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# The influence and impact of Japan to upbringing the human rights norms in Southeast Asia through the world of business

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## Summary

Japan's influence among Southeast Asia has been enormous throughout history, whether in its military occupation, culture or economical ties, and there is no doubt that Southeast Asia has developed under its influence. Have Southeast Asian states then developed and improved their human rights situation because of Japan? Or has Japan aggravated the situation being "blue washed", by performing its business activities to be "cooperative", or to simply make profit? My answer to these questions is that Japan has certainly done a considerable amount of upbringing human rights norms, with afterwar compensation and ODA to help shape the infrastructure of many countries in the region, and this can especially be seen in economic, social and cultural rights. The original Japanese approach of being non-intrusive, accommodative, and understanding towards the local government has made slow but steady progress. However, there are certainly more room for businesses to be responsible by acting in a more responsible manner, such as adopting more international human rights norms, asking professionals for consultation to truly comprehend the requirements for being a responsible business towards human rights and the society, including the environment. There might be voices asking for more enforceable methods, such as the new legislation with penalties for Japanese MNEs to follow the international standards and perform HRDD, and providing effective remedy for those who have been impacted by the business activities. However, I believe that this is not the best approach, and the best approach for Japanese MNEs are to maintain contact and good relationship with the local government while paying more attention to the requirements and details of the international standards, such as UNDP, OECD Guidelines, sector specific guidance, the Equator Principles and the IFC PS. The main focus of the details of the international standards shall be, strengthened engagement with multi-stakeholders such as local community and NGOs, as well as human rights specialists to avoid adverse impacts to happen, and if adverse impacts had already happened, MNEs shall try to avoid it to worsen, and provide effective remedy accordingly. Finally, I shall stress that disclosure is the most important stage of human rights due diligence that Japanese MNEs should work on, so that there can be more debate and improvement, for the enterprises to rise up to a sustainable development, resulting in raising the human rights norms in Southeast Asia.

In this paper, the examination will take doctrinal and law in context approach, and in the law in context approach, it will take both public and private sectors in consideration, using the cases filed to Japan NCP as examples.

## **Preface**

The background of this thesis is based on what I have always thought of throughout the 2-year programme in Sweden, coming from Japan. While the programme mainly focused on European law and human rights, it had always allowed me to look back towards the roots of my origin, Asia and Japan, where there are fewer regional regulations over human rights. The thesis brings back the old debate from 1990s, the issue of the universality of human rights and its application to Asia. It furthers the discussion towards current trends of business and human rights, reaching out to a broader audience, but still touching upon the basic notion on human rights and its identity as international law.

Also, the reason why I focused on Asia, or more specifically East and Southeast Asia, was not only because of my background but also because of the huge Asian population that consists the world. It is all great that Europe is leading in the world of human rights law, but if it doesn't cover much of the global population, where human rights should be considered and respected, it stays a regional law, and doesn't become international. With Japan's unique standing position in the global world, between the western world and Asia, I could see that there were more to explore of international human rights law as soft law.

I hope to see more of what the rest of the world apart from Europe can contribute to international human rights law, and also explore the power of soft law in the world of business.

Lastly, but not least, I would like to acknowledge my gratitude towards the support I have received in writing this thesis: Daria Davitti, my supervisor who have helped in shaping my views and putting them into words, as well as providing professional insights, our programme coordinators and course administrators in providing assistance, and my classmates who have inspired me to believe in myself to finish writing what I believe.

## **Abbreviations**

ABAC	: ASEAN Business Advisory Council
AEC	: ASEAN Economic Community
AICHR	: ASEAN Intergovernmental Commission on Human Rights
AMDAL	: Analisis Mengenai Dampak Lingkungan Hidup (Indonesian) Environmental Impact Analysis/Assessment
ANDAL	: Analisa Dampak Lingkungan (Indonesian) Environmental Impact Assessment Report
ARAIBA (ARIBA)	: ASEAN Responsible And Inclusive Business Alliance
ASCC	: ASEAN Socio-Cultural Community
ASEAN	: the Association of Southeast Asian Nations
BKPRN	: National Body of Spatial Planning Coordination
BKPRD	: Regional Body of Spatial Planning Coordination
BAPPEDA	: Cirebon Regional Body of development Planning
CEDAW	: Convention on the Elimination of All Forms of Discrimination Against Women
CEPR	: Cirebon Energi Prasarana
CL	: Civil Liberty
CRC	: Convention on the Right of the Child
CSR	: Corporate Social Responsibility
EEA	: European Economic Area and Organisation for Economic Co-operation
EIA	: Environmental Impact Assessment
EHS	: Environmental, Health, and Safety
EP	: the Equator Principles
ESIA	: Environmental Social Impact Assessment
ESHIA	: Environmental, Social, and Health Impact Assessment
EU	: European Union
FoE	: Friends of the Earth
FoEA	: Friends of the Earth Australia
GDP	: Gross Domestic Product
HRDD	: Human Rights Due Diligence

HRIA	: Human Rights Impact Assessment
IB	: Inclusive Business
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
IEE	: Initial Environmental Examination
IFC	: International Finance Corporation
IFC PS	: IFC Performance Standards on Environmental and Social Sustainability
JBIC	: Japan Bank for International Cooperation
JICA	: Japan International Cooperation Agency
KEPCO	: Korea Electric Power Corporation
MNE	: Multinational Enterprises
MOE	: Ministry of the Environment
MTR	: Mountain Top Removal
MUFG	: Mitsubishi UFJ Financial Group
NAP	: National Action Plan on Business and Human Rights
NCP	: National Contact Point
NGO	: Non-Governmental Organisation
NPO	: Non-Profit Organisation
ODA	: Official Development Assistance
OECD	: Organization for Economic Co-operation and Development
PR	: Political Rights
RSPO	: Roundtable on Sustainable Palm Oil
SEANF	: Southeast Asia National Human Rights Institution Forum
SMBC	: Sumitomo Mitsui Banking Corporation
UDHR	: Universal Declaration of Human Rights
UKPWR	: Ujungnegro, Karanggeneng, Ponowareng, Wonokerso, and Roban community
UN	: United Nations
WALHI	: Wahana Lingkungan Hidup Indonesia, an NGO
WBCSD	: World Business Council for Sustainable Development

WWII

: World War II

## 1. Introduction

“Japan makes little effort to promote human rights in Southeast Asia, although it sees itself as an advanced industrialized democracy.”<sup>1</sup> This is the discussion by an International Studies scholar Hiro Katsumata in his article, “Why does Japan downplay human rights in Southeast Asia?”. This is an interesting point as Japan has had a unique position of sharing similar values to the west, such as democracy, fundamental freedom and respect of human rights while located in the far east or East Asia to be specific, where it had put focus on different values such as economic development, community safety, education, family, and public order. While Japan stands in the middle of the two, being an advanced industrialized democracy and geographically located in the east, it shares both values, which makes it a unique state which acts as a mediator of the two. It has “strongly supported the principles of freedom, rule of law, democratic values’, premised on the view that they are ‘essential to the peace, stability and prosperity of the Indo-Pacific region”<sup>2 3</sup>. But the matter of to what extent Japan has done in order to raise the human rights norms in the region, is still in question, whether it had made ‘little effort to promote human rights in Southeast Asia’ or it had actually acted as a significant role in promoting and raising human rights norms. I will look at the case closely by dissecting the questions into several parts. In the first half I will be discussing the human rights norms in East Asia by touching upon the universality of human rights and the Asian values, along with the Japanese point of view towards international human rights standards in chapter 2, continuing the discussion of the relation to Institutionalisation of National Contact Points of Japan as a national grievance mechanism. In chapter 3, I will explain the role of international laws and standards along with how much the states are involved in the matter, and whether Japanese business practices throughout Asia are complying with them or not. In the second half of this thesis, I will be assessing Japan’s relationship with Southeast Asian states of today, and the expectations and potential of Japan, to international standards and how much in reality they have reached.

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<sup>1</sup> Hiro Katsumata, ‘Why does Japan downplay human rights in Southeast Asia?’, (2006) Volume 6, Issue 2 International Relations of the Asia-Pacific, OUP 249-267 <<https://academic.oup.com/irap/article-abstract/6/2/249/714439>> accessed 28 July 2023, 249.

<sup>2</sup> Quadrilateral Security Dialogue of Japan with US, Australia, and India, Joint Leaders’ Statement, Tokyo, 24 May 2022 <[https://www.mofa.go.jp/fp/nsp/page1e\\_000402.html](https://www.mofa.go.jp/fp/nsp/page1e_000402.html)> accessed 28 July 2023.

<sup>3</sup> Hiro Katsumata & Daiki Shibuichi ‘Japan in the Indo-Pacific: domestic politics and foreign policy’, (2023) The Pacific Review, 36:2, 305-328, <<https://doi.org/10.1080/09512748.2022.2160795>> accessed 28 July 2023, DOI: [10.1080/09512748.2022.2160795](https://doi.org/10.1080/09512748.2022.2160795) , 310.



While Asia and the Oceanian region holds 60% of the World's population, its human rights value seems to be unseen, and the problem is most likely overlooked when it produces more than 57% of the world's GDP. It is also the only region that does not have a regional human rights institution or a court. However, human rights should be universal and be applied in every country and region, and if this was ignored, human rights would just stay in as a concept in the west, not reflecting the world. This was exactly why I believed that if human rights conditions were improved in Asia, especially Southeast Asia, it would benefit not only the people living there, but would give hope to other parts of the world as well.

## **2. Theories and Methodology (Doctrinal approach and Law in context approach)**

As it is necessary to talk about methodologies to assess the question I have stated in the introduction, I will first need to discuss the theories and fundamental problems underlining human rights in Asia. 'In comparison with the United States and the European Union (EU), Tokyo's approach is less intrusive and coercive, and more tolerant and accommodative. What can be described as the economic-interest explanation holds that Japan takes a non-intrusive approach in order to maintain favourable relations with the Southeast Asian countries, so as to maximize its interests in the areas of trade and investment, and official development assistance (ODA)'<sup>4</sup>. This is the point of view Katsumata holds, and I agree to a certain extent. The reason behind Tokyo's approach can be examined and explained with the history and understanding of so-called 'Asian-Values' towards human rights. In connection to the relation between Tokyo's approach and the 'Asian-values', the traditional debate on whether human rights are a western concept, and whether they can be accepted in other parts of the world, especially in East Asia, must be also discussed. This will be the first method, internal doctrinal approach, examining whether the international human rights standards and laws are at all viable and meaningful in Asia or not. Following, I will explain the other methods, the external method of examining what Japan has done in improving human rights in Asia.

### **2.1.Underlying Theory (Doctrinal approach)**

#### **2.1.1. Universality of Human Rights**

Universality of human rights has always been a discussion for many decades since human rights law has established, and when it has become more vibrant because of globalization and more states joining the UN after the liberation of many countries in the 1960s and 1970s, it has

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<sup>4</sup> H Katsumata, (n 1) at 249.

become more meaningful to discuss and agree on the universality of human rights, so that human rights would be secured and respected in any area of the world.

‘The 1948 Universal Declaration of Human Rights (UDHR) is generally considered a starting point of modern international human rights law. The idea of human rights, mainly civil and political rights developed between the 16<sup>th</sup> and the 18<sup>th</sup> centuries by many eminent Western jurists, theorists and philosophers, plays a rather prominent role in the UDHR. In this sense, the concepts of human rights are heavily indebted to [...] Western philosophical traditions’<sup>56</sup>. The original discussion was whether the concept of human rights was universal or not, and if it is, then it shall be applicable to every cultural and social context possible. However, there many scholars agree human rights as a universal idea, but rather argues of ‘whether it is possible to maintain the fundamental universality of international human rights while still taking into account the historical and cultural particularity’<sup>7</sup>.

From the first criticism against universality of human rights during the discussion of UDHR in making, there has been much development of the discussion. The first argument was that the Universal Declaration of Human Rights could be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America, and that it could not be applicable to all human beings because “[t]he Personality of the individual can develop only in terms of the culture of his society”.<sup>8</sup> Some said this was from the view of colonialism, to oppose a dominant belief that the West and Western culture are superior to others and to suggest that all people are influenced by the communities where they live<sup>9</sup>. This is due to the influence of the third world countries who participated in making the UDHR at that time, which were not necessarily Asians or Africans, but more like Latin Americans who had similar values to those of the west and those who studied in the United States, which had Western ideologies influenced on them<sup>10</sup>. Therefore, many have argued that international human rights law is developed on the western ideas and is biased towards western values.

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<sup>5</sup> Buhm-Suk Baek, ‘Section IV. Universality of Human Rights, but Not Uniformity of Implementation’ (2018) 6 Korean J Int’l & Comp L 80.

<sup>6</sup> Louis Henkin, G Neuman, D Orentlicher, and D W Leebron., *Human Rights* (1st edn, Foundation Press 1999) 7-8.

<sup>7</sup> Buhm-Suk Baek (n 5) 81.

<sup>8</sup> Ibid.

<sup>9</sup> Karen Engle, ‘Culture and Human rights: the Asian Values Debate in Context’ (2000) 32 New York University Journal International Law & Politics 291, 308-309.

<sup>10</sup> Maka Makau Mutua, *Human Rights; A Political & Cultural Critique* (University of Pennsylvania Press 2002) 154-155.

According to Buhm-Suk Baek, however, ‘the argument of whether the role of Third World countries in the development of international law during the process of decolonization after WWII, has been positive or not, is both partially right and partially wrong’<sup>11</sup>. He claims that this is because of the role of Third-World States implementing some of the biggest human rights issues on the U.N. agenda, which are namely, colonialism, self-determination, abolition of racial discrimination, apartheid, the right to development and economic, social and cultural rights after the publication of UDHR. This is in fact an interesting point, since colonial countries would have been reluctant to add these human rights values to the international standards.

To sum up what I have discussed so far with other scholars’ views, international human rights law may have started reflecting western values between western states, however, have advanced with the help of other Third World States, and is not biased to western states as much as it did before. However, as for the point that whether Asian countries have also assisted in advancing the human rights norms, and whether human rights itself clashes with so-called “Asian-Values”, will be discussed further in the next section.

### **2.1.2. Human Rights in Asia and the ‘Asian Values’**

As discussed in the previous section, there is no doubt in the universality of human rights, to respect human rights in wherever you are and in whichever state you are in. However, what kind of rights are more valued than the other, differ depending on the region and the state. This is the position taken by most Asian scholars. For example, Lee Kuan Yew, a recognized politician and political scholar from Singapore, states that ‘any country must first follow the economic development of a state as a whole, then democracy comes afterwards. Despite a few irregular exceptions, in most new developing countries, democracy never brought about a “good government”’<sup>12</sup>. A “good government” talked about here is a government which provides food, living, education, and safety, and one that set out goals to achieve an economic development<sup>13</sup>. This position shares a view of Asian values towards “human rights” in some way that they do not support the idea of civil and political rights, which leads to democracy. “Good governance” does not necessarily mean a “good government”, but focuses on educating

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<sup>11</sup> Buhm-Suk Baek (n 5) 82.

<sup>12</sup> Kouichi Tsutsumi, グローバル化時代のアジアの人権 [‘Human Rights in Asia during the era of Globalization’] (2000) 3:4 Volume 1 Ritsumeikan Hogaku, 271-272.

<sup>13</sup> Mitsunori Fukada, 現代人権論 [Modern Human Rights Theory], (Koubundo 1999), 140.

and raising the intelligence of the majority civilians in a state<sup>14</sup>, which may be a step to realizing human rights in long term after economic development. In other words, many Asian scholars think that Asian states should focus on economic social rights rather than civil and political rights, and community rights rather than individual rights.

This emphasis of social stability and economic development, rather than civil and political rights for the individuals, have become 'more prosperous and more self-confident in the 1990s'<sup>15</sup>. The concept of human rights in Asia was first discussed among representatives of Asian states in the preparatory Asian Convention in Bangkok, before the Vienna World Human Rights Convention in 1993. Here, the important points discussed were room for consideration of regional characteristics and particularity, and the avoidance of foreign countries involvement. However, these two points were not accepted in the Vienna Conference, and it was reassured that human rights are universal and of international concern at the same time<sup>16</sup>. There, the Asian representatives pushed for mainly 4 points<sup>17</sup>, a) human rights is a relative issue; b) human rights is an internal issue and therefore does not allow foreign intervention, including NGOs; c) it is more important to assure social rights in Asia, and the individual states' is the priority, and the rights of development as a group shall be assured in the international society; and d) the human rights policy in developed countries are lacking consistency and it is wrongful to use human rights as a negotiation card for providing development assistance<sup>18</sup>. This is understandable from a viewpoint where human rights have not developed as much as Europe. Nonetheless, some of the points mentioned in the Bangkok declaration actually did make it to the Vienna Declaration, such as the consideration of regional characteristics in Article 5.

During the period of this controversy in 1990s, many Asian governments have engaged in a wide range of serious human rights abuses. One of the major reasons why these government stress the importance of economic development is to avoid or refute domestic and external criticism of such abuses. On the other hand, one cannot deny that many of these governments have been fairly successful in improving economic, social and educational conditions in their respective countries from the 1960s through the 1990s, and that together with this development,

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<sup>14</sup> Fukada (n 13) 140.

<sup>15</sup> Yasuaki Onuma, 'In Quest of Intercivilizational Human Rights: "Universal vs. "Relative" Human Rights Viewed from an Asian Perspective', (2000) 1 Asia-Pacific Journal on Human Rights and the Law 53-88, Kluwer Law International, Netherlands, 56.

<sup>16</sup> These were assured in Article 1 and 5 of the Vienna Declaration and Programme of Action, Adopted 25 June 1993, the World Conference on Human Rights in Vienna.

<sup>17</sup> K Tsutsumi (n 12) 271-272.

<sup>18</sup> Kouki Abe, 人権の国際化 [*Internationalism of Human Rights*], (Gendai Jinbunsha 1998) 88.

there has been steady progress in the enjoyment of human rights. People in South Korea, Taiwan, Thailand, Malaysia and Singapore now generally enjoy much better lives than in the 1960s in terms of per capita national income, life expectancy, literacy, health conditions and other matters of human development. South Korea and Taiwan also improved conditions for civil and political rights substantially, and the others have to some degree. In contrast, the Philippines, which most Western intellectuals have referred to as nations with democracy and human rights, have failed not only to substantially improve their economic situation, but also the human rights situation as a whole<sup>19</sup>.

Some say that the universality of human rights means two things, which exists in the Western tradition, the norms of conduct and their underlying justification<sup>20</sup>. That '[o]n one hand, it is a legal tradition, legitimating certain kinds of legal moves, and empowering certain kinds of people to make them', while on the other hand, 'entrenching rights to define the norms around which world consensus would supposedly crystallize'<sup>21</sup>. The eastern scholars criticize these points, claiming that these western ideas give primacy to the individuals, where the Asian or a "Confucian" outlook would have a larger place for the community, and creates a platform for the people that eventually meets the human rights standards for a majority to agree with<sup>22</sup>.

I believe this is true to some extent as this creates a place for questioning the implementation of international human rights standards.

### **2.1.3. Japan's approach towards human rights explained by Japanese scholars**

At the Bangkok Declaration and thereafter the Vienna World Human Rights Convention, the representative of Japan has pointed out that 'although Japan understands the Asian point of view, it stands corrected and believes in the universality of its nature as an international concern.

Most Japanese scholars stand differently from other Asian scholars, expressing their point of view, which is neither completely western, nor eastern. They point out the importance of international human rights standards, while giving some certain understandings towards the Asian Value. According to Yasuaki Onuma, a leading expert of human rights in the University of Tokyo's Graduate School of Law and Politics, he explains the Asian understanding of human

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<sup>19</sup> Onuma (n 15) 56.

<sup>20</sup> Charles Taylor, Conditions of an Unforced Consensus on Human Rights, presented at Bangkok Workshop, March 1996, 2.

<sup>21</sup> Ibid.

<sup>22</sup> Lee Kuan Yew, 1959-90. *Prime Minister's speeches, press conferences, statements, etc.* Singapore: Prime Minister's Office.

rights to the term, “intercivilization” of human rights. ‘The term “intercivilizational” refers to a perspective seeking to overcome a perspective which is assumed by, and framed within, a particular civilisation. It seeks to reach a more widely shared perspective by bringing into intellectual discourses plural ways of thinking based not only on modern Western civilisation but on other civilisations as well. It is a methodological as well as strategic concept to overcome a predominant Westcentric universalist discourse on one hand, yet to prevent intellectual discourses from falling into a one-sided criticism based on some particular non-Western civilisation on the other’<sup>23</sup>.

In his article, Onuma also stresses 7 main points, as follows:

- 1) ‘The notion of human rights is a specific formulation of a more general, even universal pursuit for the spiritual as well as material well-being of humanity. Because the mechanism of human rights is only one of many ways to pursue this universal objective, there can be other ways to realise it.’
- 2) ‘Seen from a comparative perspective, however, the mechanism of human rights is the most effective means of protecting the vital values of human persons within the modern system of sovereign nation-states.’
- 3) ‘A historical survey suggests that for any nation to guarantee civil and political rights in an effective manner, a preceding, or at least a concurrent, progress in economic, social and educational fields is necessary.’
- 4) ‘The overwhelming majority of human beings (those in the South) are, and will continue to be, in the process of modernization. Governments in the South are committing, and will continue to commit, a number of serious human rights abuses in the same manner as, or even worse than, the governments in the North have committed in the process of their modernization. Since the mechanism of human rights has proven to be the most effective way of protecting vital human interests in this process, international society must encourage, and at times even urge, governments of developing countries to respect human rights.’
- 5) ‘The discourse on human rights is part of the contemporary Westcentric intellectual discourse that dominates the entire world. This discourse on human rights is foreign to

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<sup>23</sup> Onuma (n 15) 53. See also critical remarks on Westcentric American education of international law in the 1981 *Proceedings of the 75<sup>th</sup> Anniversary Convocation of the American Society of International Law*, Washington, D.C., 1983, pp. 163-167, and a critical analysis of Westcentric history of international law in *A Normative Approach to War*, Y. Onuma (ed.), (OUE, 1993), pp. 371-386

many developing nations because of their diverse civilizational backgrounds. Moreover, they share a strong resentment against the political, economic, and military hegemony, as well as the imperial and colonial history of Western powers and Japan. It is thus natural that many of them are critical of “human rights diplomacy” by developed countries.’

- 6) ‘The developed countries must therefore be critical of their own past as well as their contemporary hegemonic behaviour. They also have to appreciate the values, cultures, religions, and pride of non-Western, non-Christian peoples when they engage in human rights diplomacy.’
- 7) ‘Since the mechanism of human rights is one of many ways to realise human well-being, it naturally has flaws as well as merits. It is thus necessary to constantly reconceptualize human rights to make them less flawed and more universal. It is also necessary to find an alternative or at least complementary mechanism to achieve the well-being of humanity.’<sup>24</sup>

He writes, there is a tendency of negative attitude towards human rights in Asia, which can be explained by its diverse culture, GDP income, religions<sup>25</sup>. He claims this is also because of the nature of its governance, being not as legalistic as European or contemporary American culture with the exception of western Asia (the middle east). ‘In East Asia, for example, the abuse of power by the ruler and the violation of values and interests of the people have not traditionally been prevented and checked by judicial mechanisms.’<sup>26</sup> Another reason behind the negative attitude towards human rights in Asia could be because of many Asian governments being authoritarian and oppressive, and that Bourgeoisie and independent labour unions have not been helpful as it was in western states or in Japan, where they can be helpful in fighting for their rights. Not to mention, most Asian nations were poor, and it was natural for these countries’ leaders to prioritize the economic growth and development of their nation ‘to provide subsistence for, and to improve the material situation of, their people, whether they are characterized in terms of human rights or not’<sup>27</sup>. Lastly, because of the influence of superpowers during the cold war period, most authoritarian governments have disregarded the importance of human rights, and they continued to do so even after “human rights diplomacy” started in late 1970s because of the inconsistency of the policies and what kind of aid they

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<sup>24</sup> Onuma (n 15) 53.

<sup>25</sup> *ibid* 59-60.

<sup>26</sup> *ibid*.

<sup>27</sup> *ibid* 60.

could get from the US and in Western Europe. There were many times when abominable human rights abuses were tolerated when the Western powers regarded other political, economic, and military interests as more important.

Another point many scholars points out, is the illiteracy and insufficient knowledge of the fundamental rights of human beings being the reason behind the lack of human rights development in these countries. India is an example given by Onuma, having committed to liberal democracy and human rights as a matter of formal political theory, and has established civil and political rights, but on the other hand, having a large illiterate population which makes it difficult to achieve a real materialization of civil and political rights. Moreover, the deeply rooted patron-client relationship in rural areas have caused difficulty for many Indian people to vote freely even if they wish to do so, which is a result of insufficient knowledge of the fundamental rights, as well as human relationship and culture.

Another Japanese scholar, Tatsuo Inoue, Professor of Philosophy of Law at the Graduate School of Law and Politics, at the University of Tokyo, writes in his article<sup>28</sup>, that Asian Values do not exists and are merely a thought of a government trying to oppose western powers, and that Asia will have to continue to develop democracy. However, he does believe that Western powers do need to listen to Asian voices, and let them in the discussion of development for the genuine realization of democracy: ‘to identify a reasonable and fair common basis of legitimacy for divided societies without giving up the commitment to basic human rights’; and ‘to enrich the concepts of individual rights and democracy so as to accommodate individualist – communitarian tensions in a principled way’.

However, in contrast with these countries, Japan has had a relatively high standards of respect for human rights, identifying ‘itself as one of the advanced industrialized democracies, which share liberal values such as a concern for freedom, human rights, democracy, as well as a market economy’<sup>29</sup>. Japan has already internalized the norm of human rights, embedding most of them in the Constitution of Japan, especially mentioned in articles 11, 13, and the preamble showing that right to fundamental human rights shall be enjoyed by the people, that their right to life, liberty, and pursuit of happiness shall ... be the supreme consideration in legislation and in ordering governmental affairs’, and that Japan abide by the international standards in international society. This can also be seen in practice domestically, shown in the *Freedom in*

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<sup>28</sup> Tatsuo Inoue, ‘Liberal Democracy and Asian Orientalism’ in Joanne R. Bauer., Daniel A. Bell (eds), *The East Asian Challenge for Human Rights* (Cambridge University Press 1999), 59.

<sup>29</sup> Katsumata (n 1) 249.



*the World*, an annual comparative assessment of political rights (PR) – which enable people to participate freely in the political process – and civil liberties (CL) – which include the freedom to develop views, institutions, and personal autonomy apart from the state. According to the assessment in 2022, Japan was graded 1 (PR) and 1 (CL), out of 7 as the lowest possible score in each case. In contrast, in some of the Southeast Asian countries grades are still in the low: Myanmar graded 7 (PR) and 6 (CL); Vietnam graded 7(PR) and 6(CL); Cambodia graded 7 (PR) and 5 (CL); Thailand graded 6 (PR) and 5 (CL)<sup>30</sup>. Then the question is what does Japan do differently, and what kind of approach does it take towards Southeast Asian countries?

Not to mention, Japan’s history of modernization has brought upon many western ideas already in the late 1800s and early 1900s, Japan had already advanced in the economic and modern ideas. This includes the domestic laws such as civil law and the constitution, articulated with modeling German and French laws at that time. But most importantly, the reason behind its highly respected human rights is probably because of the heavy influence of the United States after the second World War. The current constitution which includes basic human rights, as well as criminal procedure which is crucial for due diligence of law, and labour law for protecting labour rights. Post war, Japanese Constitution assures that the sovereignty lies with the people, and not the imperial power<sup>31</sup>. This has assured many rights for the people in Japan, and built a basis for new rights to be discussed.

‘Tokyo’s approach is apparently less intrusive and coercive, and more tolerant and accommodative. On a bilateral basis, Japan does not criticize the target country in the way that the United States and the EU do. Nor does it impose economic or political sanctions, comparable to those of the US or the EU. More importantly, Japan’s approach toward the association of Southeast Asian countries as a whole is distinct from that of the North American and European countries. It is largely non-intrusive and accommodative, as the Tokyo government gives due consideration to ASEAN’s diplomatic style<sup>32</sup>. This is evident in the cases of Myanmar, Indonesia and Cambodia, where Japan had avoided the use of phrases the states have disliked<sup>33</sup>, and also the direct appointing of accusations to name the countries of human rights abuses. Japan had tried using the phrases “democratic”<sup>34</sup>, but since it created a

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<sup>30</sup> Freedom in the World, Country and Territory Ratings and Statuses, 1973-2023 (Excel Sheet from Freedom in the World), <<https://freedomhouse.org/report/freedom-world>> accessed 23 April 2023.

<sup>31</sup> Preamble and Articles 1-4 of the Constitution of Japan

<sup>32</sup> Katsumata (n 1) 252-253.

<sup>33</sup> Japan avoided the term “democratic governance” and “democratic principles” in the summit for ASEAN-Japan summit in December 2003; and the term “coup” in the 1997 coup in Cambodia.

<sup>34</sup> The Chunichi Simbun, 5 December 2003.

lot of tension among the states, had focused on more inclusive phrases such as “harmonious environment”<sup>35</sup>.

Katsumata explains in his article, that the reason behind this soft approach of Japan towards Southeast Asian States is to maintain economic-interest of its own. He shares the same view with Human Rights Watch that the Tokyo government avoids creating political tensions with its ‘most important trading and aid partners’ over their abusive human rights practices, such as Indonesia, Myanmar, and Cambodia. ‘Intrusive diplomatic maneuvers may jeopardize Japan’s interests in the two areas, trade and investment, and ODA. In terms of trade and investment, Tokyo has a large stake in Southeast Asia, and it rightly recognizes that the economic development of the countries in this region is crucial to its own economic performance. Thus, Japan offers a large amount of ODA to the countries of Southeast Asia’<sup>36</sup>. For example, for Indonesia, Vietnam and for Cambodia and Myanmar, Japan is still in the top 5 donors for ODA<sup>37</sup>. ‘Although Tokyo claims to consider the human rights conditions of the recipient countries in its overall ODA policies’..., ‘its approach in this area is rather practical and accommodative’<sup>38</sup>. At the time when Katsumata wrote his article, this might have been true. However, the situation of Japan and Southeast Asia has somewhat changed, though not entirely, after two decades, and the interest of Japan has not entirely been on economic relations, but has slowly shifted to caring more of the human rights in the area, or portraying as such. This might be because of the rise of China in the region, with more economic influence, pushing back Japan to be less influential in their economic partners. Some still have Japan as one of their first ODA donors, but the fact that China’s national GDP has grown so much, has opened opportunity for more influence of China in the area. At the same time, it has given an opportunity for Japan to reconsider its identity as a leader in the East and Southeast Asian region. Nonetheless, it is still true that Japan uses soft approach towards Southeast Asian states, which can also be explained by the economic-interest theory, that the region needs to develop

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<sup>35</sup> ASEAN and Japan dialogue, 2003.

<sup>36</sup> Katsumata (n 1) 255.

<sup>37</sup> ‘Indonesia in 2011’ (pdf downloaded from *Development Initiative*), <<https://devinit.org/wp-content/uploads/2013/09/Investments-to-End-Poverty-Chapter-10-Indonesia.pdf>> accessed 24 April 2023

‘Cambodia in 2022’ (report from *Cambodian Rehabilitation and Development Board Council for the Development of Cambodia – The Cambodia ODA Database*)

<[http://odacambodia.com/Reports/reports\\_by\\_updated.asp](http://odacambodia.com/Reports/reports_by_updated.asp)> accessed 4 May 2023.

‘Myanmar in 2011’ (pdf downloaded from *Development Initiative*)

<<https://devinit.org/wp-content/uploads/2014/02/Myanmar.pdf>> accessed 24 April 2023.

‘Country Report Vietnam’ (*DevelopmentAid Special Report 2018*),

<[www.developmentaid.org/api/frontend/cms/file/2018/08/Country-Report-Vietnam.pdf](http://www.developmentaid.org/api/frontend/cms/file/2018/08/Country-Report-Vietnam.pdf)> accessed 24 April 2023, 5.

<sup>38</sup> Katsumata (n 1) 255.

economically in order to develop rights as well. As mentioned earlier, because of the ODA and the focus on economic development, the socio-economic development as well as economic social and cultural rights in East Asia are better than other areas of the world. The numerical data is difficult to find as there is so much focus on civil and political rights, compared to economic social and cultural rights, and how these data are collected and rated are unknown so it is difficult to rely entirely on the index. Even so, with what I could find on the HRMI Rights Tracker, the Quality of Life that most East Asian countries offer were actually about the same or even higher than those even in Europe and North America, providing education, work, housing, food and health care for the huge population they have in the region<sup>39</sup>.

Katsumata also claims the soft attitude of Japan towards Southeast Asia comes from the identification as an Asian country, over the concern of state sovereignty and the principle of non-interference as an important element of regional diplomacy. Japan's approach in its Asian diplomacy is based not on pressure but on dialogue due to the historical fact of Japan and other states colonializing the states in Asia.

With the Japanese approach, the Japanese government has aided in many areas related to human rights, such as legal technical assistance, ODA, and infrastructure building. One of such, which is essential in building the human rights norms, is the International Cooperation Department, and it is conducted by the Ministry of Justice, providing legal technical assistance to developing countries in Asia. They provide assistance in drafting and amending basic laws, improving legal systems and training legal professionals in these countries, with projects organized by the Japan International Cooperation Agency (JICA) as the nation's Official Development Assistance (ODA). They have worked since 1991, and expanded their operation after 2001, with an official establishment of the department. It has worked with Vietnam, Cambodia, Laos, Indonesia, Myanmar, Nepal, Timor Leste, et al<sup>40</sup>.

Their achievement includes assistance to drafting the Civil Code and the Civil Procedure Code, as well as training judges and other judicial officials in Vietnam and Cambodia among other

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<sup>39</sup> Cambodia 61.4%, Laos 71.4%, Malaysia 83.2 %, Indonesia 75.2%, Thailand 91.5%, South Korea 96.5%, compared to United States 91.2%, United Kingdom 81.1%, Germany 78.4%, France 80.7%, This data is doubtful itself when there are so many countries in Asia, where they provide school healthy and well-balanced school lunches, while in the US and in Europe, there rarely provide something as such. Comparatively, the hospital fee is relatively high in these so-called west states and does not provide as much preventive health care. Also, the unemployment rate is relatively higher in the western states, where in East Asia, they keep it low around 3%. See more at 'Unemployment Rate -Countries- List | Asia' (*Trading Economics*) <<https://tradingeconomics.com/country-list/unemployment-rate?continent=asia>> accessed 4 May 2023.

<sup>40</sup> 'The International Cooperation Department' (*The Ministry of Justice, JAPAN*) <[www.moj.go.jp/housouken/houso\\_icd.html](http://www.moj.go.jp/housouken/houso_icd.html)> accessed 5 May 2023.

projects<sup>41</sup>. The significance of their operation is that they provide assistance according to the states' requests, and cooperate with the Ministry of Foreign Affairs, and JICA to offer "good governance" support and for the market economy in these countries to develop. This is a good example of what Katsumata explains in his article, the soft approach which Japan takes, in which the underlying concepts are economic-interest and consideration of the Southeast Asian states' memory of the war, and imperial era. Japan tries never to overstep the boundaries these states set, and support them through dialogue and consultation.

In sum, Japanese scholars agree to a certain point that human rights have been developed mainly in the west but do not only concern of western ideas, and that they need to develop with Eastern ideas imbedded as well. However, they do not discard the idea of universality of human rights, and believe that human rights standards and international human rights law, is the best way, or in other words, the least ineffective way to protect the vital values of human persons within the modern system of sovereign nation-states. Additionally, Asian countries have not traditionally engaged in legalization of the norms, and have rather waited until the norm was established and shared within the community in the country, to legalize these ideas. What moved the people and the public was not the law, but rather the norm and standardized mutual understanding between one another. However, when considering how to fulfil these steps, Japanese scholars have a different idea with the western ones, mentioning the importance of respect and dialogue towards these Asian states, and showing a certain understanding towards these Asian states. The method shall not be coercive or bargained with half intention to alter the states forcing them to deal with these human rights violations, which western states usually use. It shall be done by inclusive dialogue and consultation. However, this process takes time, and thus, there weren't much advancement or movement outside of what I have mentioned above, as of the government.

However, with globalization and the stronger involvement of other actors such as multinational corporations in power of the global economy, there are more things which private actors can do and influence in the region. Therefore, in this paper, I will focus more on the private aspects of businesses of Japan and the influence it has in human rights in Asia. The reason behind this is because of the Asian aspect I have discussed previously, as Asian states have been reluctant to assure rights as individual rights, and to ensure those rights, the realization of the rights by the state have been proved as a struggle with history from the last 20 years. Some multinational

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<sup>41</sup> 'The International Cooperation Department' (*The Ministry of Justice, JAPAN*) <[www.moj.go.jp/ENGLISH/MEOM/meom-01-05.html](http://www.moj.go.jp/ENGLISH/MEOM/meom-01-05.html)> accessed 5 May 2023.

companies and enterprises might have more power than a state, not only on a financial level, but also on a personal level, which creates the norms in the region. Moreover, as I have mentioned earlier, East Asian states focus and put much weight on the economic development, thus might be more willing to opening the country to foreign ideas on the business terms. Seeing the relation Japan already has with these Southeast Asian countries and the power of influence it has, with the invitation of the states, this might be a new breakthrough for achieving higher human rights norms for individuals in Southeast Asia.

## **2.2. External Methodology**

In order to assess the question of to what extent has Japan done in order to raise the human rights norms in the region, whether it had made ‘little effort to promote human rights in Southeast Asia’ through business or it had actually acted as a significant role in promoting and raising human rights norms, I will mainly take two approaches. The first one will be the law in context approach, where I look into the Business and Human Rights standards and agreements in Asia, as well as Institutionalization of Japan NCPs. I will examine how much of the international standards are implemented and have been accepted to East Asian states including Southeast Asia. The details will be discussed in Chapter 3.

The second one will be the empirical research approach, which is based on observation and measured phenomena from several cases described in details in Chapter 4. I will mainly use the qualitative research, gathering non-numerical data, and here I will look into business practices of Japanese MNEs, such as the implementation of international standards in their business conducts, human rights due diligence and grievance systems, especially established complaint systems through Japanese NCP cases. Comparing the different business practices towards human rights related to Southeast Asia, I will try to draw a conclusion whether Japan has contributed enough to elevate the human rights norms in Southeast Asia.

## **3. Business and Human Rights Standards and Agreements in Southeast Asia**

As mentioned above, there have been different sentiments towards human rights in Asia. However, in these few decades, slowly but steadily, things have been changing and the states and different actors have started taking actions against the violations. As business actors take a huge role in economic development, and as Southeast countries develop, there are more margin for business actors to take responsibility in their business conduct. While most businesses in local communities in Southeast Asia are reluctant or not used to complying with international standards of Business, Japanese government and Japanese companies has started to make more

efforts to comply with International Standards to responding to international pressure and contributing to improving the regional environment. In order to assess, how well and how much Japanese government and companies are doing to comply with the standards, we will first look into the international standards and soft laws relating to business conducts. Following that, we will look into the development of Japan National Contact Point, a complaint system that was established following the OECD Guidelines.

### **3.1. International Standards and Soft Law relating to Business**

Although there are several international standards related to business and human rights, or labour in general, there is no unilateral law binding specifically for business and human rights. Despite this fact, there are still many international standards that governments and businesses can refer to, and the existence of those help businesses grow sustainably, while respecting the people and culture of the place they practice. This leads to a broader understanding of the public in these countries and eventually can bring up changes in governments, such as implementing hard law relating to individual rights and the environment.

There are many international standards that have influenced in shaping the business conduct norms, starting with UN Guiding Principles on Business and Human Rights<sup>42</sup>, OECD Guidelines and Guidance<sup>43</sup>, and traditional International Laws such as International Covenant for Civil and Political Rights (ICCPR)<sup>44</sup>, and International Covenant for Economic, Social and Cultural Rights (ICESCR)<sup>45</sup>, as well as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>46</sup>, Convention on the Rights of the Child (CRC)<sup>47</sup>, and individual workers' rights in ILO Conventions and Recommendations. Not to mention, all of the human rights basis are on the Universal Declaration of Human Rights (UDHR)<sup>48</sup>.

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<sup>42</sup> UN Guiding Principles on Business and Human Rights (published 01 January 2012); developed by economics professor at Harvard University, John Ruggie after his development and publication of UN Global Compact in 2000.

<sup>43</sup> OECD Guidelines for Multinational Enterprises, (adopted 27 June 2000, Organisation for Economic Cooperation and Development); OECD Due Diligence Guidance for Responsible Business Conduct.

<sup>44</sup> International Covenant for Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>45</sup> International Covenant for Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976 UNGA Res 2200A(XXI)) (ICESCR).

<sup>46</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted and opened for signature, ratification and accession 18 December 1979, entered into force 3 September 1981, UNGA Res 34/180) (CEDAW).

<sup>47</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990 UNGA Res 44/25) (CRC).

<sup>48</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR).

### 3.1.1. United Nations Guiding Principles on Business and Human Rights

The most important one when discussing business and human rights is the UN Guiding Principles on Business and Human Rights<sup>49</sup> for States, business, civil society, and other relevant stakeholders. This was established to provide advice, tools and other resources; support capacity building on business and human rights to all stakeholders, including through OHCHR's field presences and across the United Nations system; and act as secretariat for human rights mechanisms and bodies, such as the Working Group on Business and Human Rights and the inter-governmental group developing a business and human rights treaty. This has helped states to refer to a standard that is universal and gave a platform from where they should work from. Although they are not binding international law, 'they are the most authoritative international statement regarding the responsibilities of business with respect to human rights'<sup>50</sup>. As expected in the summary of U.N. Guiding Principles for Business and Human Rights, by Foley Hoag, it did start influencing the national law and policy in jurisdictions in certain states in the United States, and some states across Europe, such as Germany, the Netherlands, and most importantly in the EU. The EU has started its discussion towards the Proposal of a new Directive of its own, a Directive on Corporate Sustainability Due Diligence (CSDD)<sup>51</sup>. With this Directive, multinational enterprises with operations in the EU space will be obligated to take measures to protect human rights and the environment, which when they do not comply, will face penalties, such as civil liability and administrative sanctions. Again, this is a very typical European or western move, going ahead with legalisation of undefined norms, in order to stabilize and influence the people and business norms. I am not claiming that there isn't an already established norm of human rights and environmentalism towards business practices and conducts. There are already many business practices which openly follow the human rights due diligence (HRDD) set by the UN Guiding Principles and claims that their businesses are sustainable in many ways. However, the norm isn't as established as it seems, and the business practices towards the environmental protection and

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<sup>49</sup> United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (A/HRC/17/31 21 March 2011) (UNGP).

<sup>50</sup> Smith G A. and Lehr A K., 'U.N. Guiding Principles for Business and Human Rights', (2011) Foley Hoag LLP <<https://media.business-humanrights.org/media/documents/files/media/documents/ruggie/foley-hoag-briefing-guiding-principles-may-2011.pdf>> accessed 28 July 2023.

<sup>51</sup> Radu Mares, 'The New EU Directive on Corporate Sustainability Due Diligence: Origins, Compliance Effects and Global Significance' (*The Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, 14 September 2022) <<https://rwi.lu.se/blog/the-new-eu-directive-on-corporate-sustainability-due-diligence-origins-compliance-effects-and-global-significance/>> accessed 29 April 2023.

human rights protection are sometimes exercised for publicity and advertisement, which some may name as greenwashing, or “blue-washing”<sup>52</sup>.

However, the good thing about this UN Guiding Principles, is that it has evolved from the previous UN principle for businesses, the UN Global Compact. Not that the UN Global Compact hasn’t had a huge impact before the UNGP was established, but it is worthwhile to mention that it was not as successful since there were no monitor systems or detailed guidelines for multinational enterprises to follow. This UN Global Compact tried to set a standard for businesses and governments in 2000, but the details were non-existent, and did not give as much guidance as the UNGP did. The peculiarity of UNGP lies on the “protect, respect, remedy” standard, suggesting that the states have the legal obligation to protect human rights, companies have the responsibility to respect human rights, and that the victims should have access to effective remedy, with states assuring this right. ‘This means that the companies should not infringe on the human rights of other, and they should address adverse human rights impacts with which they are involved. Companies should respect internationally recognized human rights, even if they are not recognized under national law. Additionally, when national law conflicts with international law, companies should seek to honor the principles of the international standards, while complying with domestic law. Finally, companies should address the risk of contributing to gross human rights abuses as an issue of legal compliance’<sup>53</sup>. What is unique about the UN Guiding Principles is not only this point, but also that it had provided detailed guidance for businesses to follow, which is the Human Rights Due Diligence (HRDD) steps. It ‘propose that companies: develop a policy commitment to respect human rights; assess actual and potential human rights impacts; integrate and act upon the findings of such assessments; and track or audit how impacts are addressed; and communicate regarding how the impacts are addressed’<sup>54</sup>. Finally, the Guiding Principles called on companies to establish grievance mechanisms on operational-level so that individuals and communities that may be strongly impacted from business activities can seek assistance, and resolutions. This is both beneficial for the company and the individuals as it takes time and resources to go through law suits. HRDD is risk-based, and therefore ‘the measures that an enterprise takes to conduct due diligence should be commensurate to the severity and likelihood of the adverse impact’<sup>55</sup>.

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<sup>52</sup> Gordon Alexander Schlicht, ‘Reflecting on the UN Global Compact: what went wrong?’ (*London School of Economics*, 26 July 2022) <<https://blogs.lse.ac.uk/businessreview/2022/07/26/reflecting-on-the-un-global-compact-what-went-wrong/>> accessed May 1 2023.

<sup>53</sup> Foley Hoag LLP (n 50).

<sup>54</sup> *ibid*.

<sup>55</sup> OECD Guidelines for MNEs (n 43), 17.



Where it is impossible to address all identified impacts at once, as it is in most cases with their limited resources, enterprises shall prioritise to tackle the risks that are most severe, and the likelihood of the adverse impacts. Then, after the first risk has been handled, they should move on to the next one, gradually working on the rest of the risks.

### **3.1.2. The OECD Guidelines for Multinational Enterprises (MNEs)**

Additionally, it had opened an atmosphere for discussion not only in Europe and North Americas, but also in other parts of the world as well. Following the UNGP, was the OECD Guidelines for Multinational Enterprises revised and updated in 2011, which opened the discussion to not only Europe, but also in the Asia Pacific area, which has 4 member states, namely, Australia, Japan, New Zealand, and Republic of Korea (South Korea). This set of Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They are non-binding but set standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD did not stop with just this set of Guidelines, and further provided a Due Diligence guidance, to support enterprises practically on the implementation of the OECD Guidelines for Multinational Enterprises. This has led to further implementation and suggestions for non-EU countries to work along with companies and businesses to align with international standards. One of which is the National Contact Points mentioned in OECD Due Diligence Guidance for Responsible Business Conduct.

The National Contact Points (NCP), required to set up by governments complying with the OECD Guidelines, work to enhance the effectiveness of the Guidelines by promoting the values set in the Guidelines, carrying out surveys, and ‘contributing to the resolution of issues that may arise from the alleged non-observance of the guidelines in specific instances. NCPs assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines. They provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines’<sup>56</sup>. The grievance mechanism in the NCP is one of the biggest improvements of business and human rights in the Asia Pacific region. I will explain more in the next section, about the institutionalisation of NCP in Japan, with a comparison to a neighbour state, South Korea.

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<sup>56</sup> National Contact Points for the OECD Guidelines for Multinational Enterprises (OECD) <[www.oecd.org/investment/mne/ncps.htm](http://www.oecd.org/investment/mne/ncps.htm)> accessed May 2 2023.

### 3.1.3. Regional frameworks and standards

As a regional instrument, ASEAN Human Rights Declaration was the beginning of soft law for human rights in the region, and because of its nature as a declaration, it has no binding effect. Nonetheless, the work of ASEAN Human Rights Declaration has been remarkable as it has worked on expanding the understanding towards human rights in the region, by establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Responsible And Inclusive Business Alliance (ARAIBA or sometimes ARIBA). The AICHR has assisted in deepening the knowledge on human rights by coordinating workshops, conferences and dialogues between government officials, scholars, professionals and students. This does not halt at the rights mentioned in the Declaration, but continues forward with newer relations to human rights that are discussed globally, including environmental rights and the rights connected to business conducts. The ASEAN Intergovernmental Commission on Human Rights have been preparing for regional environmental rights framework, as well as promotion of human rights in business conduct. The promotion of human rights in business conduct relies on the National Action Plan on Business and Human Rights (NAPs) in ASEAN members states, and Human Rights Due Diligence based on the UN Guiding Principle. ARAIBA, following the International Labour Organization's responsible business, and UNGP, have 6 key objectives, namely are: to realize the vision of "A World Where Businesses Do Well By Doing Good"; to enable responsible business conduct in ASEAN to achieve sustainable, inclusive and equitable economic development; to promote a culture of good governance, in conformity with the principles of the ASEAN Charter; to share information, experiences and good practices on responsible and inclusive business activities with ASEAN Member States, other international organizations, non-governmental organization and other relevant bodies; to support businesses, governments and other stakeholders in implementing and adopting international norms and standards in the ASEAN Work Plans; and to connect businesses with ASEAN Sectoral Bodies, Member States and other stakeholders to accelerate the adoption of responsible and inclusive business conduct. ARAIBA has set soft laws such as the Code on Responsible and Inclusive Business<sup>57</sup>.

The two main focus on the ASEAN platform is on building and supporting "a responsible business" and "an inclusive business". A responsible business by their definition means 'one

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<sup>57</sup> 'A Joint Initiative of the ASEAN Business Advisory Council and the ASEAN CSR Network – To promote responsible business conduct in ASEAN to meet the objectives of the ASEAN 2025: Forging Ahead Together (ASEAN Responsible and Inclusive Business Code of Conduct)' (ARAIBA, 2018) <[www.araiiba.org/code-of-conduct](http://www.araiiba.org/code-of-conduct)> accessed 30 July 2023.

that gives serious consideration to the impact of their operations on People and Planet, while remaining Profitable. A responsible business also abides by their principles and values in their internal methods and processes as well as in their interaction with others'<sup>58</sup>. An inclusive business (IB) is explained as 'one that provides goods, services, and livelihoods on a commercially-viable basis to people at the base of the economic pyramid, making them part of the company's value chain as suppliers, distributors, retailers, or customers'<sup>59</sup>. The term "Inclusive Business" is referred from the ASEAN Inclusive Business Framework (AIBF), which refers to the 'emerging private sector contribution towards achieving ASEAN Economic Community (AEC) 2025 Vision of a resilient, inclusive and people-oriented and people-centered community'<sup>60</sup>. The objectives of AIBF are: 'to strengthen enabling policy environments for IB in ASEAN member states, thereby helping IB companies maximize opportunities in terms of economic growth and development; to foster regional collaboration encouraging cross country adoption of IB practices; and to connect AEC and ASCC<sup>61</sup> vision along the line of IB practices, economic growth and positive social impact'. After the Framework was published, followed the Guidelines for the Promotion of Inclusive Business in ASEAN. The Guidelines provided a more detailed Guidance for the ASEAN states and business enterprises to achieve economic growth and positive social impact. ASEAN also created the ASEAN Guidelines for Corporate Social Responsibility (CSR) on Labour<sup>62</sup>. This set of guidelines were set to provide a broad stroke on the principles of accountability, transparency, ethical behaviour in respect for international labour standards, respect for stakeholder's interests, and respect for human rights. They have priority areas of risk management, which are: forced labour and child labour; employment and employment relationship; human resources development and training; conditions of work and life; industrial relations; migrant workers; and sustainable development<sup>63</sup>. This set of guidelines focuses on

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<sup>58</sup> 'The ARAIBA Brand Story' (ARAIBA) <[www.araiba.org/brand-story](http://www.araiba.org/brand-story)> accessed 9 May 2023.

<sup>59</sup> *ibid.*

<sup>60</sup> ASEAN Inclusive Business Framework (adopted 14 August 2017, World Business Council for Sustainable Development (WBCSD)).

<sup>61</sup> ASEAN Socio-Cultural Community. See more at <<https://asean.org/our-communities/asean-socio-cultural-community/>> accessed 30 July 2023.

<sup>62</sup> ASEAN Guidelines for Corporate Social Responsibility (CSR) on Labour (Jakarta, The ASEAN Secretariat, September 2017) <<https://asean.org/wp-content/uploads/2012/05/ASEAN-Guidelines-for-CSR-on-Labour.pdf>> accessed 29 July 2023.

<sup>63</sup> ASEAN Guidelines for CSR (n 62), at VII. 11-17. Sustainable Development paragraph 17 applies to a broader scope, stating at 17.1 that "Enterprises/establishments should adopt environmentally sustainable systems and practices including efficient management of resources, sustainable production, and environmentally-sound management of wastes, collaboration with local communities and governments in order to prevent or minimize their adverse impacts on human health and the environment and to support social progress". Although human

methods created by international standards, such as the UN Global Compact, UNGP, ILO, ISO 26000 on Guidance on Social Responsibility (2010), which includes the tripartite system, social dialogue, collective bargaining, regular reporting and stakeholder engagement.

Not as an instrument, but more as a collaboration platform, there is also the Southeast Asia National Human Rights Institution Forum (SEANF), which consists of six National Human Rights Institutions in Indonesia, Malaysia, the Philippines, Thailand, Myanmar and Timor Leste. SEANF's mission is to collaborate with National Human Rights Institutions in the region and sharing human rights information and technical support, through Technical Working Group Meetings, Annual Meetings and Conferences, and to promote, protect and fulfil human rights of the peoples of South East Asia region<sup>64</sup>. The ASEAN Business Advisory Council (ABAC), which stands behind the establishment of ARAIBA, provides regional business advisory service as well. Another institution behind the creation of ARAIBA, is the ASEAN CSR Network, which also created the ASEAN Guidelines for CSR on Labour.

As we can see from these multiple collaboration platforms and creation of the soft laws, Southeast Asia focuses on dialogue and consultation, and have proceeded with multiple soft laws regarding business conduct and practices. This illustrates their interests and emphasis on economic development and collaborations rather than strict law implementation. Their eagerness towards business development and regional economic development is what differentiate the attitude towards the issue, compared to other human rights issues that are internationally recognized. As I have mentioned earlier, I believe that this is the most effective way to tackle and start communicating human rights issue in the region, through business, and its relations.

#### **3.1.4. The Equator Principles**

Another international standard which business follow as a guideline for human rights and environmental impact is the Equator Principles (EP). The Equator Principles are not like the traditional international law, whether hard or soft, as it does not evolve from a UN perspective. Rather, it was developed as a pact between those of financial institutions to cope with the social demand on environmental and social responsibilities of businesses in the terms of investment. It was developed based on the International Finance Corporation's (IFC) *Performance*

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rights is not mentioned, human health and environment are mentioned, and helps the victims to refer to when there are adverse impacts to these, even when they are not employees of the MNE.

<sup>64</sup> Rules of Procedures of the South East Asia National Human Rights Institution Forum, (amended 12-14 September 2014 SEANF), <https://seanf.asia/seanf-mandate/>

*Standards on Environmental and Social Sustainability* and the World Bank Group's *Environmental, Health and Safety Guidelines*. 'It is a financial industry benchmark for determining, assessing and managing environmental and social risk in projects. The Equator Principles apply globally, to all industry sectors and to five financial products: project finance advisory services; project finance; project-related corporate loans; bridge loans; and project-related acquisition finance'<sup>65</sup>. There are 34 states as of February 2023, that are designated to the Equator Principles, and includes countries mainly in Europe, but also in Asia Pacific region, such as Australia, Japan, Republic of Korea, New Zealand, and Canada and the United States of America<sup>66</sup>. According to the Equator Principles website, the designated countries are those which have robust environmental and social governance, legislation systems and institutional capacity to protect their people and the natural environment. But when we look at the detailed requirements and the countries listed, it seems as those that are economically developed and are associated with the traditional west. The requirements are that 'a country must be both a member of the Organisation for Economic Cooperation and Development (OECD) and appear on the World Bank High Income Country list to qualify as a Designated Country'<sup>67</sup>. The remarkable thing about EP is that it does not limit its scope to so-called designated countries, but it also extends to non-designated countries. When there are projects located in these non-designated countries, there are different compliance standards the EPFI refers to, which are the IFC Performance Standards on Environmental and Social Sustainability (Performance Standards) and the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines)<sup>68</sup>, while when the projects are located in designated countries, it will refer to relevant host country laws, regulations and permits that pertain to environmental and social issues. This result in a lesser gap of threshold between those in developed countries and more developing countries, as in developing countries, some laws and regulations are underdeveloped. Moreover, having the projects in these developing countries comply with international standards rather than underdeveloped local laws or regulations, are what

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<sup>65</sup> 'About the Equator Principles' (Equator Principles) <<https://equator-principles.com/about-the-equator-principles/>> accessed May 3 2023.

<sup>66</sup> The Equator Principles does not only work with countries from designated ones, but also regions that are in interest of protecting their own people and environment. For example, financial institutions from Bahrain, Brazil and China are also included. See more at Members & Reporting for Equator Principles Financial institutions (EPFIs) and their annual reporting on EP-related activities < <https://equator-principles.com/members-reporting/>> accessed May 3 2023.

<sup>67</sup> The Equator Principles IV, (adopted July 2020, entered into force 1 October 2020 Equator Principles Association) (EP, EP4, or EPs), [https://equator-principles.com/app/uploads/The-Equator-Principles\\_EP4\\_July2020.pdf](https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf)

<sup>68</sup> *ibid* Principle 3: Applicable Environmental and Social Standards at 12.

responsible multinational corporations should do, making less margin of appreciation for those financial institutions.

There are mainly 10 principles, which are related to social and environmental risks of business practices. Principle 1 is on Review and Categorisation, which correlates with finding what the project is identified as. Principle 2 is the Environmental and Social Assessment, which carries out the initial assessment of the risks during business conducts. Principle 3 is the Applicable Environmental and Social Standards and Principle 4 is the Environmental and Social Management System & EP Action Plan. Principle 5 is the Stakeholder Engagement, Principle 6 is the Grievance Mechanism, Principle 7, the Independent Review, and Principle 8, the Covenants. Lastly, there are Principle 9 for the Independent Monitoring and Reporting, and Principle 10 for Reporting and Transparency. These 10 principles are followed to see whether the projects are in line with responsible business conducts. The EP apply globally and to projects across all industry sectors, but is specifically intended for five financial market products: project finance, where total project capital costs exceed US \$10 million; advisory services related to project finance; project-related corporate loans; bridge loans; and project-related refinance, and project-related acquisition finance. The EP has been revised and launched 4 times, and the one which is in force by May 2023, is the EP IV. EP III was when human rights came into the bigger picture of investment, adding human rights due diligence into the framework. The EP refers to the UNGP's "Protect, Respect and Remedy" framework, and can be classified as a negative and impact-based CSR-concept<sup>69</sup>. The do-no-harm concept, and referring to the impact of business conduct assessments to human rights and the environment with the businesses involvement is the specifics UNGP and John Ruggie was insisting on, with the current international system on state-based ruling. However, the EP is allowing the investors, specifically financial institutions, as another actor to overlook and have responsibility over business conducts in projects that are financed by them.

The standard that EP is based on, the IFC Performance Standards on Environmental and Social Sustainability (IFC PS)<sup>70</sup> is also another standard that financial institutions follow, however, this is a standard created by the World Bank therefore more in relation with public banks, in comparison with the EP. There are eight Performance Standards that the client is to meet

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<sup>69</sup> Manuel Wörsdörfer, 'The Equator Principles and Human Rights Due Diligence – Towards a Positive and Leverage-based Concept of Corporate Social Responsibility' (2015) 14 *Philosophy of Management* 193-218 <<https://ssrn.com/abstract=2627190> or <http://dx.doi.org/10.2139/ssrn.2627190>>, 198.

<sup>70</sup> International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability, (IFC 1 January 2012) (IFC PS) [www.ifc.org/content/dam/ifc/doc/2023/ifc-performance-standards-2012-en.pdf](http://www.ifc.org/content/dam/ifc/doc/2023/ifc-performance-standards-2012-en.pdf)

throughout the life of an investment by IFC: PS1 refers to Assessment and Management of Environmental and Social Risks and Impacts; PS2 refers to Labor and Working Conditions; PS3 refers to resource Efficiency and Pollution Prevention; PS4 refers to Community Health, Safety, and Security; PS5 refers to Land Acquisition and Involuntary Resettlement; PS6 refers to Biodiversity Conservation and Sustainable Management of Living Natural Resources; PS7 refers to Indigenous Peoples; and PS8 refers to Cultural Heritage. The IFC PS is important in studying the business and human rights relations, because some business projects include private-public relations, such as the public banks for imports and exports, or for overseas cooperation projects.

Although there are critical views on the UNGP, EP, IFC PS and OECD Guidelines, such as its ineffectiveness because of its nature as a voluntary agreement, and the obligations which are set on the states' governments, without any sanctions, I still believe that this is the best way for promoting human rights in the business world. Critics believe that due to globalization and the more power laid on the multinational corporation, these companies are also (co-)authors of the regulations, and should be duty bearers and thus be held directly liable for their human rights violations<sup>71</sup>. Even though, globalization has enabled multinational companies to grow bigger, the power of legislation, and jurisdiction still lies on the government and does not have enough power as the decision maker. They might have more influence in pressuring other state government in moving into the right direction of legislation, however, it is the government that ultimately decides on which and what kind of laws will regulate the country. Many multinational enterprises have left Russia and China after alleged human rights violations, but the laws and practices in these two countries haven't changed much. Even so, these voluntary agreements and international standards set a more detailed set of measures which can provide guidance into what kind of practice business should do, and what to be careful of when conducting their practices, especially when it's over the border, and those responsible enterprises or those who wish to be responsible will follow these soft laws. Therefore, these soft approaches, are set to work in global society and especially in East Asia, where the governments legislative power as enforcements aren't as strong as in European states. Moreover, these soft laws work when other states' multinational corporations can help build the norm from outside, without being too intrusive, respecting the boundaries of the state with clear guidance and responsibility set on the business enterprises and financial institutions. It helps global entities to build upon a higher norm than the region. Japan follows all that is

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<sup>71</sup> M Wörsdörfer, (n 69) 199.

mentioned above, and there are more and more companies that refer to these international standards.

As of other East Asian countries, China has adapted the UNGP into their domestic system, establishing a National Human Rights Action Plan of China<sup>72</sup>. They are not a part of the OECD countries, and therefore do not follow the OECD Guidelines or EP, thus it remains heavily on participation on individual companies in China cooperating on human rights due diligence. South Korea, on the other hand, has implemented and followed the three, which is similar to what Japan has been doing. The progress can be different and will be discussed in detail later in Chapter 4.2. In Southeast Asian countries, some have published their National Human Rights Action Plan while others are still in the process of adopting them. Thailand initiated the trend by adopting its NAP in 2019, followed by Indonesia, and Malaysia. Although there are not much complaint systems, they rely on the mutual discussion, collaboration and consultation with the AICHR. However, because NCPs established by the OECD Framework accepts complaints from complainants in other states, this has helped complainants from these Southeast Asian countries to come forward to seek resolution towards Japan and South Korean multinational companies with operations in their own countries. The operation of Japan NCP and the development of it can be assessed more in detail in the next session as well as in the next chapter.

### **3.2. Institutionalization of Japan NCP**

As mentioned earlier, the establishment of NCP and its role as a grievance supporting institution, has advanced the human rights due diligence system upon Japanese companies, along with other factors and has opened a way for a deeper respect of human rights in Southeast Asian countries. When the NCP was first established in 2011, after the OECD Guidelines were established, there were only few cases brought upon the Japan NCP. Now there are many cases that are reviewed, some of which has even brought upon recommendations for resolution for both parties.

Japan NCP consists of three different Ministries and has an EU flagship programme, called EU-Japan Centre for Industrial Cooperation for research and innovation. It closely keeps ties with other governments and organizations to deliver excellent solutions for global corporate

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<sup>72</sup> 'China: Human Rights Action Plan (2021-2025) mentions encouraging Chinese businesses to abide by UN Guiding Principles', (*Business & Human Rights Resource Centre*, 9 Sep 2021) <<https://www.business-humanrights.org/en/latest-news/human-rights-action-plan-of-china-2021-2025/>> accessed 9 May 2023.



issues<sup>73</sup>. This has helped Japan NCP grow with academia and governmental institutions collaborating together, finding new ways to incorporate sustainable solutions for business conducts.

There is also the NCP Committee of Japan, which is ‘composed of the Japanese NCP (Ministry of Foreign Affairs, Ministry of Health, Labour and Welfare, and Ministry of Economy, Trade and Industry), Keidanren (Japan Business Federation), and Rengo (Japanese Trade Union Confederation)’<sup>74</sup>. They facilitate the exchange of opinions among the government, industry, and trade unions, in hope to implement and promote the OECD Guidelines for MNEs.

Japan NCP has helped several industrial sectors to follow the guidelines in Japanese translation referring to the OECD Guidance for different sectors as well. There are 10 cases filed to Japan NCP, which have concluded by April 2023. Of those 10, 4 are domestic and 5 are related to Southeast Asian states. From what we can see on the government’s website, there seems to be a tendency of increase in filed case numbers in the last 5 years, and every time, the case files get longer with more detailed information of the cases. The first one concluded in 2012, was only 1 and a half pages long, and did not include how the initial assessment was reviewed. It only included of the claims of the claimant and the result of the initial assessment by Japan NCP with regards to Malaysia’s judicial procedures in progress at that time. It concluded as “it does not require further review”, however expressing being proud of the fact that the problems have been solved due to both parties’ compromise. The second case concluded in 2014, which was the case involving Japan Nestle, and the union of the company, which ended up being slightly longer, 3-pages report. This might be because of the collaboration with Swiss NCP, and therefore had a deeper analysis of the case, providing platforms for the both of the opposite parties to discuss and negotiate the terms. For the case in 2021, regarding 3 Mega Banks’ involvement in energy industry in Vietnam, Japan NCP went further into accessing the cases in detail which ended up 8 pages long, with a detailed reference to the articles of the OECD Guidelines and Guidance for each and every act the financial institutions took, with alleged violations. This case will be further examined as a case in Chapter 4.2.1. as a case study on the Japan NCP’s advancement together with the case of Indonesia, which is still in review. Just by the number of pages and how much details they go in the official report of Japan NCP, we can

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<sup>73</sup> NCP Japan collaborates with Enterprise Europe Network (EEN), Euraxess Japan and other several thematic NCP networks in Japan, see more at ‘About NCP Japan’ (*NCP Japan*) <[www.ncp-japan.jp/en/about-ncp-japan/](http://www.ncp-japan.jp/en/about-ncp-japan/)> accessed 3 May 2023.

<sup>74</sup> ‘About the NCP Committee of Japan’ (*Ministry of Foreign Affairs, JAPAN*), <[www.mofa.go.jp/files/100155312.pdf](http://www.mofa.go.jp/files/100155312.pdf)> accessed 3 May 2023.

see the progress of Japan NCP as evolving, and becoming more and more accessible to those who need it.

From what we have seen so far, there are regional frameworks and standards that businesses in ASEAN countries can refer to, as well as international framework. As I am focusing on the impact of Japan and Japanese companies in Southeast Asian states, I will mainly focus on the international standards, and the OECD Guidelines with the complaint system NCP provides. However, later in the analysis, I will include my ideas on the ASEAN frameworks, and regional ones to properly assess what the Japanese approach is missing.

#### **4. Business Practices**

What makes business practices unique as a means in human rights is that, it directly affects individual's rights, as well as community rights, which are both widely connected to different rights in society. Another aspect of valuing responsible business practices is the acceptance by developing states, especially Southeast Asian states. While Southeast Asian states have been seen to be unwilling to accept the notion of human rights as law, they have been eager to accept the corporate responsibility on social and economic issues, as we can see on the movement of regional frameworks and guidelines on the issue in chapter 3. This may be because some states do not necessarily have the means to tackle these problems on their own, but multinational corporations which are rich financially and in means, they would have the capacity to take care of their affairs in foreign states. Moreover, despite some critics' opposition, most states would like to take care and protect their people from being abused of the corporate capital. We will see some of the norm changes in Japanese corporate practices, as well as how Japan NCP and Japanese MNEs have implemented these international standards set by the UNGP and OECD Guidelines into their internal assessments and remedy seeking evaluations.

##### **4.1. The Change of Norms among Japanese MNEs**

Since the SDGs in 2015, there are more and more companies in Japan, that refer to these goals specifically in their websites and connect the practices they do to show the engagement with international standards. This trend of appealing to the public that they are a responsible business, continues with the announcement of implementation of National Action Plan on Business and Human Rights in October 2020. Since then, many companies have showed interest in the publication and reporting of their business conduct, actions and the risk they are associated with. Keidanren, the Japan Business Federation revised its Charter of Corporate Behaviour with a pillar of delivering on the SDGs through the realization of Society 5.0 in November

2017. The revised Charter stipulates that corporations “conduct business that respects human rights of all persons”. Along with the revision, Keidanren introduced a questionnaire survey to grasp the situation and case examples of efforts carried out by its corporate and group members. According to the survey, of the respondent corporation, over 80% responded that they have either “already developed”, “planning to develop”, or “under consideration for developing” guidelines relating to respect for human rights. Many corporations have set up focal points or specific departments in charge of dealing with human rights issues, as well as grievance and remedy mechanisms, including human rights consulting services. There are also many that have implemented systems to promote respect for human rights, as well as systems for education and training in promoting human rights in workplace<sup>75</sup>.

With the baseline study done before the adoption of NAP of Japan, it shows the interest of businesses and companies and their attitude towards the work on responsible business conducts. Because they have a clearer guidance with the details on what to do, as risk managements, reporting and remedial procedure. Despite current laws already in line with many international standards there were not enough corporate involvement in the works of transparency and disclosure of their social impacts through risk assessments and reporting. Now big companies such as Ajinomoto, ANA Holdings, Sony Group, TOYOTA, Hitachi, and many more follow the NAP, publishing their own Human Rights Policy, or Code of Conduct, ensuring Human Rights Due Diligence in their operations, and establishing their own remedial mechanism.

Taking into account the results of the baseline study, priority areas of issues in the current system was taken into account, and was to be incorporated in the NAP. In the process of the creation, multiple stakeholders were invited, to exchange views and hear the public insights. This included, experts such as the UN Working Group on Business and Human Rights and the Head of the OECD Centre for Responsible Business, Directorate for Financial and Enterprise Affairs, relevant ministries and agencies, as well as consumer organizations<sup>76</sup>.

The priority areas were reformed as the Fundamental Principles of the NAP, which are: promoting understanding and awareness of business and human rights within the government; ensuring that business enterprises understand and comply with relevant legislation and policies;

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<sup>75</sup> ‘The Report of the Baseline Study on Business and Human Rights (Executive Summary) -Toward Developing Japan’s National Action Plan on Business and Human Rights’ (*Ministry of Foreign Affairs, JAPAN*, December 2018) <[www.mofa.go.jp/files/000455152.pdf](http://www.mofa.go.jp/files/000455152.pdf)> accessed 30 July. See also ‘National Action Plan on Business and Human Rights (2020-2025)’, (*Inter-Ministerial Committee on Japan’s National Action Plan on Business and Human Rights*, October 2020) <[www.mofa.go.jp/files/100173319.pdf](http://www.mofa.go.jp/files/100173319.pdf)> Chapter 1.1(7) accessed 30 July 2023.

<sup>76</sup> ‘National Action Plan on Business and Human Rights (2020-2025)’ (n 75) Chapter 1. 4 (3).

promoting understanding and awareness of human rights in general through society; the government developing concrete mechanisms to promote human rights within business for the sake of business activities overseas; and assuring access to judicial remedies and making improvements where necessary, while encouraging companies and third-party organizations to develop non-judicial remedy systems. Most of their principles are based on promotion, but the last priority area, is the point where most changes can be made. This includes the Japan Bank for International Cooperation (JBIC) Guidelines for Confirmation of Environmental and Social Considerations, the Japan International Cooperation Agency (JICA) Guidelines for Environmental and Social Considerations, the Nippon Export and Investment Insurance (NEXI) Guidelines on Environmental and Social Considerations in Trade Insurance, and the Japanese National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises (the Japanese NCP).

In response to the creation of NAP and also the fundamental rights stated in the ILO Declaration, the Government made a series of revision to laws, including the Act on the Comprehensive Promotion of Labour Policies, and the Employment Security and the Productive Working Lives of Workers (Labour Policies Comprehensive Promotion Act) (Act No.132 of 1966) in 2019. This resulted in new requirements for employers to establish necessary measures regarding employment management, such as the provision of counseling services, to prevent the abuse of authority, or so-called “power-harassment”, in the workplace. The revision of these laws has also strengthened preventive measures against sexual harassment, such as the prohibition of disadvantageous treatment by an employer against employees who report.<sup>77</sup> For migrant workers, Japan has had bilateral agreements with the sending states, which is based on the Technical Intern Program. However, there has been many cases reported that this system itself is an abuse of the migrant workers working in Japan, and the proper implementation of the system has been difficult to confirm, with many employers abusing the program. In response to these accusations, the government claims in the NAP, that appropriate implementation of the Technical Intern Training Program and protection of technical intern trainees are being promoted based on the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (Technical Intern Training Act) (Act No.89 of 2016) enacted in November 2017<sup>78</sup>. There are also future measures planned in the aims of promoting decent work and a healthy work environment, and improving labour-related issues in Japan mentioned earlier.

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<sup>77</sup> ‘National Action Plan on Business and Human Rights (2020-2025)’ (n 75) Chapter 2. 2 (1).

<sup>78</sup> *ibid.*

In relations to Southeast Asian countries, the Government has supported promotions and protection of children's rights, mainly supporting education by aiding financially through technical cooperation by JICA and contributing to various UN agencies, which is an important factor in abolishing child labour. In respond to this, with various factors involved, the growth has been significant in the last 5 decades, with the rate for secondary school enrollment in the East Asia and Pacific starting at 34% increasing up to 88% in 2020<sup>79</sup>. This has partially contributed to the significant decline in child labour in Asia Pacific region. The percentage of children aged 5 to 17 years in child labour has decreased from 13.3% in 2008, to 5.6% in 2020<sup>80</sup>. We can proudly say that having primary and secondary education has become a norm in the East Asia & Pacific area, and partially Japan can be held accountable for its contribution in the norm-creation.

Additionally, there are more institutions which publishes Impact Assessments for human rights, the environment, and social impacts through business conducts. One of the most significant progresses was made possible by the Equator Principle, which is the standard for project financing by private banks. Now, Japan Bank for International Cooperation (JBIC) publishes more than 10 Environmental Social Impact Assessments (ESIA) a year<sup>81</sup>. This can be seen as a change of norm in financial institutions, when funding for projects that are big, and especially those who partake overseas.

From what we can see so far, there are multiple creation of norms, which Japan had contributed to, with its soft approach. Of course, these creations of norms are not established without fault, and there are many spaces for improvement. Nevertheless, the Japanese government admits that further efforts are required, to respond to the increasing social demands regarding human rights within business conducts. This is to be achieved by further promotion of human rights in business context, as well as involving multiple stakeholders in the process, which begins with financial institutions such as mega banks. Further involvement and space for improvement for

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<sup>79</sup> 'School enrolment, secondary (% gross) – East Asia & Pacific' originally from the UNESCO Institute for Statistics (UIS), (*The World Bank Data, UIS Bulk Data Download Service*, October 24, 2022) <<https://data.worldbank.org/indicator/SE.SEC.ENRR?locations=Z4>> accessed 14 May 2023.

<sup>80</sup> 'Executive Summary for Child Labour: Global estimates 2020, trends and the road forward', (*ILO and UNICEF*, 10 June 2021) <[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_800278.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_800278.pdf)> accessed 30 July 2023.

<sup>81</sup>'Results of JBIC's Environmental Review (on Projects for which JBIC Received Screening Form after April 1, 2015)' (*Japan Bank for International Cooperation*) <[www.jbic.go.jp/en/business-areas/environment/projects/review\\_monitoring\\_2015.html](http://www.jbic.go.jp/en/business-areas/environment/projects/review_monitoring_2015.html)> accessed 15 May 2023.

the Japanese government and companies can be discussed in the next section with examples through Japan NCP cases filed in Indonesia and Vietnam.

#### **4.2.Complaint Systems through Japan NCP cases with comparison to South Korea NCP**

Japan NCP has come a long way to develop as an established complaint system for those who seeks advice and solution for Japanese MNEs operating domestically and internationally. The significance of the institutionalisation of NCP is written in Chapter 2.4., and here I will look into the individual cases of Indonesia and Vietnam, where multiple actors were involved.

First of all, when a case is filled against Japan NCP, Japan NCP goes through the technical requirements of the information needed, and after confirming the details, it sends out the notification of acceptance of the case to the applicant. Then, the initial assessment is carried out to determine whether the complaint needs further assessment or not. After it confirms the need of further assessment, it notifies both parties of the result. This is usually done in 3 months. The third step is to provide support for the interested party to hold a meeting for discussion to solve the issue concerned. This includes: asking for advice for the related ministries, and/or professionals from business associations, labour unions, and other nongovernmental organization's representatives and related professionals; discussing the problem with the other related NCP (if there is one); asking for opinions of the OECD Investment Committee when there is any questionable interpretation of the Course of Action; suggest the use of non-adversarial means of agreement, such as mediation or conciliation, to assist the parties in resolving their issues, and assist with any agreements between the parties concerned. This process takes approximately 6 months. Lastly, Japan NCP publishes the report on the issue, whether it has been resolved or not, if not, followed by a statement. This concludes the process with approximately 3 months for the publication of the report. The whole process takes approximately 1 year, which is faster than a court ruling, and therefore is valued much by human rights victims from Southeast Asian states. Looking on the 3 cases presented below, I will try and assess the involvement and the attitude towards human rights abuses in projects Japan and Japanese companies are involved.

## 4.2.1. Case 1: Case on the Nghi Son 2 Coal-fired Power Plant Project, Vietnam

### 4.2.1.1. Claimants claim and NCP's response to the case<sup>82</sup>

This case was a complaint sent to the Japan NCP, from an NGO towards Japanese private financial institutions regarding the alleged violations of the OECD Guidelines by failing to: 'exercise their leverage on the project sponsors to ensure that communities impacted by the coal-fired power stations were adequately consulted and had their views taken into account'; 'ensure that project-affected communities are able to make informed decisions about projects, including the environmental and social impact assessments of these projects, through sufficient disclosure of information by either requesting or demanding the project sponsor to provide information about environmental, livelihood or health impacts or by providing information themselves'; and, 'urge the project sponsor to assess, prevent or minimise environmental damage and impacts to human rights such as the right to livelihood and the right to a healthy environment'<sup>83</sup>.

The complainant was Market Forces, an affiliate project of Friends of the Earth Australia (FoEA), an Australian non-governmental organisation, however, representing the local community organisations in Vietnam which seek to prevent the environmental degradation and loss of livelihood that results from the expansion of coal-fired power in those countries. Due to security concerns on the ground and fear from retaliation, these Vietnamese community organisations was reluctant on raising their concerns on their own, so the FoEA heard out their concerns and acted on filing a complaint. The MNEs involved are so-called "mega banks" in Japan, and are financial institutions that operate not only across Japan, but also globally, including countries in Asia. They also finance various projects overseas, sometimes together with JBIC, for international cooperation. The first MNE is Mitsubishi UFJ Financial Group,

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<sup>82</sup> 'Market Force v MUFG, SMBC and Mizuho', (report from *OECD Watch Complaint*, 18 September 2018), at <[www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/](http://www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/)> accessed 16 May 2023.

<sup>83</sup> 'Final Statement on Specific Instance Involving Mizuho Financial Group, Inc., Sumitomo Banking Corporation and Mitsubishi UFJ Financial Group, Inc., in Relation to the OECD Guidelines for Multinational Enterprises' (*Japanese National Contact Point (NCP) for the Organisation For Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*, 15 January 2021) <[www.mofa.go.jp/files/100138168.pdf](http://www.mofa.go.jp/files/100138168.pdf)> accessed 16 May 2023; which are violations of II General Policies, A 1; 3; 7; 11; 12; 13; 14; and B 2; III Disclosure, 2. e) f) 3. c) d) e) and 4, as well as IV Human Rights 1. 2. 3. 5. And 6. There is also relevance to VI Environment 1. a) b) c) 3. 4. 5. 6. 7. 8 in my opinion. However, the claimants claimed the violations based on III Disclosure 2(f), IV Human Rights in general and VI Environment 2(b). Along with the violation of domestic law in the operating country, Article 21 of the Vietnamese Law on Environmental Protection 2014, No 55/2014/QH13, stating that project owners are obliged to consult communities that are directly affected; in section 20 of the same law, stating that project owners must repeat the ESIA where the project is not executed within 24 months of the date of the approval of the EIA.

Inc., (MUFG), with headquarters located in Tokyo. MUFG has financed Nghi Son 2, and was considering financing Nam Dinh 1, Van Phong 1 and Vung Ang 2 at that time.

Nghi Son 2, was a coal-fired power plant to a joint-company consisting of Marubeni Corporation and Korea Electric Power Company (KEPCO). The plant was scheduled to come online in 2018, the two companies would then own and operate the plant for 25 years, after which ownership would be passed down to Electricity of Vietnam. Nghi Son 2 had environmental risks of high greenhouse gas intensity. This affects people's livelihood and health who are living in the area with toxic gases released there.

MUFG's involvement was the largest along with Sumitomo Mitsui Banking Corporation (SMBC), being 132.4 million USD, followed by Mizuho Bank (Mizuho)'s contribution by 99.3 million USD at that time. It is said that another bank, Standard Chartered Bank, a British MNE, also one of the banks previously linked to financing this plant, have considered financing the plant again, but reconsidered after knowing of the project's high greenhouse gas intensity.

The project raised several concerns which MUFG, SMBC and Mizuho should have addressed. First, '[n]o public consultation took place, or public consultation was categorically inadequate'. The Environmental Social Impact Assessment (ESIA) was made available by the Japan Bank for International Cooperation (JBIC) on 7 February 2018, however 'did not contain any evidence that the public was consulted on the project'<sup>84</sup>. The biggest problem of the case is that even though ESIA was published in 2015, it was not made available to the public to review them, so that relevant stakeholders could express their views on them. The ESIA is in local language, which I believe makes it more accessible for those related in the area, on the other hand, does not provide enough information whether it is accessible for the executives of the corporation. This questions whether the executives and the head of MUFG, Mizuho and SMBC had knowledge of the content of the environmental impact assessment conducted by JBIC, when making the transactions.

Second, the ESIA appears to have violated Vietnamese law<sup>85</sup>. Article 21 of the Vietnamese *Law on Environmental Protection 2014*, No 55/2014/QH13, states that project owners are obliged to consult communities that are directly affected, however the ESIA provided show no evidence of such. Further, while 'section 20 of the Vietnamese *Law on Environmental Protection 2014*

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<sup>84</sup> 'Market Force v MUFG, SMBC and Mizuho' (n 82), Violation to OECD Guidelines for MNEs (n 43), Principle II. General Policies A14, B2, OECD Due Diligence Guidance for Responsible Business Conduct (n 43), at 18 and Question 9 of the Annex.

<sup>85</sup> Violation to OECD Guidelines for MNEs (n 43), Principle I Concepts and Principles 2. Obeying domestic laws..



states that project owners must repeat the ESIA where the project is not executed within 24 months of the date of the approval of the EIA’, ‘the ESIA was dated February 2015, more than 3 years prior to financial close and the commencement of construction, and cannot seem to find another EIA after that’. Even when MUFG and Mizuho was advised of the potential violations of law by letter in March 2018, they had ‘not exerted leverage on the project sponsor to repeat the ESIA or to conduct further consultations’<sup>86</sup>.

Third, Nghi Son 2 is highly polluting and negatively impacts the environment, and is potentially violating the Vietnamese law. The CO<sub>2</sub> gas emissions intensity is estimated at 860-880g CO<sub>2</sub>/kWh, which is considered unacceptably high level by international standards according to FoEA. The OECD Understanding on Export Credits for Coal-Fired Electricity Generation (Sector Understanding)<sup>87</sup>, which Japan is a party to, excludes export finance for all coal-fired power projects in Vietnam, other than those that use ultra supercritical technology or with emissions lower than 750g CO<sub>2</sub>/kWh. While this standard does not apply to private banks, it was apparently shown in MUFG’s coal policy<sup>88</sup> at that time. Again, even though it did not apply to private banks, it should have applied to JBIC, Japan Bank of International Cooperation, which is a 100% Japanese government funded financial institution, and it should have not signed a loan agreement if they had known of this fact<sup>89</sup>. This itself is a violation of the OECD Sector Understanding. The project also uses supercritical technology, which is not the best available technology for coal-fired power projects. The air pollutants expected from the new power plant are: SO<sub>x</sub> to be 200ppm(524.011mg/m<sup>3</sup>), NO<sub>x</sub> to be 50ppm(94.090mg/m<sup>3</sup>), and PM to be 50mg/Nm<sup>3</sup>. One of the above exceeds the Vietnam’s emission limits for new coal-fired power plants: SO<sub>2</sub> = 350mg/m<sup>3</sup>, NO<sub>x</sub> = 455mg/m<sup>3</sup>, and PM = 140, and 2 out of the 3 pollutants exceeds Japan’s emission limits for existing coal-fired power plant<sup>90</sup>. This is a

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<sup>86</sup> ‘Market Force v. MUFG, SMBC and Mizuho’ (n 82), 4.

<sup>87</sup> ‘Arrangement and Sector Understandings – Coal-Fired Electricity Generation’, (OECD, 18 October 2021) <[www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/](http://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/)> accessed 27 June 2023. Later in 2021, there was an agreement reached at OECD to end export credit support for unabated coal-fired power plants corresponding to the recent trend on going “carbon neutral”. See more at <[www.oecd.org/trade/topics/export-credits/documents/Participants%20agreement%20on%20coal-fired%20power%20plants%20\(02-11-2021\).pdf](http://www.oecd.org/trade/topics/export-credits/documents/Participants%20agreement%20on%20coal-fired%20power%20plants%20(02-11-2021).pdf)> accessed 27 June 2023.

<sup>88</sup> ‘Market Force v. MUFG, SMBC and Mizuho’ (n 82), 4.

<sup>89</sup> JBIC loaned a maximum total of 560 million USD to the project. ‘Project Finance and Political risk Guarantee for Nghi Son 2 Coal-Fired Power Generation Project in the Republic of Vietnam – Supporting Japanese Company’s Participation in IPP Project in Vietnam’, (JBIC, 13 April 2013), <[www.jbic.go.jp/ja/information/press/press-2018/0413-010921.html](http://www.jbic.go.jp/ja/information/press/press-2018/0413-010921.html)> accessed 28 June 2023.

<sup>90</sup> ‘Comparison of coal power plant emission standards’, (Centre for Research on Energy and Clean Air (CREA), 2023) <<https://energyandcleanair.org/comparison-of-coal-power-plant-emissions-standards/>> accessed 9 July 2023. See also National Technical Regulation on Emission of Thermal Power Industry (QCVN 22: 2009/BTNMT, Vietnam) for Vietnam, and Shannon N. Koplitz, Daniel J. Jacob, Melissa P. Sulrpizio, Lauri Myllyvirta, and Colleen

violation to the OECD Guidelines Principle VI. Environment 2; and 4, and potentially Principle I. Concepts and Principles 2.

Fourth, the ESIA did not take into account the cumulative impacts of the other projects in the area, which is a violation of OECD Guidelines Principle VI. Environment 4, as a failure to prevent or minimize environmental damage that are threats of serious damage, taking into account human health and safety. There was already an established coal-fired power station, Nghi Son oil refinery and petrochemical project within a few kilometres of Nghi Son 2, which already affected the areas' CO<sub>2</sub> emission, as well as other critical resources such as water. MUFG, Mizuho and SMBC did not exert leverage on the project sponsor to assess the cumulative impacts, nor have they conducted independent assessments, which is a violation to the IFC Performance Standards 1, in which this type of individual analysis is required.

Further, the project raised serious health and livelihood concerns as a result, bringing possible human rights violations<sup>91</sup>. This includes, relocation to the resettlement area, resulting in 'loss of livelihoods, such as salt production and onshore fishing, and have to travel great distances, including going to other provinces, to access new jobs and schooling'<sup>92</sup>. Additionally, the compensation issued for relocation to build Nghi Son 1 was supposedly insufficient to construct housing in the resettling area according to the claimants. In general, the residents' lives have reportedly aggravated after their resettlement. As for Nghi Son 2, there are other concerns, such as fishing communities being impacted by a lack of access to the port area to fish, as well as potential discharge from the coal plant affecting fisheries. In addition to this, these communities also face enhanced scrutiny from police and other local authorities. Whenever community members gather, local police disperse these meeting, and even routine activities on the part of community members, such as going to the hospital, were followed up by police investigations, and therefore the community members felt intimidated by this conduct<sup>93</sup>.

Finally, the ESIA failed to include an analysis of potential alternatives to the project, for example, renewable energy such as solar or wind. It did not even contain an analysis of the

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Reid, 'Burden of Disease from Rising Coal-Fired Power Plant Emission in Southeast Asia' (2017) <<https://pubs.acs.org/doi/full/10.1021/acs.est.6b03731>> accessed 30 July 2023 for Japan.

<sup>91</sup> Violation to ICESCR (n 45) Article 11 para1., Right to an Adequate Standard of Living.

<sup>92</sup> 'Market Force v. MUFG, SMBC and Mizuho' (n 82), 6.

<sup>93</sup> *ibid.*

Best Available Technology (BAT), or alternative coal technologies such as the use of ultra-supercritical technology which is understood as the BAT for coal-fired power plants<sup>94</sup>.

After the initial assessment, NCP took the case in for further examination, where they invited both parties to resolve the issue with some recommendations. Japan NCP recommended that the financial institutions: ‘provide stakeholders with key project information such as ESIA or, in the alternative, use their leverage to urge the sponsor to disclose ESIA for the projects; use their leverage to ensure that the project sponsors consult with right holders and stakeholders in respect of the projects; conduct an independent review of human rights and other environmental impacts in respect of Nghi Son 2 power plant in light of the above impacts; confirm which projects the banks’ policies exclude; and consider changing their policies to exclude lending to any coal-fired power projects in Vietnam, given coal’s serious environmental impacts and the availability of renewable alternatives to coal’. Of these recommendations, MUFG took actions on some of it, such as consider changing their policies to exclude lending to any coal-fired power projects in Vietnam, and use their leverage to urge the sponsor to disclose ESIA for the projects. However, there seems to be no resolution after the NCP’s involvement.

#### **4.2.1.2. The author’s observation and aftermath of the case**

Other than the OECD Guidelines, there are other soft laws or international standards the case can be referred to. As a basic study, reference to UNGP must be mentioned. Out of the UNGP, there seems to be violations to the GP13 as businesses contributing to adverse human rights impacts through their own activities, and failing to address such impacts when they occur. This is also mentioned in the OECD Guidelines II. General Policies. 11 and 12, mentioning the MNE’s responsibility to respect human rights lies as causation, contribution, and direct linkage to human rights abuses. In this case, they are financial institutions and therefore, it is a question of whether financial institutions funding activities can be considered as contribution to a human rights abuse. According to UN Office of the High Commissioner for Human Rights (OHCHR), “a bank may not facilitate a client or other entity to cause harm, if it knows or should have known that there is human rights risk associated with a particular client or project, but it omits to take any action to require, encourage or support the client to prevent or mitigate these risks”<sup>95</sup>.

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<sup>94</sup> ‘Market Force v. MUFG, SMBC and Mizuho’ (n 82), 6.

<sup>95</sup> ‘OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector’, (OHCHR, 12 June 2017) <[www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf)> accessed 30 July 2023.

Nghi Son 2 is also currently considered an Equator Project, which runs under the Equator Principles<sup>96</sup>. This means the human rights violations occurred under the project are not only violations under the OECD Guidelines or UNGP, but also through the Equator Principles. The suspected violations are to EP2, EP3, EP5, failure to conduct an appropriate Assessment process to address the relevant environmental and social risks and scale of impacts of the proposed Project, by not proposing measures to minimize, mitigate, and where residual impacts remain, to compensate/ offset/ remedy for risks and impacts to Affected Communities, and the environment, in a manner relevant and appropriate to the nature and scale of the proposed Project<sup>97</sup>. EP3: Applicable Environmental and Social Standards states that “[t]he assessment process should, [...] address compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues” Since the project is located in Vietnam, a non-designated country, compliance with the applicable IFC PS and the World Bank Group EHS Guidelines shall be evaluated by the EPFIs, in this case, MUFG, Mizuho, and SMBC. For IFC PS, PS1, The EPFIs failed to do so, and EP5: Stakeholder Engagement,

MUFG, Mizuho and SMBC’s failure to assess potential alternative technology regarding air pollutants and the environment to Nghi Son 2, is also a violation to EP5, Principle 2 and Annex A.

After the claim, Mizuho has published its Human Rights Report of 2022<sup>98</sup>, in July 2022, responding to the increasing demand of the public. The report included human rights policy revision from the 2018 version, addressing and identifying human rights issues they have in the line of their conduct, establishing a framework for promoting respect of human rights, and clarifying and strengthening their approach to human rights due diligence. It also included Grievance mechanism and stakeholder communication, which partially comes from the feedback and complaints in this case.

MUFG also revised some of their internal policies, regarding environmental and social responsibility. One of which is the revision of the MUFG Environmental and Social Policy

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<sup>96</sup> ‘Nghi Son 2 Coal Power Plant Vietnam’, (*BankTrack*, Created 15 Feb 2018 with last update on 11 Aug 2011), <[www.banktrack.org/project/nghi\\_son\\_2\\_coal\\_power\\_plant/pdf](http://www.banktrack.org/project/nghi_son_2_coal_power_plant/pdf)> accessed 28 May 2023.

<sup>97</sup> EP IV (n 67) 2: Environmental and Social Assessment.

<sup>98</sup> ‘Human Rights Report 2022’, (*Mizuho Financial Group*, 2022), <[www.mizuhogroup.com/binaries/content/assets/pdf/mizuhoglobal/sustainability/human-rights/solution/human\\_rights\\_report.pdf](http://www.mizuhogroup.com/binaries/content/assets/pdf/mizuhoglobal/sustainability/human-rights/solution/human_rights_report.pdf)> accessed 9 July 2023.

Framework in April 1, 2022<sup>99</sup>. In its revised framework, MUFG states that for mining Sector (Coal), they have updated their framework on financing projects, with its prohibition of use on removal methods, not limiting to the mountaintop removal (MTR) method, but also all new thermal coal mining projects for power generation in consideration of their impact on climate change. Besides the change in mining sector, they have revised their policy on financing other sectors, such as oil and gas sector, palm oil sectors. In oil and gas sector, MUFG added the shale oil and gas pipeline subsectors to Transactions of High Caution and established a process for identifying and assessing environmental and social risks/impacts. For palm oil sector, they have revised that the certification for clients to verify their consideration for environmental and social impacts when considering transactions by means, will be limited to the ones issued by the Roundtable on Sustainable Palm Oil (RSPO), compared to the previous requirement on certification issued by some recognized certification organizations<sup>100</sup>. This has made it clearer to have a common platform or threshold for the projects when reviewed, giving a more precise assessment for the social and environmental risks the projects may endure.

However, even with the revised framework MUFG provided, there is no mention of conducting their own independent ESIA's for projects, and it puts the burden on the debtors to collect information and do an assessment in order to get loans, or the debtors needs to hire other organizations to do the assessments. They have clearly not followed the Japan NCP's recommendation for this point.

SMBC also revised their ESG financing policies, stating that they would not support newly planned coal-fired power plants, in principle, and exceptions are made when the projects use environmentally friendly technologies, such as ultra-supercritical pressure<sup>101</sup>. Further, on April 1, 2022, Sumitomo Mitsui Financial Group. Inc., which is the parent company of SMBC, announced their "Enhancement of Initiatives for Sustainability"<sup>102</sup>. In the initiatives, states 4 scopes: 1. Organizational Changes, such as the establishment of the "Sustainability Division" and the "Environmental and Social Risk Management Department"; 2. Revisions of Rules and

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<sup>99</sup> 'Revision of the MUFG Environmental and Social Policy Framework', (*Mitsubishi UFJ Financial Group, Inc. (MUFG)*, 1 April 2023), <[www.mufig.jp/dam/pressrelease/2022/pdf/news-20220401-001\\_en.pdf](http://www.mufig.jp/dam/pressrelease/2022/pdf/news-20220401-001_en.pdf)> accessed 16 May 2023.

<sup>100</sup> *ibid.*

<sup>101</sup> 'Consideration of ESG risks', (*Sumitomo Mitsui Financial Group, Inc.*, April 16 2020), <[www.smbc.co.jp/news\\_e/e600579\\_01.html](http://www.smbc.co.jp/news_e/e600579_01.html)> accessed 9 July 2023.

<sup>102</sup> 'Enhancement of Initiatives for Sustainability', (*Sumitomo Mitsui Financial Group, Inc.*, April 1 2022), <[www.smfg.co.jp/news\\_e/e110198\\_01.html](http://www.smfg.co.jp/news_e/e110198_01.html)> accessed 9 July 2023.

Policies, such as formulation of the “SMBC Group Environmental and Social Framework<sup>103</sup>”, which includes establishment of the “Social Contribution Policy” and the “Sustainable Procurement Policy”, and the Revision of policy for the coal mining sector; 3. Launch of an Investment Fund, such as setting up the “Sustainability Investment Fund” (20 million JPY), and 4. Scope 1 and 2 Reduction, which is to fully switch to renewable energy at the four head office buildings.

Despite all the negotiation and dialogue between the parties, Nghi Son 2 power-plant was still in construction, and was later completed in 2022. Again, Nghi Son 2 was approved with no consultation of the project-affected communities, and according to the Vietnamese community organizations, the residents’ resettlement has been “unsatisfactory”<sup>104</sup>. This shows that the Japan NCP was unsuccessful in this case towards the claimants, however still influential in shaping the norms towards Japanese MNEs.

This case is particularly interesting because it is the first case in Japan NCP where the claimants have accused of financial institutions being responsible in line of their business conduct, especially in financing projects that have adverse human rights impact risks. This case involves power-plants that is sponsored by Korea Electric Power Corporation (KEPCO) from South Korea, and Marubeni Corporation from Japan. After the case, Marubeni Corporation have decided to pull out of Coal-Fired Power Generation, by 2030, and to refrain from entering into any new coal-fired generation business<sup>105</sup>. Marubeni also explains they will double the ration of power generated from renewable sources by 2023 as a target. However, the human rights commitment that the company takes is rather broad and vague than the commitment it takes towards environmental issues. Related to the case, the basic policy on human rights includes “engage in sincere dialogue and discussion with stakeholders, and work with them to eradicate human rights abuses”, “carry out human rights due diligence”, “create a complaint resolution mechanism and take appropriate procedures for redress”, “if there are contradictions between international rules and national laws, pursue solutions for respecting human rights in accordance with international rules” “expand education and training”, and “conduct proactive information disclosure”. Although they are the basic rules underlined by the UNGP and the

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<sup>103</sup> ‘SMBC Group Environmental and Social Framework’, (SMBC Group, 2020) <[www.smfg.co.jp/english/sustainability/group\\_sustainability/pdf/framework\\_e.pdf](http://www.smfg.co.jp/english/sustainability/group_sustainability/pdf/framework_e.pdf)> accessed 9 July 2023.

<sup>104</sup> Talanx: Seriously Clearing Up or Silently Continuing Support for Coal?’ (Urgewald, May 2019, <[www.urgewald.org/sites/default/files/Talanx.pdf](http://www.urgewald.org/sites/default/files/Talanx.pdf)> accessed 23 May 2023.

<sup>105</sup> ‘Marubeni’s Sustainability’, (Marubeni Corporation, 18 March 2019), 16pp <[https://ssl4.eir-parts.net/doc/8002/ir\\_material14/153829/00.pdf](https://ssl4.eir-parts.net/doc/8002/ir_material14/153829/00.pdf)> accessed 10 July 2023, 9.

OECD Guidelines, it is important to note that a Japanese company which has enormous impact on Southeast Asian energy powerline, has committed to these points in their policy. In their report of 2019<sup>106</sup>, they have announced their engagement of the main points I've pointed out above in details.

## **4.2.2. Case 2: Cirebon Coal-fired Power Plant Project in West Java, Indonesia**

### **4.2.2.1. Complaint filed towards NCP**

The second case concerned is against the Cirebon Coal-fired Power Plant Project in Indonesia. The Cirebon Coal-fired Power Plant Project was a joint project of Marubeni Corporations (Marubeni) and JERA Co., Inc (JERA), both which are Japanese MNEs. In the Cirebon Coal-fired Power Plant Project, unit 2, Marubeni, established a joint venture corporation called PT Cirebon Energi Prasarana (CEPR), holding 35% of its shares along with JERA, Indika Energy, Samtan and Korea Midland Power. Marubeni's activities extend to power projects and infrastructure, plants and industrial machinery, finance, logistics and information industry, real estate development and construction, while working business in 131 branches and offices in 68 countries and regions<sup>107</sup>. JERA also works as a multinational company with subsidiaries and business domains across Southeast Asia, Middle East and North America<sup>108</sup>, and in the project, it held 10 % of its shares, and succeeded this project from Chubu in July 2016. CEPR was estimated to construct and operate a 1000MW coal power plant in this project<sup>109</sup>.

The CEPR-Unit 2 with a capacity of 1000 megawatt was expected to be operational in 2021, with an investment of USD 2.1 billion. Before this CEPR-Unit 2 project, there was already another project present in the area, called the CEPR-Unit 1. This was also developed by a consortium PT, consisting of Marubeni (32.5%), Korea Midland Power (27.5%), Samtan (20%), and Indika Energy (20%). The previous running power plant had already caused problems such as loss of livelihood and income opportunity, and the complainants believe that the same would happen if the Unit 2 project had proceeded as planned.

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<sup>106</sup> "Building a Better Tomorrow" – Sustainable Development Report 2019' (Marubeni Corporation, March 2019) <[https://marubeni.disclosure.site/en/sustainability/pdf/report/sdr2019\\_en\\_all.pdf](https://marubeni.disclosure.site/en/sustainability/pdf/report/sdr2019_en_all.pdf)> accessed 26 May 2023.

<sup>107</sup> More details can be found at (Marubeni Corporation) <[www.marubeni.com/company/network/index.html](http://www.marubeni.com/company/network/index.html)> accessed 29 May 2023.

<sup>108</sup> More details can be found at (JERA) <[www.jera.co.jp/english/business/projects/](http://www.jera.co.jp/english/business/projects/)> accessed 28 May 2023.

<sup>109</sup> 'Friends of the Earth Japan and WALHI vs Marubeni', or Cirebon Coal Power Plant Project at (OECD Watch, 2017) <[www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/](http://www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/)> accessed 2 July 2023.

The claimed human rights abuses, are mainly economic rights, specifically, violation to the right to freely choose one's occupation, and the right to an adequate standard of living for oneself and one's family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The future loss of livelihood and income opportunity are claimed, in result of limitation of access to their fishing opportunity and the contamination of waste water which runs into the local sea, causing the sharp drop of fish, as more than half, compared to the one before Unit 1 Project in 2007<sup>110</sup>. The families who have less livelihood have had no choice but to change their professions, and work on, for example, as on construction labour. Moreover, it is noted that most of the families have never received compensation or remedy from PT. CEP., the previous company for Unit 1 Project. If the Cirebon Coal-fired Power Plant Project – Unit 2 is pushed through, it is deeply concerned that the waste water from the Unit 2 Project would more deteriorate the marine ecosystem and would cause more reduction of fish the local fishermen would catch, which make their life more difficult. Even though PT. CEPR, like PT. CEP, provides some programs under its Corporate Social Responsibility (CSR), the claimants believe that those are not effective to restore their small-scale fishermen's livelihood and not the rights answer. Furthermore, there seems to be no livelihood restoration plan related to the Unit 2 Project, so far.

In addition, the violations against the OECD Guidelines are: failure to obey domestic laws, which is a violation to article 2 of I. Concepts and Principles and failure to refrain from seeking or accepting exemptions, which is violation to article 5 of II. General Policies. When Bandung Administrative Court (PTUN) admitted that the Unit 2 Project to be built in two districts, namely, Astanajapura and Mundu, it didn'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, and not including Mundu. The environmental permit which West Java provincial government issued is claimed illegal, along with 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. Even in the recent verdict dated April 19, 2017, Bandung Administrative Court (PTUN) admitted that the Unit 2 Project 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, therefore the court requires

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<sup>110</sup>Friends of the Earth Japan and EALHI vs Marubeni' (n 109), 4-5.



West Java provincial government to revoke the environmental permit. Additionally, 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, and this is a violation because the business plan is not including one region. 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. The claimants claim that the PT CEPR has been already working in Mundu as well as in Astanajapura, which implicates that PT. CEPR has already committed a crime against the Law No. 26 of 2007 on Spatial Plan. In addition, the former crime, the location permit exceeds the location mentioned in Cirebon Regency Spatial Planning, which doesn't include Mundu and Pangenan. Albeit the legality of the permit is still decided in the court, the claim is that the companies, PT CEPR, and its shareholders Marubeni and JERA shall ensure the compliance with the said regulation by the final court decision, before they continue any more land clearing work and proceed to any construction work related to the Unit 2 Project. '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 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'<sup>111</sup>.

The second violation of the OECD Guidelines is the 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.) In other words, a violation to the right to health and its exemption towards accepting the violation. As mentioned above, the 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, yet haven't revised the Spatial Planning till today. Even though there was a government offer to include other districts to the Project, PT. CEPR and its shareholders Marubeni and JERA must refrain from accepting such offer, or must not regard such offer as

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<sup>111</sup> 'Friends of the Earth Japan and EALHI vs Marubeni' (n 109), at 7.

an exemption from the revision of the Spatial Planning. Since this relates to the human rights, especially economic rights and environmental rights, as well as the right to health, of the not included communities, Mundu and Pangenan. Moreover, the Indonesian governments<sup>112</sup> and the company had tried to exempt the Spatial Planning revision and to go further with the AMDAL documents, referring to Presidential Regulation No. 4 Year 2016 about Acceleration of Power Plant Infrastructure Development. The 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 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 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'<sup>113</sup>.

In the end of the complaint, the complainants ask Japan NCP to assist them in several ways to ensure that substantial damages and problems related to the Unit 2 Project are prevented among the community in both long-term and short-term, and that Marubeni and JERA adhere to article 11 or 12 of II. General Policies of the OECD Guidelines. These are: 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'; and 3) 'PT. CEPR even encourages West Java provincial government to withdraw its appeal to the high court of the Supreme Court, and makes efforts to comply with the Indonesian laws and regulations'.

The case is still under the initial review under Japan NCP, and it is still unknown whether Japan NCP would assist in resolving the complaint case.

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<sup>112</sup> This includes the National Body of Spatial Planning Coordination (BKPRN), West Java provincial government, Regional Body of Spatial Planning Coordination (BKPRD), and Cirebon Regional Body of Development Planning (BAPPEDA)

<sup>113</sup> 'Friends of the Earth Japan and EALHI vs Marubeni' (n 109), 8.

#### 4.2.2.2. JBIC's findings<sup>114</sup>

A similar complaint was filed against JBIC concerning JBIC Guidelines for Confirmation of Environmental and Social Guidelines (hereinafter “the Environmental Guidelines”)<sup>115</sup>, and following the objection complaint, there was a Report by JBIC's Examiners regarding the Cirebon Coal-fired Power Plant Project – Unit 2 in West Java, Indonesia, published 5 September 2022.

In the Examination Report on Objection to Cirebon Coal-fired Power Plant Project - Unit 2, West Java, Indonesia (hereinafter “Examination Report Cirebon”), the non-compliance towards the Environmental Guidelines were discussed and divided into 6 points: 1) inappropriate implementation of resident engagement and disclosure of information<sup>116</sup>; 2) non-compliance with Laws, Standards and Plans, and proceeding the loan agreement before the First Judgement<sup>117</sup>; 3) negligence towards health consideration of local residents resulting from the power plant<sup>118</sup>; 4) negligence towards following the court's decision on validity of the environmental permits<sup>119</sup>; 5) negligence of listening to multiple stakeholders (such as the Requestors, the NGO supporting the Requestors, and their lawyers) opinions, when reaching a conclusion, in a balanced fashion<sup>120</sup>; and 6) insufficient or ineffective compensation or measures taken to improve lost livelihoods or at least restore the living standards of local

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<sup>114</sup> Kazuaki Hoshino and Shinsuke Toyonaga, Examiners for Environmental Guidelines Japan Bank for International Cooperation (JBIC), ‘Examination Report on Objection to Cirebon Coal-fired Power Plant Project – Unit 2, West Java, Indonesia’, (JBIC, 5 September 2022) <[www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report_en.pdf)> accessed 4 July 2023.

<sup>115</sup> Japan Bank for International Cooperation (JBIC) Guidelines for Confirmation of Environmental and Social Guidelines, (adopted January 2015, came into effect April 2015, last revised May 2022, JBIC) (JBIC “Environmental Guidelines”) <[www.jbic.go.jp/en/business-areas/environment/image/Environmental\\_Guidelines\\_2022.pdf](http://www.jbic.go.jp/en/business-areas/environment/image/Environmental_Guidelines_2022.pdf)> accessed 30 July 2023.

<sup>116</sup> Violation of the JBIC “Environmental Guidelines” Part 1, 3. (Basic Principles Regarding Confirmation of Environmental and Social Considerations) (3) (Information Required for Confirmation of Environmental and Social Considerations) paragraph 4; and Part 2,1. (Environmental and Social Considerations Required for Funded Projects) (5) (Social Acceptability and Social Impacts), paragraph 1.

<sup>117</sup> Violation of JBIC “Environmental Guidelines” Part 1, 3 (Basic Principles Regarding Confirmation of Environmental and Social Considerations) (4) (Standards for Confirmation of Appropriateness of Environmental and Social Considerations) 1), and Part 2, 1. (4) (Compliance with Laws, Standards and Plans), paragraph 1.

<sup>118</sup> Violation of JBIC “Environmental Guidelines” Part 1,3. (Basic Principles Regarding Confirmation of Environmental and Social Considerations) (4) (Standards for Confirmation of Environmental and Social Considerations) 3).

<sup>119</sup> Violation of JBIC “Environmental Guidelines” Part 1,4. (Procedures for Confirmation of Environmental and Social Considerations) (3) (Environmental Reviews for Each Category).

<sup>120</sup> Violation of JBIC “Environmental Guidelines” Part 1, 5. (Disclosure of Information Regarding Confirmation of Environmental and Social Considerations by JBIC) (1) (Basic Principles), paragraph 2.

residents such as small-scale fishermen<sup>121</sup>. Towards these 6 points made, JBIC has made clear that they have not found any violation of the Environmental Guidelines.

It explains that the court's decision on validity on the environmental permits, as the West Java Provincial Government withdrawing its appeal, the Former Environmental Permits had been annulled, and at the same time new environmental permits were issued. In response, the Requestors and the NGOs filled another lawsuit contesting the legality of the New Environmental Permits, however was denied to make a determination by the Indonesian district court and the Supreme Court<sup>122</sup>, and therefore the permit stayed valid. In addition, JBIC claims that the day before the initial court decision to annul the former environmental permits on April 19, 2017, JBIC and the Project Proponent did in fact assign a financing agreement on April 18, 2017. However, they state that the lending from JBIC to the Project Proponent was made after the New Environmental Permits were issued, and the courts in Indonesia do not always specify in advance the state that a decision will be handed down. Regarding the air pollution control technology, JBIC stated that the concentration of harmful atmospheric pollutants emitted by the Project (planned value) was not covered by the phrase "Where appropriate" by reason of being significantly lower than the local standards of the Republic of Indonesia as well as values indicated in the International Finance Corporation (IFC) 's EHS guidelines. It also claims that there are no absolute standards globally common, and therefore, 'even if regulation standards were to diverge between power plants in Japan and the Project with regard to emissions of harmful atmospheric pollutants, viewed from the perspective of comity based on respect for the sovereignty of the Republic of Indonesia'<sup>123</sup>, there is no problem with the above decision made by JBIC. Regarding the claim of negligence of listening to multi stakeholders, JBIC states that 'in its environmental reviews prior to the start of construction of the Project, it had recognized the possibility that there was a discrepancy between the spatial plan, - the ground of the project – and the content of the Project, but had deemed it not necessary to seek the opinions of concerned organizations and stakeholders based on the environmental permits'<sup>124</sup> obtained in relation to the host nation and governments . They claim this decision was made after taking all reasonable measures and was also based on respect for the sovereignty of the Republic of Indonesia, and denies the violation of the claimed negligence according to

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<sup>121</sup> Violation of JBIC "Environmental Guidelines" Part 2, 1. (Environmental and Social Considerations Required for Funded Projects) (7) (Involuntary Resettlement), paragraphs 2 and 3.

<sup>122</sup> K Hoshino & S Toyonaga (n 114), 7-8.

<sup>123</sup> *ibid* 9.

<sup>124</sup> *ibid*.

proportionality of their judgement<sup>125</sup>. Considering the last request and the ground related, JBIC claims that compensation and the CSR programs were implemented, including ‘mangrove protection and conservation activities, microfinance, vocational training, life and accident insurance, and free health check-ups’<sup>126</sup>, which are recognized as complying with paragraph 28 of the IFC PS5. Additionally, there were CSR program assessment survey conducted by a third-party organization, and although they admit that there are residents who have not received the CSR program benefits provided by the Project Proponent, the receipt of CSR program benefits is not the obligation of the target residents, and therefore claims to have not found any ground to constitute the violation of sufficient or effective compensation or measures taken to improve lost livelihoods or at least restore the living standards of local residents such as small-scale fishermen<sup>127</sup>. In sum, in their independent examination report, JBIC claims not to have found any grounds for the violation of the JBIC “Environmental Guidelines”.

After JBIC’s report was published online, there was an opinion, or rather correctly, an objection letter towards the report, by WALHI, the NGO supporting the complainants of the case sent to JBIC. In this opinion, WALHI expresses their frustration, and questions the examination done by JBIC as the complaint system does not function into addressing the environmental, social, health, and cultural issued of the same human beings, whether in Japan or in Indonesia.

The objection opinion includes specific indication to the report, pointing of inappropriate analysis and conclusion. They refer to the examination’s inadequate information collection, insufficient information and explanation, insufficient verification, and lack of respect for the objections, claims, and testimony of residents. They refer to the examination done by the operator’s monitoring, and not by an independent, credible research team, on top of other things. While it seems as if the JBIC has done a thorough research, it excludes major details such as small-scale fishermen who do not use fishing boats or trade at the TPI (auction sites), and fish to consume at home or sell them to their neighbors. In addition to the fishing, the examination of the worsening air pollution and damage to health was done with inadequate information collection, using only statistics, and not quantitative testimonials, which shall be done for at least six months. If JBIC has used a third-party organization to do a survey, then the name of the third-party organization, the dates and the figures and survey methods shall be described within the report, with documentation, and it lacks clarity as well as sufficient disclosure. As

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<sup>125</sup> K Hoshino & S Toyonaga (n 114), at 9.

<sup>126</sup> *ibid* at 10.

<sup>127</sup> *ibid* at 10.

for multi stakeholders' participation, there were insufficient consultations, unthorough analysis of the disclosure of the project to the local residents, and for those which had had concerns of negative impacts on the project, they were not incorporated into the contents of the project plan, when it was supposed to. It even includes a different legal interpretation of "Ministry of Forestry and Environmental Regulation No. 17 of 2012 on Guideline for Public Participation in EIA and Environmental Permit, "the announcement methods not only through the internet but also through notice boards at the project site and/or activity that is accessible for the affected community", while JBIC understood it as the announcement "requires disclosure through TV, on the internet, and/or bulletin boards when applying for environmental permits as well as disclosure and/or in mass media such as newspapers when permits are issued. In addition, the issue of the new environmental permits was not disclosed when issued, and the residents only knew when the NGO WALHI West Java, noticed them, which is also a violation of the Regulation 17/2012. There were also not enough information explaining what kind of method or technology is used in order to reduce emissions of hazardous substances. Data and information should be presented to determine whether the effectiveness of the program has been ensured. In conclusion, the examination in fact ignores the basis of the claims were made, trying not to find violations of the JBIC "Environmental Guidelines". If JBIC were a responsible organization, it will fully investigate both sides, do an appropriate analysis, and conclude that there seems to be some violations of the Guidelines, however, because of the balance of necessity of the project and proportionality of the project violations, JBIC shall continue the project, but with reparations to the community, as well as proper monitoring and promising to confirm with JBIC "Environmental Guidelines" for future projects.

#### **4.2.2.3. The author's findings and aftermath of the case**

The Cirebon 2 uses ultra-supercritical technology, which is said to drastically reduce the CO<sub>2</sub> emissions, while utilizing higher temperatures and pressure to drive thermal efficiency up to 45%. Although this is claimed, it is difficult to access the CO<sub>2</sub> emission decline, due to its difference in each case. In the Fact Sheet<sup>128</sup> provided by a NGO, FoE Japan, it seems as if the air pollution substances are worse than the international standards and definitely worse than those used in Japan. The SO<sub>2</sub> pollutants are estimated to be 221ppm and NO<sub>2</sub> to be 251 ppm, which are both withing the Indonesian standard (SO<sub>2</sub> = 265 ppm, NO<sub>2</sub> = 370ppm), however

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<sup>128</sup> 'FoE Japan Fact Sheet', (FoE Japan, May 2018), <[https://sekitan.jp/jbic/wp-content/uploads/2014/01/201805\\_%E3%83%81%E3%83%AC%E3%83%9C%E3%83%B3\\_factsheet.pdf](https://sekitan.jp/jbic/wp-content/uploads/2014/01/201805_%E3%83%81%E3%83%AC%E3%83%9C%E3%83%B3_factsheet.pdf)> accessed 4 July 2023, 3.

compared to the other countries' standards (SO<sub>2</sub>: China = 12ppm; India = 35ppm; EU = 53ppm, NO<sub>2</sub>: China = 25ppm; India = 49 ppm; EU = 74 ppm), we can see that it is exceeding the limit to almost 10 times. Even compared to the existing and running coal-fired power plants in Japan, the SO<sub>2</sub> emission is about 10-30 ppm, while the NO<sub>2</sub> emission is estimated to be about 13-30ppm<sup>129</sup>. The air pollution substances not only have a strong impact on the local people's health, but it also negatively impacts the environment, and will eventually influence the Southeast Asian region, and globally contribute to the global climate change as well. This correspondence and handling of the case by JBIC and the other companies is a clear reflection of Japanese companies complying with local laws and regulations, while not fulfilling their responsibility as a MNE towards the local community.

The attitude detailed in the Examination Report by JBIC also contradicts the stance the Ministry of the Environment of Japan is taking. The Ministry of the Environment states in its Environmental Impact Assessment of Coal-fired Power Plants<sup>130</sup>, “ Since coal-fired power plants emits more than twice the amount of CO<sub>2</sub> compared to Natural Gas-fired power plants, even when it uses the most advanced technology, it shall choose the methods below to assess the environmental impact assessment: 1) to use the Best Available Technology (BAT); 2) consistency with the country's objective and plan, which are, 2.1) To cooperate and build a framework for reducing CO<sub>2</sub> emissions throughout the electric power industry, participate without delay, and work to reduce CO<sub>2</sub> under this framework; and 2.2) Until the framework is drawn upon, take environmental conservation measures that reduce CO<sub>2</sub> emissions to the same level as natural gas-fired power generation”. It further continues about the PM<sub>2.5</sub> emission, that there shall be a comprehensive response to air pollution caused by PM<sub>2.5</sub>. The goals are: 1) Ensuring the safety and security of Japanese citizens; 2) achievement of environmental standards; 3) Collective occupation of clean and clear air in Asia region. The proposed actions towards the goals are 1-a) Implementation of Qualified Reminders, 1-b) Strengthening support for Japanese residents in China; 2-a) Elucidation of development of PM<sub>2.5</sub> and consideration of reduction measures; 3-a) Promoting regional initiatives in Asia, 3-b) Strengthening bilateral

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<sup>129</sup> 'FoE Japan Fact Sheet' (n 128), 3. For comparison, see Japan's standards towards industrial areas pollutant, 『工場及び事業場から排出される大気汚染物質に対する規制方式とその概要』 [Regulatory System and Summary of Air Pollutants Emitted from Factories and Business Establishments'], (Ministry of the Environment, JAPAN) <[www.env.go.jp/air/osen/law/t-kisei1.html](http://www.env.go.jp/air/osen/law/t-kisei1.html)> accessed 4 July 2023.

<sup>130</sup> 『石炭火力発電所の環境影響評価』 [Environmental Impact Assessment of Coal-fired Power Plants'], (Ministry of the Environment, JAPAN) <[www.env.go.jp/council/01chuo/y010-22/mat03\\_4-2.pdf](http://www.env.go.jp/council/01chuo/y010-22/mat03_4-2.pdf)> accessed 4 July 2023.

cooperation<sup>131</sup>. While it is understandable that the “Asia” region mentioned here refers to China and South Korea since the document was made in 2013, a decade later now, it is necessary for Japan to discuss this pollution issue not only with China and South Korea, but globally, especially in Southeast Asia region as a democratically and economically advanced responsible country.

Another point to be discussed is the difference in legal interpretation in which JBIC and WALHI has, on the Ministry of Forestry and Environmental Regulation No. 17 of 2012 on Guideline for Public Participation in EIA and Environmental Permit. I could not find either of the claims when looked at the Ministry Regulation, however, this might be because the Regulation was referring to another law or regulation, and the document is in Indonesian only. Therefore, the legal debate shall be left for Indonesian judicial power and the Indonesian legal scholars to decide.

It is good to note that the EIA for Indonesia does include Environmental, Social, and Health Impact Assessment: ESHIA<sup>132</sup>, and therefore EIA not only assess biological, geological, physical and chemical aspects, but also social, economic, cultural and public health aspects<sup>133</sup>.

It has also been clear that private banks such as MUFG, Mizuho and SMBC have also involved themselves by providing loans to the project. This means if the project sustains the threshold of the Equator Principles, then there is a possibility that there will be violations to the Equator Principles.

The interesting differences between international standards and the Indonesian standards are the methods and measures of the EIA, screening, Environmental Conservation Method, and the public participation<sup>134</sup>. The MOE Regulation No. 16 of 2012, covers most of the point IFC

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<sup>131</sup> 『石炭火力発電所の環境影響評価』 [‘Environmental Impact Assessment of Coal-fired Power Plants’] (n 130), 4; 『PM2.5 に関する総合的な取り組み（政策パッケージ）の概要』 [Outline of Comprehensive Measures Regarding PM2.5], (*Ministry of the Environment, JAPAN*, December 2013) <[www.env.go.jp/council/07air-noise/y078-06/900427115.pdf](http://www.env.go.jp/council/07air-noise/y078-06/900427115.pdf)> accessed 30 July 2023.

<sup>132</sup> Government Regulation No.27/2012, Indonesia.

<sup>133</sup> Akiko Uragou, Raven Limited Company; Hermien Roosita; Ary Sudijanto, Erik Teguh Primiantoro, Sena Pradipta, Laksmi Widjayanti, Esther Simon, and the Ministry of Environment and Forestry, INDONESIA, 『日本企業の海外における事業展開に際しての環境影響評価ガイドブック～インドネシア編～』 ‘Environmental Impact Assessment Guidebook for Overseas Business Expansion by Japanese companies – Indonesia’, (*Institute for Global Environmental Strategies (IGES)*, March 2016) <[http://assess.env.go.jp/files/0\\_db/seika/0209\\_01/20160715\\_02.pdf](http://assess.env.go.jp/files/0_db/seika/0209_01/20160715_02.pdf)> accessed 7 July 2023, 8.

<sup>134</sup> *ibid* 15.



Guidelines state, however, it does not include labourers' safety, child labour, waste, hazardous substances, ecosystem services, non-timber forest products, and cultural assets. In the screening process, UKL-UPL, which is similar to EIA and Initial Environmental Examination (IEE), but an environmental management and monitoring plan, does not carry out an impact assessment. For environmental conservation measures, the MOE Regulation No. 16 of 2012 stipulates the order of priority and offsets for environmental conservation measures such as avoidance, reduction, and compensation., however, does not state goals such as "like-for-like or better" principle. For public participation, according to the Decree of the Head of BAPEDAL No. 08 of 2000 on Public Participation and Information Disclosure in EIA Procedures, there may be any number of public consultations. Only the scoping stage is required at a minimum, and consultation with residents after the preparation of the EIA report (ANDAL) is not mandatory. This gap between the IFC or international standards and Indonesia, has created problems, such as clashes between the operators and residents after the project approval because of projects started without conducting proper social surveys, policy decisions and zoning carried out without sufficient coordination among ministries, resulting in policy discrepancies and zoning overlaps becoming apparent during the EIA process.

### **4.2.3. Case 3: Batang Coal-fired Power Plant in Central Java, Indonesia**

#### **4.2.3.1. Complainants Claim**

The third case was filed against a huge multinational trading company from Japan, ITOCHU Corporation (ITOCHU), and a Japanese electric power development company, Electric Power Development Co., Ltd., also known as J-POWER. ITOCHU, its headquarters in Tokyo, engages 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<sup>135</sup>. ITOCHU has approximately 130 bases in 65 countries, which makes it an MNE. J-POWER, its headquarters in Tokyo, is also considered a multinational company because of its consulting service projects having run in 63 countries, mainly in the developing world, since 1960<sup>136</sup>. In this coal-fire project, J-POWER, together with ITOCHU and PT Adaro Power, established a joint venture corporation called PT,

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<sup>135</sup> (ITOCHU) <[www.itochu.co.jp/en/about/profile/](http://www.itochu.co.jp/en/about/profile/)> accessed 2 June 2023.

<sup>136</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' regarding the HR violations at Central Java Coal-fired Power Plant Project in Indonesia, (OECD Watch, 29 July 2015) <[www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/](http://www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/)> accessed 2 June 2023 at 5.

Bhimasena Power Indonesia (BPI), and held 34% of its shares. BPI constructed and is expected to operate a 2000 MW coal-fired power plant, 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), degrading and dumping in the sea, and 500kV transmission line and substation. BPI entered into a contract or a 25-year power purchase agreement with Perusahaan Listrik Negara (PLN), an Indonesian state-owned power company in 2011, and this was apparently the first public-private partnership (PPP) project for ITOCHU in Indonesia<sup>137</sup>. Other Japanese financial MNEs were considering its involvement in investing loans for the project at that time, along with JBIC. They are currently reviewing the project according to the JBIC Guidelines for Confirmation of Environmental and Social Consideration and other relevant standards. There were delays in the project due to failure of land acquisitions of the area because of local communities' oppositions, which has caused increase of costs in the project, roughly estimated as 50 trillion rupiah (5 billion USD), in comparison to the initial estimate of 35 trillion rupiah (3 billion USD). The delay allegedly influenced the Indonesian government to act on the application of Law No. 2 of 2012 on Land Procurement for The Public Interest<sup>138</sup>.

The complainants are from the Paguyuban UKPWR, an association established in 2012 in order to defend the land and sea from the coal-fired power plant project as well as its people from the diverse impacts of the projects, and are of the community of Batang, Indonesia. In this case again, the complainants did not feel safe enough to disclose their names to the public, out of fear of retaliation from the companies, and the Indonesian government. The complainants' claim was that 'BPI, and its shareholders ITOCHU and J-POWER, have not carried out comprehensive human rights and environmental due diligence, and it had 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<sup>139</sup>, and caused human rights violations. The failure of BPI, ITOCHU and J-POWER to conduct due diligence will mean the

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<sup>137</sup> Execution of Long-Term Power Purchase Agreement for a New 2 GW Coal-Fired IPP Project in Indonesia' (ITOCHU, 7 October 2011) <[www.itochu.co.jp/en/news/press/2011/111007.html](http://www.itochu.co.jp/en/news/press/2011/111007.html)> accessed 30 July 2023.

<sup>138</sup> On 30 June 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.

<sup>139</sup> This includes violence; wrongful and arbitrary arrest; criminalization of peaceful protests; unfair trials; efforts at bribery; illegal and fraudulent land sales; hostage taking; community harmony endangered; rice fields and other property damaged; vandalism; and trespassing.

companies will be incapable of preventing or mitigating significant adverse impacts on thousands of people and the environment, if the proposed project is proceeded'<sup>140</sup>. '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'<sup>141</sup>. They claimed that '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'<sup>142</sup>.

The many human rights violations through the OECD Guidelines are, namely, loss of livelihood opportunities due to the acquisition of farmland; loss of livelihood opportunities due to no access to enough irrigation water; threatening to fisheries due to the harm towards the marine environment; criminalization of peaceful protests, unfair trials, efforts at bribery and perversion of justice, and violent intimidation by armed groups prior to trial; violent action, intimidation, harassment, illegal trespass, property destruction, and vandalism by military, police and private security in the community<sup>143</sup>. Further, 'the project has led to destruction of social fabric in the community by bribery and attempted bribery'. These are just the human rights violations the community is facing at the moment when the case was filed, additionally, there are potential adverse impacts in the future if the project proceeds as planned<sup>144</sup>.

As for the loss of livelihood opportunities in future prospect, it is estimated that they will continue and may be even get worse. The loss of jobs in the community has caused people to become economically desperate, desperate enough to change their careers and relocate, sometimes even getting on fishing trawlers, which makes them vulnerable to abuses due to the isolation it creates with low pay. This forced change of situation isn't limited to men, but also to women and those may go to work as maids in Jakarta or even Singapore, where they experience psychological stress due to isolation or homesickness. Some of these cases have already been reported. According to JBIC, the project proponent is preparing alternative

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<sup>140</sup>'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 137), 6.

<sup>141</sup> *ibid* 6.

<sup>142</sup> *ibid*.

<sup>143</sup> *ibid* 8-16.

<sup>144</sup> *ibid* 16.

farmland, reportedly about 90 hectares. However, the complainants claim that this is not sufficient to restore the loss of livelihoods, either in quality, productivity, or quantity. They claim that the coal-fired power plant proposed use technology that is destructive to the ecosystem, which is not sustainable, and does not adopt alternative sustainable forms<sup>145</sup>.

Regarding the community's inclusion for discussion, only selected villagers which were non-critical or questioning of the Environmental Impact Assessment (EIA) were invited, and 'there was a lack of free, fair, open, and transparent fashion', and when there was an attempt to attend, those who were not invited were barred from the hearing. Moreover, 'there was no public hearing in Roban village at all, as the BPU has never recognized the fishermen in in Roban as a key stakeholder'<sup>146</sup>.

Due to unjust arbitrary arrests, some have lost livelihood. There were cases of no compensation after alleged suspicion and arrests which has imprisoned some for 5 months against a hostage case of a Japanese businessman, and some others who were unjustly imprisoned for 7 months with no compensation afterwards.

There were also cases of community members who faced many safety and security issues, including criminalization through acts of peaceful protests, unfair trials, efforts at bribery and perversion of justice, and violent intimidation by armed groups prior to trial. This included a case of a community leader being hospitalized while put in jail and received poor medical treatment including having to pay for the medical bills himself while being under custody of the police<sup>147</sup>. There were also times where those who have opposed to the project, were falsely accused of assaulting an individual, and arrested without any evidence<sup>148</sup>. There were even cases of these people from the community to be imprisoned for 7 months without any representative of legal counsel, which was required to provide at that time<sup>149</sup>. These human rights violations continued with intense intimidation cases in negotiations with landowners by military and police in the community, which were addressed by the Komnas HAM (the National Human Rights Commission) in August 2013 as well. There were further clashes between the community and the military, police, private security and thugs. There was questioning of the existence of the 100 staff-sized private security prior to the acquisition of all

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<sup>145</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 137), 10.

<sup>146</sup> *ibid* 10.

<sup>147</sup> *ibid* 11.

<sup>148</sup> *ibid*.

<sup>149</sup> *ibid* 11-12.

project land. There were intimidations, attack on community members, illegal trespassing, vandalization and destruction of the community's and individual's property, by police, army, and thugs, which happened only after the project proposal came in. This includes the massive presence of the "Angkatan Darat" (Army) and police after the arrest of 5 community members for their anti-coal views at least a week until the Komnas HAM visited the village and requested that the army leave. Even after the national human rights commission's arrival, the intimidation continued unofficially through thugs, which worsened the situation in the villages. Even when the villagers tried reporting of the intimidation through police reports, the police refused of filing the reports, and told the villagers to 'just sell their land for a good price'<sup>150</sup>. The intimidation escalated into a forced removal of land, and access to water to their farms, when the engineering brigade of Indonesian military got involved in the land clearing activity in the proposed project site. The police, army, security forces, and thugs have also decided to try and forbid all of the local people from documenting the events by taking photos or videos. There were even cases of violence of brutal beating by the officials towards those who were involved in a protest opposing the project taking away their land without the necessary permission, which resulted in 17 severely injured, and 50 mildly hurt<sup>151</sup>. What is remarkable is that there was even a case of violent attack on Greenpeace staff supporting the community, who was held hostage by thugs for 3 hours by thugs along with 2 volunteers and a driver. The thugs forced the Greenpeace staff to record a video of himself saying that he would not come back to the community again<sup>152</sup>. The more serious problem is the impunity for violence against community members resisting the coal plant. As mentioned earlier, there were several cases where the police didn't take incident reports for cases thugs were involved in harassing or assaulting the community regarding the coal-fire power project. In 4 years, the community and Greenpeace estimate that 'close to 50 people from the community have been severely hurt as a result of violent attacks by pro-coal thugs, police, army, or company security guards.' However, no investigation or justice was sought in these cases<sup>153</sup>.

The project has led to destruction of social fabric in the community by bribery and attempted bribery as well<sup>154</sup>. The BPI has bribed several community leaders in order to make them sell their land, and those community leaders who have agreed have also threatened or strongly

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<sup>150</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 137), at 13.

<sup>151</sup> *ibid* 13.

<sup>152</sup> *ibid* 14.

<sup>153</sup> *ibid* 15.

<sup>154</sup> *ibid*.

pressured others in the community to sell their lands, with thugs behind their back. They were told that when they succeed in making the others in the community to sell their land, then those who first agreed to sell their land would receive a bonus 4 times of what they have received when selling their land. The police were also involved in the bribery, offering money to those who will join the pro coal camp. As a result, many of these villagers and the community do not trust each other anymore. 'The social relationship among the community has been destroyed because of the BPI'<sup>155</sup>.

There are also mentions of future 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. This is backed up with research done through a previous coal-fired power plant: Cirebon. This research was created upon the environmental and social impacts of the coal-fired power plant including financial harm, damage to livelihood and health suffered, also which JBIC has provided finance for. The research demonstrated the kinds of harms and suffering that the community could face if the Central Java Coal-fired Power Plant had proceeded. Although BPI may claim that the Japanese companies have the clean coal technology or the best pollution control technology, the reports of Japanese NGOs states otherwise. They claim 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<sup>156</sup>.

The first violation of the OECD Guidelines, is the violation of Indonesian Laws, in violation of General Policies in Chapter I, Paragraph 2, obeying domestic laws.

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 and the Central Java provincial bylaw, No. 6/2010, in which no plant should be allowed to harm those protected areas. The 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 Marine Protected area is especially important for the local community because of its aspect as an employment provider related to tourism, not only just for the ecosystem and the country's environment. Both the economic value and environmental value cannot be

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<sup>155</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 137), 15.

<sup>156</sup> *ibid* 15-16.

overlooked. However, despite these existing laws, ‘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’<sup>157</sup>. This decision was hotly contested by local people and authorities. The claimants stand that this act was based on fraud: in particular, on falsified maps with imaginary relocation of coral reefs, and that the Batang Regent’s decision to change the regional regulation was misguided and the decision itself was illegal. The local residents have even brought a lawsuit against the regent for adopting this bylaw<sup>158</sup>.

As the plan is to have a part of the power plant to 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’<sup>159</sup>.

Also, because the Batang project is owned by a private company, BPI, the implementation of Law No. 2 of 2012 on Land Procurement for The Public Interest, by the Indonesian government is questionable, since the law was intentioned to be applied for public projects<sup>160</sup>.

Moreover, the involvement of the Engineering Brigade from Indonesian national army in the land clearing activity of the Batang project violates the Law No. 34/2004 on the Indonesian Armed Forces, which 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”<sup>161</sup>. This was in a recommendation of Komnas HAM (the National Human Rights Commission), stating that ‘for the respect for and protection of the landowners’ rights, all the military soldiers withdraw from any activity or any active/passive involvement in the construction of the Batang coal-fired power plant. This wasn’t the only recommendation, and in one of the many, Komnas HAM even mentioned that the governor of Central Java and Central Government shall cancel the project, because of human rights violations and social problems in the community<sup>162</sup>.

The second violation of the OECD Guidelines, is the failure of ITOCHU and J-POWER to seek to prevent or mitigate adverse impacts directly linked to their operations and exercise their

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<sup>157</sup> ‘Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER’ (n 137), 10.

<sup>158</sup> *ibid* at 17. This lawsuit resulted in a loss for the residents, and the special exemption bylaw was considered to be legal.

<sup>159</sup> *ibid*.

<sup>160</sup> *ibid*. This arose controversy in Indonesian government as the opinions vary among the government. Some believe that it can be used when the government acquires the land that hadn’t been sold

<sup>161</sup> *ibid*.

<sup>162</sup> *ibid*.

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, in violation of Human Rights Chapter IV, paragraph 1 and 2. The Batang coal-fired power plant project had already caused adverse impacts on civil rights, economic rights, and rights to health of local communities.

‘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). The 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)’<sup>163</sup>, in addition to sufficient and effective remediation for the victims to restore the potential loss of income and livelihoods (in violation of Human Rights Chapter IV, Paragraph 6)<sup>164</sup>.

It is also mentioned that Komnas HAM has issued the recommendations several times, in which it includes that ‘the governor of Central Java and the Central Government cancel the project, because of human rights violations and social problems in the community’<sup>165</sup>. The BPI and its shareholders ITOCHU and J-POWER must carefully identify the cause of these adverse human rights impacts the residents have already faced and what action should be taken or what kind of leverage should be used to avoid such impacts.

In addition, there were adverse impacts on economic rights (in violation of Human Rights Chapter IV, Paragraph 1 and 2)<sup>166</sup>. The project has deprived of the Batang community of the right to work, more specifically the right to freely choose one’s occupation, and the right to an adequate standard of living for oneself and one’s family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The project will also expose the people of Batang in the higher risk of health damage, which is a violation to the right to health, if it is pushed as currently planned, and will fail to ensure the Batang community to enjoy the highest attainable standard of health without using the best-

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<sup>163</sup> ‘Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER’ (n 137), 18. The full list of the breaches of the OECD Guidelines: II General Policies A-10; A-11; A-14; IV Human Rights 1; 2; 5; and 6.

<sup>164</sup> *ibid* 22.

<sup>165</sup> *ibid* 19.

<sup>166</sup> Also see Article 6; 11; and 12 in International Covenant on Economic, Social and Cultural Rights (ICESCR).



available technology<sup>167</sup>. The claimants show a comparison of an alternative technology used in a coal-fired power plant in Isogo, Kanagawa, Japan, in which J-POWER is very proud of its “clean” technology. The power plant has been up and running since the late 1960s, and have introduced the flue gas desulfurization equipment early on, but later in 2002 and 2009, they have constructed two new plants in order to meet their goals of becoming more environmental-friendly. This technology includes the introduction of the latest environmental equipment, and using the Ultra-supercritical (USC)<sup>168</sup> to steam conditions, which enabled the power plants to be a compact urban coal-fired power plant that achieves the world’s highest level of both environmental load reduction and energy efficiency improvement<sup>169</sup>. It is boasting a total power output of 1200 MW. The former 2 plants which were operating with an output of 265MW each, which were still in use until the first power plant in 2002 was built, then was completely scrapped and dismantled. The Enhanced Environmental Performance has reduced the SOx from 60ppm to 20ppm and 10ppm, NOx from 159ppm to 20 ppm and 13 ppm, soot and dust 50mg/m<sup>3</sup>N to 10 mg/m<sup>3</sup>N and 5 mg/m<sup>3</sup>N<sup>170</sup>. The efficiency has also increased from CO<sub>2</sub> emissions per kWh of 100 to 83. Compared to the above, new and “clean” technology, the Batang Power Plant, the power output is estimated to be 1000MW per unit, and the pollution control seems to have been worse than that. For example, the SOx: the emission concentration will be 5-10 times higher in Batang than Isogo, and the emission concentration for NOx will be 6-10 times higher in Batang than in Isogo, because of the installment of LNB rather than SCR. Also, the emission concentration will be 5-10 times higher in Batang than in Isogo. Although J-POWER claims to use ultra-supercritical (USC) technology for high thermal efficiency, according to other sources, it seems as if they are not using the most efficient ones within their capacity. This may due to financial reasons, as it may cost more, or the Indonesian government had preferred this method over the other used in Isogo. However, there should have been a basic census data in details, of adequately assessing or addressing potential human rights impacts and sharing it to the public or the community affected. If this was actually in practice, there would be less effect to the right to health.

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<sup>167</sup> Violation of OECD Guidelines Human Rights Chapter IV, Paragraph 1 and 2; Article 12 of ICESCR.

<sup>168</sup> USC technology raises the steam pressure and temperature of steam turbines above that of conventional supercritical steam turbines (pressure: 246 kg/cm<sup>2</sup>; temperature: 566°C) in order to enhance the efficiency of thermal power plants. More information can be seen at ‘Annual report 2009’ (*J-POWER group*, 2009) 14-22 <[www.jpowers.co.jp/english/ir/library/pdf/2009/2009.pdf](http://www.jpowers.co.jp/english/ir/library/pdf/2009/2009.pdf)> accessed 25 June 2023.

<sup>169</sup> 『磯子火力発電所』 [‘Isogo Fire Power Plant Information’] (*J-POWER group*) <[www.jpowers.co.jp/learn/facilities/isogo.html](http://www.jpowers.co.jp/learn/facilities/isogo.html)> accessed 24 June 2023.

<sup>170</sup> ‘Annual report 2009’ (n 168), 15.

Moreover, all of these violations are in result of BPI failing to conduct comprehensive human rights due diligence, as mentioned earlier, which are in violation of General Policies Chapter II, Paragraph A.10, 11 and 14 and Human Rights Chapter IV, Paragraph 2 and 5.

The most important part of the HRDD, the responsibility to remediate the adverse human rights impacts they have caused, hasn't been fulfilled by BPI. BPI did not prepare or make 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. There was a lack of LRP which established the entitlements of affected persons and/or communities, ensuring that these are provided in a transparent, consistent, and equitable manner, and designed 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<sup>171</sup>.

Lastly, BPI, including J-POWER and ITOCHU have failed to conduct comprehensive environmental due diligence, including consulting with and informing affected communities, violating the General Policies Chapter II, Paragraph A.10 and Environmental Chapter VI, Paragraph 3, and General Policies Chapter II, Paragraph A 14. 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).

In the process of EIA, there should have been prediction and assessment of the project's potential positive and negative impacts, to the extent possible in quantitative terms, including identifying 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'<sup>172</sup>.

At the end of stating all of these violations, the complainants ask the Japanese NCP for assistance to help resolve the problems taking several measures<sup>173</sup>. They ask assistance in mainly the companies involved to practice HRDD properly and thoroughly. This includes protecting landowners from human rights violations by using their leverage to ensure that the

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<sup>171</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 136), 22-23.

<sup>172</sup> *ibid* 25.

<sup>173</sup> *ibid* 28-30.

land acquisition process doesn't involve any further manipulation, coercion, intimidation or violence towards the local community, and ensuring appropriate rehabilitation or remediation for any damage restoration, a thorough investigation and field visits with relevant Japanese embassies and/or consulates to assess the Japanese companies' compliance with the Guidelines, including all of the local people to be affected by the projects such as landowners, farm tenants and workers and fishermen. Also, have the assessment presented to the community. Additionally, when they put direct or contracted security in place, 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, guided by the principles of proportionality and good international practice. This includes considering to investigate all allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) upon the investigation 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'<sup>174</sup>. The request also includes Japanese NCP to identify Project Affected Persons (PAPs), and make the companies establish a grievance 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 also for any losses of income/ means of livelihood. As for the environmental actions, make the companies disclose quantitative data for the predicted level of pollution/ data on all harmful emissions, including inter alia, particulate matter (PM 2.5 & PM10) and mercury, as well as the specific pollution control technology that will be utilized by the project for PM, SO<sub>2</sub>, NO<sub>x</sub>, and mercury in a form and manner that are understandable to the affected people. The request also asks for the Japanese NCP to 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, pollution controls, plant size, water usage, etc., as the option with the lowest environmental and social risks. In addition, the demand includes help for Japanese companies to understand the concerns, call upon all companies, financiers, and the governments to dialogue with the local community in an attempt to resolve disputes and enhance understanding do the issues at stake on a public level. Lastly, to disclose and explain the information and the process of which the Batang Regent passed a special bylaw exempting the project to practice in the restricted and protected region.

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<sup>174</sup> 'Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER' (n 136), 29.

This complaint was filed against the Japan NCP in July 29, 2015, before the Examination Report on Objection to Central Java Coal-fired Power Plant Project, Central Java, Indonesia was published on June 19, 2017.

#### **4.2.3.2.JBIC's findings<sup>175</sup>**

The same claimants that have filed an NCP case to the Japan NCP have filed a complaint to JBIC basing their claims on violations of Japan Bank for International Corporation (JBIC) Guidelines for Confirmation of Environmental and Social Considerations (April 2012)<sup>176</sup>. This complaint was filed because of the involvement of JBIC's investment in the project, along with other Japanese and Singaporean banks. JBIC approved if a USD 3.4 billion loan agreement for the 2000 MW project, joined by a string of commercial banks including Mizuho, MUFJ and SMBC, which came after five years of delay due to local opposition from farmers and fishermen in Batang<sup>177</sup>.

According to JBIC, none of the violations of JBIC Guidelines for Confirmation of Environmental and Social Considerations the claimants have claimed, were to be found in their independent examination of the situation. The examiners have also confirmed that the Project Proponent and government agencies have provided free substitute farmlands to tenant farmers, as well as employment and self-supporting programs and CSR programs at a high level, in addition to setting reasonable price for acquiring land from landowners, which have been beneficial to many of the residents in the affected area<sup>178</sup>. JBIC has also confirmed that Komnas HAM, the national human rights institution has reached a conclusion to support the project, with a decision made at a discussion with the Indonesian government that measures will be consecutively carried out to respond to concerns of Komnas HAM for the affected residents<sup>179</sup>.

This examination was conducted for approximately 3 and a half years with about 20 sessions both in Japan and on site, with NGO representatives, Indonesian government representatives, local community residents, and others. However, because most of the violations claimed were

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<sup>175</sup> Koji Shimada and Hiroshi Kobayashi, Examiner for Environmental Guidelines Japan Bank for International Cooperation (JBIC), 'Examination Report on Objection to Central Java Coal-fired Power Plant Project, Central Java, Indonesia', (JBIC 19 June 2017) <[www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report_en.pdf)> accessed 14 June 2023.

<sup>176</sup> Hereinafter referred as "JBIC Guidelines". See more at (n 115).

<sup>177</sup> BankTrack condemns Japanese and Singapore bank financing of Batang coal project in Indonesia as reckless to people and climate.

<sup>178</sup> K Shimada and H Kobayashi (n 175), 12.

<sup>179</sup> *ibid* 10.

stated non-existent by the Indonesian government, either by jurisdiction<sup>180</sup> or administratively<sup>181</sup>, JBIC's approach was to respect the local decision and to not proceed to further investigation, or halt the project or the investment in the project. JBIC therefore made a decision to continue with the loan towards the project in June 2016.

The report is significant because it had done a thorough report on the case with multiple stakeholders involved, and it does mention that if it were actually the case claimed by the Requesters, then it would be a grave violation and pointed out that such issues shall be avoided in future Project's implementation, in connection with "Social Acceptability" and Social Impacts" of the Guidelines. It also led to JBIC reviewing their own Guidelines, from 2021-2022, establishing a newer version of the revised Guidelines in May 2022<sup>182</sup>.

#### **4.2.3.3. The author's findings and aftermath of the case**

Although the case hasn't been resolved yet with Japan NCP's mediation<sup>183</sup>, there are some other findings I have found in relation to the case, such as alleged violations of other international principles, such as the Equator Principles and the UNGP. If what the claimants claims of the case assert is true, then the project will be an asset to the Equator Principle, and nonetheless continuous violations of the UNGP.

In relation to the UNGP, the state duty to protect human rights have been infringed by the Indonesian State government, one of the foundational principles of the UNGP<sup>184</sup>, when the police didn't cooperate with properly filing and investigating the assault, kidnapping, extortion and trespassing incidents local residents have claimed, and the army intervening to the villages. Additionally, the operation principles, where the states shall 'ensure that other laws and policies

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<sup>180</sup> Lawsuits were filed however all of them were dismissed by courts either in district court, high court or supreme court: one against the illegality of the AMDAL(EIA) process and environmental approval in June 2014; one against the inappropriateness of the decree of Minister of Marine Affairs and Fisheries (No. KEP/MEN/2012) and the Regent of Batang Decree (No. 523/194/2012); one against the illegality of the application of Law No.2/2012 on Land Acquisition in August 2015; criminal case involving arrest and detentions of some Requesters judged guilty by the Batang District Court on November 12 2013.

<sup>181</sup> Administrative decisions include approval and verification from Indonesian Ministry of Environmental and Forestry, from the leader of the local residents, Batang Regency and the Central Java Province, the public prosecutor's office of the Batang Regency, local law office, and the coordinating Ministry for Economic Affairs.

<sup>182</sup> 'Process of Revising JBIC Guidelines for Confirmation of Environmental and Social Considerations (Revision in 2022)' (JBIC, 2022) <[www.jbic.go.jp/en/business-areas/environment/business.html](http://www.jbic.go.jp/en/business-areas/environment/business.html)> accessed 28 June 2023.

<sup>183</sup> Since there isn't a final statement uploaded to the website of the Ministry of Foreign Affairs of Japan, it is considered that the assessment is incomplete. Once the assessment is completed, it is to be uploaded on the official website, at 'Economic Diplomacy -OECD Guidelines for Multinational Enterprises' (*Ministry of Foreign Affairs*, JAPAN 20 September 2022) <[www.mofa.go.jp/mofaj/gaiko/csr/housin.html](http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html)> accessed 26 June 2023.

<sup>184</sup> UNGP I The state duty to protect human rights: A Foundational Principles: 1, 2; and B Operational Principles, General State Regulatory and Policy Functions: 3 (a).

governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights'<sup>185</sup>, has also been violated. The Batang Regent passing the special bylaw exempting the project from the restrictions of development in the vicinity of the Ujungnegoro-Roban coastal area, which was already a protected area by regional and state law, would be the act of violation. The ignoring of enforcing the already existing laws of the protected area, can also be seen as a violation of the states' duty to protect<sup>186</sup>, in which the laws were indeed for environmental purposes, but there is a possibility of them being aimed at, or have the effect of, requiring business enterprises to respect human rights, related to the environmental protection of the area. This is also recommended by the Commentary in the UNGP, that even if the laws are not directly mentioning human rights, states shall also consider other laws related that can impact human rights. Also, the Indonesian state haven't been complying with the state-business nexus, where states should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, by requiring human rights due diligence (HRDD)<sup>187</sup>. It had continuously been ignoring violations, and although they might claim that there was a HRDD, the initial ESI assessment, which was not enough and even criticized by the national human rights institution. Also, when there were repeated offences by the army, police, private security of the company, and the local gangs, in which further risk and incident assessment should have been conducted, the government had ignored of the concerns raised by the national human rights institutions, and did not do a thorough due diligence.

When looking at the case from Japanese government's violation and compliance to the UNGP, it seems as the state had violated principle 5 and 6, where JBIC should have exercised adequate oversight in order to meet their international human rights obligation when they contracted with BPI to provide services (in this case, loan) that may impact upon the enjoyment of human rights, as JBIC is a 100% government owned financial institution for international cooperation<sup>188</sup>. This may be objected from their point of view, as JBIC had done their independent review for more than 3 years, and hadn't found any violations to the JBIC Guidelines. However, this alleged systematic violation of human rights, cannot be easily assessed and should sometimes be examined in more details, for example, with talks with the

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<sup>185</sup> UNGP I The state duty to protect human rights: B Operational Principles, General State Regulatory and Policy Functions: 3 (b).

<sup>186</sup> *ibid* 3 (a).

<sup>187</sup> UNGP I The State Duty to Protect Human Rights: B Operational Principles: The State-Business Nexus 4.

<sup>188</sup> 'About JBIC, Corporate Governance' (JBIC) <[www.jbic.go.jp/en/about/governance.html](http://www.jbic.go.jp/en/about/governance.html)> accessed 26 June 2023.

private security, and local officers involved. Also, when complying with the domestic laws and regulations are not enough when the local government is infringing human rights, investors and foreign companies should know more and go beyond and above the national requirements, to comply with international standards. There shall be provisions of adequate independent monitoring and accountability mechanisms, as the commentary of the UNGP states<sup>189</sup>.

It is remarkable however, that JBIC has done an examination, ending in a 28-page report, with detailed information for a financial institution, funding a loan to the project. It shows that there are certain kind of leverage Japanese financial institutions can have in funding projects overseas. Its detailed report includes their findings on reported case of threat by military and police, such as establishing and implementing a grievance mechanism to meet requirement in relation to security personnel set by the IFC Performance Standard, stating “the client will provide a grievance mechanism for Affected Communities to express concerns about the security managements and acts of security personnel”, and that they have so far not received any complaint in regard to the military and police involvement by the mechanism.

The examination system of the Objection Procedures, is an independent and impartial investigation, that JBIC has established in October 2003, which is prior to many other export credit agencies, including the OECD Guidelines and the complaint mechanism through NCPs<sup>190</sup>. ‘Multilateral development banks such as the World Bank have successively introduced objection procedures, similar to JBIC’s Procedures, as well as examining bodies which act in accordance with the procedures’<sup>191</sup>.

As for the responsibility for business enterprises to respect human rights, J-POWER and ITOCHU, through the joint corporation BPI, failed 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, a violation to the GP 13 (b). When there is a direct linkage to businesses’ operations, products or services by their business relationships, even if they have not

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<sup>189</sup> Commentary to the UNGP Principle 5: ‘States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights’.

<sup>190</sup> ‘Annual Report of the Examiners for Environmental Guidelines (FY2017)’ (JBIC)

<[www.jbic.go.jp/en/ir/image/2017E\\_00\\_full.pdf](http://www.jbic.go.jp/en/ir/image/2017E_00_full.pdf)> accessed 28 June 2023, 1.

<sup>191</sup> *ibid* at 3.

contributed to those impacts, the responsibility to respect (RtR) human rights exists<sup>192</sup>. Most of the human rights violations happened while operating on land acquisition, however, BPI was not causing or contributing to the impacts, as we cannot see any BPI directly doing any of these extortion, assault, kidnapping, bribery or trespassing. Most of these acts were caused by local gangs, army, the police and private security. And therefore, BPI's responsibility does not lie on causation or contribution. However, private security was hired by BPI and there is a direct linkage to the human rights violations, in which the private security had been involved. This claim towards direct linkage is also mentioned in the NCP case, referring to the OECD Guidelines II. General Policies, A. 11 and 12.

With relation of the project to the Equator Principles, the total Project capital cost (1) of this project is estimated to be 3 billion USD to 5 billion USD, which is more than 10 million USD, which makes it a Project Finance. Even though there were no official complaint towards the financial institution, such as Mizuho, MUFG, and SMBC, with this project through Japan NCP, the 3 big financial institution and JBIC were involved in financing the project, and all of the private banks had adopted the EP. The big 3 megabanks have joined the EP before the project started in 2013<sup>193</sup>, however the EP IV was only adopted in 2020, therefore, would not apply retroactively. However, the previous form of the EP, EP III<sup>194</sup>, adopted in June 2013 would have been in force, and according to that, it would have violated several of the Principles, such as EP 2: Environmental and Social Assessment, illustrated in Exhibit II: i) pollution prevention and waste minimization, pollution controls (liquid effluents and air emissions), and solid and chemical waste management, and l) respect of human rights by acting with due diligence to prevent, mitigate and manage adverse human rights impacts, n) consultation and participation of affected parties in the design, review and implementation of the Project, o) socio-economic impacts, r) land acquisition and involuntary resettlement, and u) protection of community health, safety and security (including risks, impacts and management of Project's use of security personnel), EP3: Applicable Environmental and Social Standards, IFC PS paragraphs 5-12: Environmental and Social Assessment and Management System and ESS1 Assessment and Management of Environmental and Social Risks and Impacts, and EP5: Stakeholder

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<sup>192</sup> UNGP Principle 13 (b).

<sup>193</sup> MUFG adopted 22 Dec 2005, Mizuho adopted in 2003, and SMBC adopted in 2006, see more at 'Members and Reporting' (*the Equator Principles*) <<https://equator-principles.com/members-reporting/>> accessed 11 July 2023.

<sup>194</sup> The Equator Principles III, (adopted 4 June 2013, entered into force and mandated 1 January 2014, Equator Principles Association) (EPIII), [www.equator-principles.com/app/uploads/The\\_Equator\\_Principles\\_III\\_June2013.pdf](http://www.equator-principles.com/app/uploads/The_Equator_Principles_III_June2013.pdf).



Engagement. Especially in the World Bank's EHS Guidelines, it specifically states Air Emissions and Ambient Air Quality, of which project finances should carefully monitor, such as CO<sub>2</sub>, SO<sub>2</sub> and NO<sub>2</sub>, PM<sub>2.5</sub> and PM<sub>10</sub><sup>195</sup>. Also, it details Community Health and Safety in paragraph 4.3 about General Site Hazards, and Disease Prevention. The 3 mega banks failed to successfully perform human rights due diligence as well as environmental due diligence, not disclosing information regarding the projects, in accordance with UNGP, OECD Guidelines, EP, IFC PS and the World Bank's EHS Guidelines.

The Japanese government was informed of the human rights abuses and was told to carefully review a controversial 4 billion USD thermal power plant project funded by a joint consortium by the Indonesian state-sanctioned but independent human rights commission, Komnas HAM<sup>196</sup>. However, there was nothing that the Japanese government did at that time, and the prime minister Shinzo Abe forwarded the project not responding to the local residents' or NGOs' concerns.

Despite all of the allegations and complaints, the Batang Coal-fired Power Plant was completed and started running in September 2022<sup>197</sup>. There seems to be continuous complaints regarding the environmental circumstances of the Batang area, with videos and pictures made public through FoE Japan, showing black stones, which seem to be coals, causing fish nets to break because of the heavy weight of them<sup>198</sup>. NGOs such as FoE Japan continues to raise voices towards J-Power, ITOCHU, JBIC and the private banks to comply with its responsibilities to investigate the cause, to formulate, implement, and monitor recurrence prevention measures, to perform an investigation on environmental societal impacts and marine ecosystem impacts caused by the charcoal fall, and to formulate, implement, and monitor measures to restore marine ecosystems to their original state<sup>199</sup>.

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<sup>195</sup> Environmental, Health and Safety Guidelines, (The World Bank Group 30 April 2007) <https://documents1.worldbank.org/curated/en/157871484635724258/pdf/112110-WP-Final-General-EHS-Guidelines.pdf>, 3-17.

<sup>196</sup> 'Indonesian rights commission tells Japan to review power project', *The Japan Times*, (Tokyo, 9 January 2016).

<sup>197</sup> 'News Release "Indonesia: Batang Power Plant started commercial operation"', (*Electric Power Development Co., Ltd. (J-Power)* 7 September 2022) <[www.jpowers.co.jp/english/news\\_release/pdf/news220907e.pdf](http://www.jpowers.co.jp/english/news_release/pdf/news220907e.pdf)> accessed 11 July 2023.

<sup>198</sup> 『インドネシア・バタン石炭火力：漁業者に再び大きな被害～漁網に数々の黒い塊。落下した石炭か？』 [‘Indonesia Batang coal-fired power plant: Another huge damage to fishermen – numerous black lumps in fishing nets seen. Are they coal fallen out?’] (*FoE Japan*, 24 December 2020), <<https://foejapan.org/issue/20201224/3460/>> accessed 11 July 2023.

<sup>199</sup> *ibid.*

After the complaint, there were several things that have changed the Japanese companies views towards coal-fired power plants, and their attitude against the involvement and investment of those projects involving it. ITOCHU is a good example, where it had decided to totally retrieve from the Batang Coal-fired Power Project, after the sale of the plant to the Indonesian government once the construction had completed<sup>200</sup>. ITOCHU's share of 32% is being considered to transfer to Perusahaan Listrik Negara (PLN), an Indonesian state-owned power company without waiting for its 25-year power purchase agreement (PPA). This was irregular for a coal-fired power plant owner to decide to sell its shares before even finishing the construction, because energy business is thought to be a pretty "good" business with long-term contract in place, and regular profit and income expected. However, whether ITOCHU can actually sell it to another company or not remain unknown, and claimed that this decision was made due to the pressure from the "Zero Carbon" global trend.

#### **4.2.4. Comparison with South Korea NCP and the companies involved**

As mentioned in the cases above, many of the Japanese companies above have withdrawn their involvement in the investing or subsidising the companies locally in Vietnam or Indonesia. Whether this is because of the NCP complaints, or the global trend of going carbon neutral, cannot be determined. Companies such as Mizuho and Itochu have claimed and announced their decision on their website that this is because they are trying to be a responsible business enterprise, toward the environment and to a sustainable business. However, when shifting the focus towards the companies which have complaints filed against themselves in Japan NCP, and those which don't, there seems to be a clear difference in their commitment towards being responsible businesses. The gap seems to be reflecting the influence of Japan NCP has in reshaping corporations' attitude towards International Standards, such as UNGP, OECD Guidelines on MNEs, OECD Due Diligence Guidance for Responsible Business Conduct, Equator Principles, and IFC PS *et al.* As a fellow East Asian country, South Korea also has a National Contact Point, which complainants from other Southeast Asian countries can seek help for remedy. To assess Japan's influence over other countries, it would be easier if there is a comparison to another country. As it is impossible to assess every case filed, I will look into

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<sup>200</sup> 『伊藤忠が石炭火力発電から完全撤退へ、商社が飲み込まれる脱炭素の激流』 [ITOCHU to completely withdraw from coal-fired power generation, a torrent of decarbonization that is swallowing up trading companies] (*Diamond Online*, 31 May 2021) <<https://diamond.jp/articles/-/272676>> accessed 24 June 2023.

the companies' reactions and attitude change of those who were involved in the cases I have assessed above, and compare those with the Japanese companies involved.

In 2 out of the 3 cases above, there were South Korean companies involved, and therefore it is possible to compare the response of how Japanese companies and Korean companies differs, how they have changed their internal policies, towards the environment and social responsibilities, and most importantly, human rights. As none of the cases related were filed against Korea NCP, I will try and examine the acts and conducts of the companies involved. The South Korean companies involved were, Korea Electric Power Company/Corporation (KEPCO), Korea Midland Power (KOMIPO)<sup>201</sup>, Samtam, the Export-Import Bank of Korea (KEXIM), the state-owned Korea Development Bank along with other private banks. Out of the above, only few have committed sustainability responsibility towards the environment, society and human rights, or have only published a few relating to them. KOMIPO is one, mentioning of Cirebon, in their 2019 Sustainability Report<sup>202</sup>, stating their conduct of a forest-building project to plant 10,000 mangroves along the coast of Cirebon, Indonesia. However, they do not access the negative impacts of the projects the company was involved in, and does not have a sustainability framework, that can be referred to when there are overseas projects. Although it states in their Environment Protection Activities<sup>203</sup>, that there are Environmental Management Fact-Finding Investigation and Environmental Management Internal Assessment, it does not publicly publish its assessments for individual cases, and lacks transparency and disclosure.

Also, the influence and the impact of South Korea NCP and the Export-Import Bank of Korea (KEXIM) can be compared with Japan NCP and JBIC's performance towards human rights due diligence. While there is a bank in Korea, designated for development, called Korea Development Bank (KDB), when looking at the NCP cases filed against Korea NCP, it seems as if KEXIM is more associated when there are overseas projects to cooperate with Southeast Asian states with business. When looking at KEXIM's website, they mention Human Rights

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<sup>201</sup> Sustainability Report is published every other year since 2013, In the 2019 report, states their partnership with Cirebon claiming they have created shared values of community in Overseas Businesses.

<sup>202</sup> '2019 KOMIPO Sustainability Report' (KOMIPO, 2019)

<<https://www.komipo.co.kr/eng/content/248/main.do?mnCd=EN040101#n>> accessed 27 July 2023.

<sup>203</sup> 'Environment Protection Activities – KOMIPO Systems Responding to Environmental Issues, Climate Change, Fine Dust, etc.' (KOMIPO) <<https://www.komipo.co.kr/eng/content/250/main.do?mnCd=EN040201>> accessed 9 July 2023.

Management, in one of their actions toward sustainability<sup>204</sup>. However, they are still in the process of implementing the first phase of human rights due diligence, to introduce their own human rights policy, and do not have a grievance mechanism like JBIC does yet. KEXIM however, have started to disclose documents public online, when there are projects that are in consideration for financial support. While JBIC's performance and their effectiveness of the grievance system is doubtful, we can still see the effort of which JBIC makes more than KEXIM in this perspective. As KDB partially owns KEXIM<sup>205</sup>, KDB's sustainability policy can be referred to when assessing KEXIM's performance. In their Guidelines for Coal Financing<sup>206</sup>, they state that 'KDB will not finance new coal-fired power projects', and that 'KDB shall provide transition finance (Carbon Finance Programme) to companies with coal-fired power generation capacity, for their transition purpose'. It further adds 'when it comes to a new credit exposure to coal related industries (mining, import, and transportation), sustainable management will pre-review the companies' potential capacity and willingness to move towards a green transition, prior to a credit approval'. This is similar to the policy that Japanese "mega banks" follow, which is also supported by the Equator Principles Association, and seems as if they are following the global "carbon-zero" trend. However, KDB does not provide their internal grievance mechanisms, and that is a big difference between Japan Bank for International Cooperation. Yet again, KDB does not perform their own HRIA or ESIA for assessments, or simply do not make it public on their website, which makes it difficult for "clients" or project-related impacted people to access information and does not follow the disclosure responsibility mentioned in the OECD Guidelines III. Disclosure.

#### **4.3. Good practices of Japanese MNEs**

As previously mentioned, the three points which are stressed in the UNGP for business enterprises are 1) developing a human rights policy 2) performing human rights due diligence (HRDD), and 3) constructing grievance mechanisms. These points have been referred to by the Ministry of Foreign Affairs of Japan for Collection of Case Studies on Business and Human

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<sup>204</sup> 'Human Rights Management' (*Korea Eximbank (The Export-Import Bank of Korea)*) <[www.koreaexim.go.kr/he/HPHEOM025M01](http://www.koreaexim.go.kr/he/HPHEOM025M01)> accessed 27 July 2023.

<sup>205</sup> The state owns an effectively full stake in KEXIM-69% directly, 22% through KDB, and 9% through the Bank of Korea. See more at 'Fitch Affirms Export Import Bank of Korea at 'AA-'; Outlook Stable', (*Fitch Ratings*, 23 May 2023) <[www.fitchratings.com/research/banks/fitch-affirms-export-import-bank-of-korea-at-aa-outlook-stable-23-05-2022](http://www.fitchratings.com/research/banks/fitch-affirms-export-import-bank-of-korea-at-aa-outlook-stable-23-05-2022)> accessed 18 July 2023.

<sup>206</sup> 'Investor Relations – Sustainability' (*Korea Development Bank*) <[www.kdb.co.kr/CHGLIR05N00.act?\\_mnuId=IHIHEN0028&JEX\\_LANG=EN](http://www.kdb.co.kr/CHGLIR05N00.act?_mnuId=IHIHEN0028&JEX_LANG=EN)> accessed 27 July 2023.

Rights Initiatives<sup>207</sup>, and there, shows several examples of Japanese MNEs practices towards human rights responsibilities. Some are remarkable such as Ajinomoto Holdings and ANA Holdings. At Ajinomoto Holdings, they have introduced their human rights policy early on in their code of conduct in 2014, and in a separate group policy in 2018. They have also conducted general human rights impact assessments in countries that are considered high risk, and disclose information as “Human Rights Due Diligence Country Specific Impact Assessment Report” with the Global Alliance for Sustainable Supply Chain<sup>208</sup>. Although local organization such as partner companies were wary of the report at first, Ajinomoto claim to have succeeded in gaining trust from them after disclosing information about their initiative circumstances towards the impact assessments<sup>209</sup>. Further, it has introduced a grievance mechanism, where a third-party NGO accepts “Workers Voice” at the 1<sup>st</sup> step of its mechanism. They have also implemented E-learning system for human rights education for their employees and have updated their human rights policy by adding critical issues as appendix. The grievance mechanism implemented is also planned to expand within their supply chain, to their suppliers and producing subcontractors. At ANA Holdings, which offers transport across the globe, it had published the very first human rights report in Japan. In its report<sup>210</sup>, states various human rights risks assessed from the impact assessment, including foreign workers rights in Japan, supply chain management for in-flight meals, preventing human trafficking by air, and prohibition of bribery. It also uses third-party organization for its interview sessions in order to keep its neutrality and objectivity. With the problems discovered while doing the interviews, initiatives were taken such as providing break rooms, or stand by rooms for the workers waiting while there are flight delays or air craft change. It includes HRDD details about diversity and inclusion, as well as grievance mechanism that the group takes, which is not only for the employees, but also for the customers and shareholders. The report also includes stakeholder engagement, which explains the leverage it has with its business partners, suppliers and

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<sup>207</sup> 『『ビジネスと人権』に関する取組事例集～「ビジネスと人権の指導原則」に基づく取り組みの浸透・定着に向けて～』 [‘Collection of Case Studies on Business and Human Rights Initiatives’] (*Ministry of Foreign Affairs of Japan*, September 2021) <[www.mofa.go.jp/mofaj/files/100230712.pdf](http://www.mofa.go.jp/mofaj/files/100230712.pdf)> accessed 27 July 2023.

<sup>208</sup> See for example 『味の素グループ デュー・デリジェンス国別影響評価報告書 2019 タイ』 [‘Ajinomoto Group Due Diligence Country Specific Impact Assessment Report 2019 Thailand’], (*The Global Alliance for Sustainable Supply Chain*, 6 September 2019) <[www.ajinomoto.co.jp/company/jp/activity/csr/pdf/2019/ASSC\\_HRDD2019.pdf](http://www.ajinomoto.co.jp/company/jp/activity/csr/pdf/2019/ASSC_HRDD2019.pdf)> accessed 28 July 2023.

<sup>209</sup> ‘Collection of Case Studies on Business and Human Rights Initiatives’ (n 207), 16.

<sup>210</sup> 『人権報告書 2020』 [‘Human Rights Report 2020’] (*ANA Holdings*, 2020) <[www.ana.co.jp/group/csr/effort/pdf/Human\\_Rights\\_Report\\_2020.pdf](http://www.ana.co.jp/group/csr/effort/pdf/Human_Rights_Report_2020.pdf)> accessed 23 July 2023.

subcontractors. The most remarkable point of this report is the review attached at the end of the report by human rights specialists, adding the points which are missing from the report, which concerns governance and management systems as well as HRDD and grievance mechanism. For example, the grievance mechanism lacked the inclusion of community's voices, and the importance of cooperating and tackling issues with the workers unions before it becomes bigger and worse. These are just a few of the examples mentioned in the collection of case studies, however, it represents the progress of Japanese MNEs towards business and human rights. In most cases, the establishment of internal human rights policy is the place where the MNEs are taking steps, and it does not usually further to grievance mechanisms and the implementation of those issues or risks found to revise their human rights policy. Also, another point I have found was the gap of what Japanese companies see as a responsible human rights conduct, and what it actually is, as portrayed in international standards and regulations.

As seen from the "mega banks" involvement in the cases stated earlier in section 4.2, many of the big Japanese financial institutions have involved themselves with international standards such as the Equator Principles from an early stage, and it seems as they are taking steps and making efforts to comply with international standards to become responsible businesses.

However, is it simply sufficient to just being a member of the Equator Principles Financial Institutions (EPFI), and announcing their human rights policy in their code of conduct? Do these financial institutions really understand the content of the Equator Principles, substantially the IFC Performance Standards and the World Bank Group's Environmental Health and Safety Guidelines? When looking at their human rights policy online, it doesn't seem as they do, for example, to use their leverage to make their 'clients' comply with these international standards. Moreover, human rights due diligence is a continuing act of commitment, and shall meet the demand of the public, which changes by time. Therefore, companies, including financial institutions shall update their human rights policy, as well as establish a proper human rights due diligence system, such as focusing on conducting an appropriate human rights impact assessments (HRIA) or even environmental and social impact assessments (ESIA) to comply with the international standards, not just the local laws and regulations, and developing a grievance mechanism within their company to provide effective remedy. Moreover, it seems as disclosure of information is not done enough, to show the public of their involvement in human rights. Even if the companies claim that they have done their HRDD, it makes it difficult for stakeholders to assess the effectiveness of their HRDD, if there is no disclosure of information.

As for the MNEs for introducing power plants in Indonesia, and Vietnam, they are not even in the first step of conducting HRDD, as most of them haven't done a proper HRDD, which the results can be derived from the cases mentioned in section 4.3. Most of the companies from the cases, such as JERA, Marubeni, J-POWER and ITOCHU explain its commitment towards the environment and social, human rights issues on their website<sup>211 212 213</sup>, however they do not refer to any of the complaints filed against them, or publish any news towards the claim they receive. Although they try to show that they are using "renewable energy", and to be as responsible as possible, the truth seems differently. Also, similar to other companies and industries, energy industry also lacks the full understanding towards human rights or social responsibility concerning their business, as the data provided does not include the social impacts or human rights impacts which had occurred when building new power plants, such as issues when there were land acquisition, compliance to the local law regarding the construction such as permits and agreements, impact to the environment as well as the eco-system, which directly impacts the residents job opportunities, if there are fisheries or eco-system related jobs.

JERA has finally announced their JERA Group Human Rights Basic Policy<sup>214</sup> in April 2022, addition to their Compliance Code of Conduct, which mentions compliance with laws, protection and respect of human rights, fair and just business activities, as well as environmental efforts. What is missing is the information disclosure, for the public to see if they are actually complying with the said commitments, which might seem difficult for companies to follow, but is one of the most important parts of the HRDD process.

## 5. Analysis, Suggestions and Recommendations

In chapter 2, I have discussed the traditional Asian values and scholarly views about human rights regionally and concluded that even though there are critics claiming that the notion of human rights is not universal, Japanese scholars believe that the notion itself is universal, however there are difference in which rights are more favoured than others. In the case of East Asia including Southeast Asia, rights such as economic, social and cultural rights are favoured over civil and political rights. Japanese scholars agree to a certain point that human rights have

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<sup>211</sup> 'Respect for Human Rights' (*Marubeni*, March 21 2023) <<https://marubeni.disclosure.site/en/themes/21/>> accessed 31 August 2023.

<sup>212</sup> 'The ITOCHU Group Human Rights Policy' (*Itochu*, April 2020) <[https://www.itochu.co.jp/en/csr/society/human\\_rights/index.html](https://www.itochu.co.jp/en/csr/society/human_rights/index.html)> accessed 31 August 2023.

<sup>213</sup> 'The J-POWER Group Basic Policy on Human Rights' (*J-POWER*, June 2022) <[www.jpowers.co.jp/english/sustainability/contribution/pdf/2206policy\\_e.pdf](http://www.jpowers.co.jp/english/sustainability/contribution/pdf/2206policy_e.pdf)> accessed 31 August 2023.

<sup>214</sup> 'Human Rights Policy' (*JERA Group*, April 2022) <[www.jera.co.jp/en/sustainability/compliance/human-rights-policy](http://www.jera.co.jp/en/sustainability/compliance/human-rights-policy)> accessed 23 July 2023.

been developed mainly in the west but do not only concern of western ideas, and that they need to develop with Eastern ideas imbedded as well. As the Japanese scholars do, I also believe that human rights standards and international human rights law, is the best way, or in other words, the least ineffective way to protect the vital values of human persons within the modern system of sovereign nation-states. Additionally, East Asian countries have not traditionally engaged in legalization of the norms, and have rather waited until the norm was established and shared within the community in the country, to legalize these ideas. What moved the people and the public was not the law, but rather the norm and standardized mutual understanding between one another. And the Japanese approach toward the standardization or norm improving is through the importance of respect and dialogue towards these Asian states, and showing a certain understanding towards these Asian states. This method was believed not to be coercive or bargained with half intention to alter the states forcing them to deal with these human rights violations, but to be done by inclusive dialogue and consultation. However, there is questioning in whether the amount of bargaining that was used when doing this was sufficient when Japan, either in the form of public or private were involved in human rights abuses in Southeast Asian states.

In chapter 3, I have examined the international standards applicable towards Japanese companies practicing abroad, and the main international standards were UNGP, OECD Guidelines for MNEs, and the Equator Principles along with IFC PS. There were other standards that were mentioned, but it is important for Japanese enterprises to refer to these international standards along with country specific laws and regulations, as well as regional agreements such as ASEAN Guidelines for CSR on Labour.

In chapter 4, I have discussed how the Japanese government and Japanese companies are doing regarding using their leverage towards bringing up the human rights norm in Southeast Asian states through 3 case studies from those filed to Japan NCP. To conclude, Japan NCP does take a neutral position, acknowledging its role in the global situation. However, as to whether its roles as a mediator has brought positive resolution to the victims of the cases, it does not always seem so. Regarding the enterprises, I will unleash the discussion further in the next section by reading in more into the relation between Japan and Southeast Asian states, both publicly and privately.



### **5.1. Japan's relationship with Southeast Asian states of today**

With relations to ASEAN, Japan has assisted in the creation of ASEAN CSR Network (ACN) in 2010, with the ASEAN Foundation and the Japan-ASEAN Solidarity Fund, in line with the achievement of an ASEAN Community in 2015. Moreover, the ODA the Japanese government has provided to these Southeast Asian countries have brought up the socio-economic rights norms in these countries. This was achieved by providing legal assistance, implementing the notion of rule of law, and providing professional insights to the implementation of law. In addition, there were infrastructures built with aid provided by ODA, with involvements of Japanese enterprises, public and private. Therefore, it seems as if Japan, both publicly and privately, has drastically improved people's lives, bringing up the economic rights for the Southeast Asian states. However, it does not seem to have cared enough when it comes to bringing up the individuals' rights norms to international standards or the Japanese standards.

As seen from the NCP cases above, there are multiple kind of relationships Japanese enterprises can have with these Southeast Asian countries, whether it is to provide technological assistance, financial investing, loan, subsidiaries, or in a consortium with local companies, Japanese companies have enormous influence in Southeast Asia. While Japan does overseas projects in the name of development, assistance or cooperation, there are details that affects people's lives, especially individual's lives, that have been overlooked in order to achieve these goals. And these details are what keeps protection towards individual rights and the environment in the Southeast Asian region. For example, when mega banks had promised to comply with the Equator Principles, they should have read the Equator Principles thoroughly to understand what the Equator Principles are based on, such as the IFC PS and the World Bank's "Environmental, Health, and Safety General Guidelines".

### **5.2. The Double Standard of Domestic Japan and Its Overseas Activities**

It is needless to say that Japan has been improving itself, whether in the public form or private, to become accordingly with the international standards. However, does that improvement go beyond the borders of Japan, or does it stay within the island? It seems as it is the latter when looking at the three coal-fired power plant cases filed against Japan NCP. The double standard of domestic Japan and its overseas activities can be seen from the three Japan NCP cases I have introduced in this paper. The cases focus on coal-fired power plants and the Japanese companies' activities involved in those projects in Southeast Asia, namely Indonesia and Vietnam. Japanese MNEs and the Japanese government (JBIC), project their views of

responsibility towards human rights and the environment, which both have been relatively non-intrusive and accommodative towards the local government's decisions made. This hasn't changed from the approach explained by Katsumata in the 1990s and early 2000s. Although the companies mentioned are seemingly changing their attitude after the publicity they receive from the media and NGOs, their attitude doesn't seemingly change drastically, and seems that they value rights in Japan more than the rights of those in another country.

Well then, shall there be laws to restrict and shape Japanese companies and institutions' conduct to protect and respect human rights overseas such as the EU Directive on Corporate Sustainability Due Diligence? 'The statute mandates businesses to identify and eliminate the negative effects of their activities in the entire value chain'<sup>215</sup>, and the legislation is giving many human rights defenders hope for the improvement to the environment and human rights situation in other parts of the world. However, some say that the legislation could also cause some consternation to local businesses already having to adapt to numerous other EU regulations on the environment and sustainability. The incoming EU legislation on deforestation and sustainable products has already led to a major dispute with Malaysia and Indonesia, the world's two largest producers of palm oil, and EU has decided to phase out by 2030.

While it seems as if the legislation would lead to a better change, it might not be the best way for Japanese MNEs just yet. When the EEA introduced the law on consumer protection called General Data Protection Regulation (GDPR) in 2018, one of the biggest information and service providers in Japan, Yahoo! Japan has decided to retrieve from providing service in EEA, due to its cost of managing data protection and the risk of not being able to comply with the GDPR. This is just one example but this could be a beginning to a trend of companies choosing not to do any business at all because of the burden on the MNEs to comply with multiple laws at the same time, and considering not to engage with new businesses or regions that require excessive regulations to comply with. Moreover, as explained in chapter 2, this approach contradicts the Japanese approach to be accommodative and understanding towards the local society.

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<sup>215</sup> Priyanka Shankar, 'EU due diligence rules could test trade ties with ASEAN', (DW, 31 May 2023), <[www.dw.com/en/eu-due-diligence-rules-could-test-trade-ties-with-asean/a-65785027](https://www.dw.com/en/eu-due-diligence-rules-could-test-trade-ties-with-asean/a-65785027)> accessed 23 July 2023.

### 5.3. Suggestions and Recommendations for the Japanese government and Japanese MNEs

Apart from the traditional relationship of what Southeast Asian countries had with Japan such as postwar restoration and ODA, there are newer and innovative ways Japan can help in bringing up human rights norms in these countries, and that is to abide by the international trends of business and human rights following the international standards, and not just the local laws and regulations in the host countries in Southeast Asia. The traditional relationship has been non-intrusive and accommodative towards local governments of the host countries in Southeast Asia. However, as seen from the case studies above, this non-intrusive and accommodative approach has allowed human rights abuses to occur in projects where Japanese government in the form of JBIC or Japanese companies were involved, and most Japanese companies only change after the human rights violations occur. Even worse, the Japanese government, in the disguise of JBIC has not put effort in performing a proper HRDD, allowing the grievance mechanism to become an impractical proposition and seen as “blue washing” by not providing effective remedy to the victims of the human rights abuses. In order to properly perform HRDD, and effective remedy, JBIC shall truly educate themselves with human rights, and acknowledge that their act is indeed invasive and disruptive to upbringing the local people’s human rights situation and norms.

It is true that there is difficulty in assessing environmental and human rights abuses, since it is impossible to fulfil each and every person’s loss who is affected by the projects. Moreover, the companies do need to make profit in order to continue as businesses, and provide for their employees, as well as stay profitable enough to continue their businesses. However, it is not enough to stay just financially sustainable, but also sustainable non-financially, to maintain business in a long term. That is why other Japanese businesses are making efforts in order to comply with international standards quickly in these few years, arranging and updating their human rights policy or sustainability policy to the latest trend.

The Equator Principles Association provides tools to enhance access to effective grievance mechanisms and enable effective remedy<sup>216</sup>. As the EPs refer to UNGP and IFC PS, the financial institutions which are part of the EPFI shall study and refer to UNGP and IFC PS,

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<sup>216</sup> ‘Equator Principles Association launches new due diligence tools to enhance access to grievance mechanisms & enable effective remedy’, (*EP Association*, 25 October 2022), <<https://equator-principles.com/equator-principles-association-launches-new-due-diligence-tools-to-enhance-access-to-grievance-mechanisms-enable-effective-remedy/>> accessed 16 July 2023.

when writing their human rights policy, and further, when conducting project-based HRIAs or ESIAAs as well as grievance mechanisms, providing a process for grievances to be raised, assessed, tracked and resolved. In the overview of Performance Standards on Environmental and Social Sustainability, states ‘in addition to meeting the requirements under the Performance Standards, clients must comply with applicable national law, including those laws implementing host country obligations under international law’<sup>217</sup>, which means project finances shall exercise their leverage to make the clients comply with applicable national law, as well as the implemented international standards, introduced by the host countries in which the clients operate.

While JBIC mentions The World Bank Environmental and Social Standards (ESS) and IFC PS as their reference for the establishment of the JBIC Guidelines for Confirmation of Environmental and Social Considerations (JBIC Environmental Guidelines) and its grievance mechanisms, their attitude toward human rights remain quite unamicable towards respecting human rights.

I believe that there are room for more improvement if the companies and institutions truly understand the human rights need, and why it is important to maintain and comply with the international standards.

The first new and innovative way to guide business and human rights in East Asia, through international standards and documents, is understanding and referring to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, published this year, in 2023<sup>218</sup>. Not many Japanese MNEs have fully understood and implemented these international guidelines yet, seen from the very few publications on their website.

Further, more and more international guidelines and guidance are published for specific sectors, which will help these MNEs to implement them into their business activities. The OECD has published multiple guidance that are sector specific, which may help these MNEs shape their business conducts. Transparency and Disclosure Practices of State-Owned Enterprises and their Owners – Implementing the OECD Guidelines on Corporate Governance of State-Owned Enterprises can be one example.

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<sup>217</sup> IFC PS 1 Overview of Performance Standards on Environmental and Social Sustainability.

<sup>218</sup> OECD Guidelines OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <<https://doi.org/10.1787/81f92357-en>>.

As for the Japanese government as an administrator, they shall further promote the importance of HRDD, and especially stressing the disclosure side of the HRDD. Without disclosure, business and human rights is just an academic gossip, and there is no room for improvement. Only when human rights is seen by the public, there can be critics and improvement.

## **6. Conclusion**

Japan has had a unique position of sharing similar values to the west, but at the same time being located in the far east, shared traditional values of Asian culture within the region. For Southeast Asia, it had tremendous influence not only traditionally, but also during and after the world wars both culturally and economically. In terms of human rights, whether this influence has had positive impacts or negative impacts is what I've tried to answer in this paper.

As for the post-war reconstruction and compensation, it seems Japan has assisted the countries in this region, through ODA and legal assistance, which has mainly taken a non-intrusive and more accommodative approach towards the host countries. This was mainly because of the history of war, Japan invading the countries, and it was part of a compensation and perform of amends towards the victim countries during the war. Most countries welcomed this approach, and this has also proved to be helpful in shaping the host countries' peoples' social and economic rights, bringing up the living standards.

However, as globalisation progresses, the international dynamics changed, which led to new actors joining the power market. The new actors were and are Multinational Enterprises (MNEs), and while some of them respected human rights, some have caused issues in the host countries while operating their business or helped develop some other businesses. The case examples shown in Chapter 4 are good examples of how they were not monitoring human rights abuses in the operating region. Because of the introduction of international soft law of business and human rights, such as UNGP, OECD Guidelines for MNEs, EP IV and IFC PS *et al.*, Japanese MNEs are more aware of their impacts of business conducts, and have started announcing their commitments toward human rights referring to these international standards. However, as explained in chapter 4 and 5, this does not mean they have fully understood the international standards, and their commitments seem weak. The recommendation is that Japan, whether in public forms or private, should study about these standards more, and should fully comply with them, performing HRDD. But most importantly, most of these MNEs are lacking responsible disclosure and grievance mechanisms where changes can be made and seen, and therefore should concentrate on these establishments.

While Japan is trying to be responsible through its engagement with Southeast Asia, there are still loop holes and unestablished mechanisms, which does not necessarily contribute to upbrining the human rights norms in the region. With more international guidelines and guidance in place, I believe that Japan can contribute more into improving the human rights norms in Southeast Asia.

## **Bibliography**

### Law

UN General Assembly, Vienna Declaration and Programme of Action, (A/CONF. 157/23 12 July 1993)

Preamble and Articles 1-4 of the Constitution of Japan, 1946

United Nations Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (A/HRC/17/31 21 March 2011) (UNGP)

OECD Guidelines for Multinational Enterprises, (adopted 27 June 2000, Organisation for Economic Cooperation and Development) (n 43)

OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>.

OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct (n 43)

International Covenant for Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant for Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976 UNGA Res 2200A(XXI)) (ICESCR)

Convention on the Elimination of All Forms of Discrimination against Women (adopted and opened for signature, ratification and accession 18 December 1979, entered into force 3 September 1981, UNGA Res 34/180) (CEDAW)

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990 UNGA Res 44/25) (CRC)

Universal Declaration of Human Rights, (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR)

ASEAN Inclusive Business Framework, (adopted 14 August 2017 World Business Council for Sustainable Development (WBCSD)) (n 60)

ASEAN Guidelines for Corporate Social Responsibility (CSR) on Labour, (Jakarta, ASEAN Secretariat, September 2017), <https://asean.org/wp-content/uploads/2012/05/ASEAN-Guidelines-for-CSR-on-Labour.pdf> (n 62)

The Equator Principles IV, (adopted July 2020, entered into force 1 October 2020 Equator Principles Association) (EP, EP4, or EPs), [https://equator-principles.com/app/uploads/The-Equator-Principles\\_EP4\\_July2020.pdf](https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf) (n 68)

International Finance Corporation Performance Standards on Environmental and Social Sustainability, (IFC 1 January 2012) (IFC PS), [www.ifc.org/content/dam/ifc/doc/2023/ifc-performance-standards-2012-en.pdf](http://www.ifc.org/content/dam/ifc/doc/2023/ifc-performance-standards-2012-en.pdf)

Environmental, Health and Safety Guidelines, (The World Bank Group 30 April 2007), [www.ifc.org/content/dam/ifc/doc/2000/2007-general-ehs-guidelines-en.pdf](http://www.ifc.org/content/dam/ifc/doc/2000/2007-general-ehs-guidelines-en.pdf) (n 195)

Rules of Procedures of the South East Asia National Human Rights Institution Forum, (amended 12-14 September 2014 SEANF), <https://seanf.asia/seanf-mandate/> (n 63)

Law on Environmental Protection 2014, (No 55/2014/QH13, Vietnam), article 21

National Technical Regulation on Emission of Thermal Power Industry, (QCVN 22: 2009/BTNMT, Vietnam)

Government Regulation No.27/2012 (Indonesia)

The Decree of Minister of Marine Affairs and Fisheries (No. KEP/MEN/2012) (Indonesia)

The Regent of Batang Decree (No. 523/194/2012) (Indonesia)

Law No.2/2012 on Land Acquisition (Indonesia)

The Equator Principles III, (adopted 4 June 2013, entered into force and mandated 1 January 2014, Equator Principles Association) (EPIII), [https://www.equator-principles.com/app/uploads/The\\_Equator\\_Principles\\_III\\_June2013.pdf](https://www.equator-principles.com/app/uploads/The_Equator_Principles_III_June2013.pdf) (n 194)

Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (Technical Intern Training Act, Japan) (Act No.89 of 2016), [www.moj.go.jp/content/001223425.pdf](http://www.moj.go.jp/content/001223425.pdf)

### Books

Henkin L, Neuman G, Orentlicher D and Leebron D W., *Human Rights* (1st edn, Foundation Press 1999) (n 6)

Mutua M, *Human Rights; A Political and Cultural Critique*, (University of Pennsylvania Press 2002)

Fukuda M, 現代人権論 [*Modern human rights theory*], (Koubundo 1999) (n 13)

Abe K, 人権の国際化 [*Internationalism of Human Rights*], (Gendai Jinbunsha 1998) (n 18)

Bauer J R., Bell D A. (eds), *The East Asian Challenge for Human Rights*, (Cambridge University Press 1999)

Inoue T, 'Liberal Democracy and Asian Orientalism' in Bauer J R., Bell D A. (eds), *The East Asian Challenge for Human Rights* (Cambridge University Press 1999) (n 28)

The Equator Principles III

### Articles

Engle K, 'Culture and Human rights: the Asian Values Debate in Context' (2000) 32 *New York University Journal International Law & Politics* 291 (n 9)



Tsutsumi K, グローバル化時代のアジアの人権 [‘Human Rights in Asia during the era of Globalization’], (2000) 3:4 Volume 1 Ritsumeikan Hogaku, 271 (n 12)

Onuma Y, ‘In Quest of Intercivilizational Human Rights: “Universal vs. “Relative” Human Rights Viewed from an Asian Perspective’ (2000) 1 Asia-Pacific Journal on Human Rights and the Law, Kluwer Law International, Netherlands, 53. (n 15)

### Online Articles

Baek B, ‘Section IV. Universality of Human Rights, but Not Uniformity of Implementation’ (2018) The Korean Journal of International & Comparative Law Vol.6 No.1, 80-84 <<https://doi.org/10.1163/22134484-12340101>> accessed 28 July 2023 (n 5)

Katsumata H, ‘Why does Japan downplay human rights in Southeast Asia?’ (2006) Volume 6, Issue 2 International Relations of the Asia-Pacific, Oxford University Press <<https://doi.org/10.1093/irap/lci139>> accessed 28 July 2023 (n 1)

Katsumata H and Shibuichi D, ‘Japan in the Indo-Pacific: domestic and foreign policy’, (2023) The Pacific Review, 36:2, 305-328 <<https://doi.org/10.1080/09512748.2022.2160795>> accessed 28 July 2023 (n 3)

Koplitz S N., Jacob Daniel J., Sulrpizio M P., Myllyvirta L, and Reid C, ‘Burden of Disease from Rising Coal-Fired Power Plant Emission in Southeast Asia’ (2017) <<https://pubs.acs.org/doi/full/10.1021/acs.est.6b03731>> accessed 30 July 2023

Smith G A. and Lehr A K., ‘U.N. Guiding Principles for Business and Human Rights’, (2011) Foley Hoag LLP <<https://media.business-humanrights.org/media/documents/files/media/documents/ruggie/foley-hoag-briefing-guiding-principles-may-2011.pdf>> accessed 28 July 2023 (n 50)

Wörsdörfer M, ‘The Equator Principles and Human Rights Due Diligence – Towards a Positive and Leverage-based Concept of Corporate Social Responsibility’ (2015) 14 Philosophy of Management 193-218 <<https://ssrn.com/abstract=2627190> or <http://dx.doi.org/10.2139/ssrn.2627190>> at 198 (n 69)

### Other Secondary Sources

#### Conference papers

Ministry of Foreign Affairs of Japan, ‘Quad Joint Leaders’ Statement’, (Quadrilateral Security Dialogue of Japan with US, Australia, and India, Tokyo, 24 May 2022) at <[https://www.mofa.go.jp/fp/nsp/page1e\\_000401.html](https://www.mofa.go.jp/fp/nsp/page1e_000401.html)> accessed 28 July 2023 (n 2)

Taylor C, ‘Conditions of an Unforced Consensus on Human Rights’, presented at Bangkok Workshop, March 1996 at 2 (n 20)

Lee K, 1959-90. *Prime Minister's speeches, press conferences, statements, etc.* Singapore: Prime Minister's Office (n 22)

ASEAN and Japan dialogue, 2003

### **Websites and Blogs**

'Country and Territory Ratings and Statuses, 1973-2023' (Excel Sheet downloaded from *Freedom in the World*), <<https://freedomhouse.org/report/freedom-world>> accessed 23 April 2023 (n 30)

'Indonesia in 2011' (pdf downloaded from *Development Initiative*), <<https://devinit.org/wp-content/uploads/2013/09/Investments-to-End-Poverty-Chapter-10-Indonesia.pdf>> accessed 24 April 2023

'Cambodia in 2022' (report from *Cambodian Rehabilitation and Development Board Council for the Development of Cambodia – The Cambodia ODA Database*) <[http://odacambodia.com/Reports/reports\\_by\\_updated.asp](http://odacambodia.com/Reports/reports_by_updated.asp)> accessed 4 May 2023

'Myanmar in 2011' (pdf downloaded from *Development Initiative*) <<https://devinit.org/wp-content/uploads/2014/02/Myanmar.pdf>> accessed 24 April 2023

'Country Report Vietnam' (*DevelopmentAid Special Report 2018*) <[www.developmentaid.org/api/frontend/cms/file/2018/08/Country-Report-Vietnam.pdf](http://www.developmentaid.org/api/frontend/cms/file/2018/08/Country-Report-Vietnam.pdf)> accessed 24 April 2023, 5

'Unemployment Rate -Countries- List | Asia' (*Trading Economics*) <<https://tradingeconomics.com/country-list/unemployment-rate?continent=asia>> accessed 4 May 2023

'The International Cooperation Department' (*The Ministry of Justice, JAPAN*) <[www.moj.go.jp/housouken/houso\\_icd.html](http://www.moj.go.jp/housouken/houso_icd.html)> accessed 5 May 2023

'The International Cooperation Department' (*The Ministry of Justice, JAPAN*) <[www.moj.go.jp/ENGLISH/MEOM/meom-01-05.html](http://www.moj.go.jp/ENGLISH/MEOM/meom-01-05.html)> accessed 5 May 2023

'National Contact Points for the OECD Guidelines for Multinational Enterprises' (*OECD*) <[www.oecd.org/investment/mne/ncps.htm](http://www.oecd.org/investment/mne/ncps.htm)> accessed May 2 2023 (n 56)

'A Joint Initiative of the ASEAN Business Advisory Council and the ASEAN CSR Network – To promote responsible business conduct in ASEAN to meet the objectives of the ASEAN 2025: Forging Ahead Together (ASEAN Responsible and Inclusive Business Code of Conduct)' (*ARAIBA* 2018) <[www.araiba.org/code-of-conduct](http://www.araiba.org/code-of-conduct)> accessed 30 July 2023

'The ARAIBA Brand Story' (*ARAIBA*) <[www.araiba.org/brand-story](http://www.araiba.org/brand-story)> accessed 9 May 2023.

'About the Equator Principles' (*Equator Principles Association*) <<https://equator-principles.com/about-the-equator-principles/>> accessed May 3 2023 (n 65)

‘China: Human Rights Action Plan (2021-2025) mentions encouraging Chinese businesses to abide by UN Guiding Principles’ (*Business & Human Rights Resource Centre*, 9 Sep 2021) <[www.business-humanrights.org/en/latest-news/human-rights-action-plan-of-china-2021-2025/](http://www.business-humanrights.org/en/latest-news/human-rights-action-plan-of-china-2021-2025/)> accessed 9 May 2023

‘About NCP Japan’ (*NCP Japan*) <[www.ncp-japan.jp/en/about-ncp-japan/](http://www.ncp-japan.jp/en/about-ncp-japan/)> accessed 3 May 2023

‘About the NCP Committee of Japan’ (*Ministry of Foreign Affairs, JAPAN*), <[www.mofa.go.jp/files/100155312.pdf](http://www.mofa.go.jp/files/100155312.pdf)> accessed 3 May 2023

‘The Report of the Baseline Study on Business and Human Rights (Executive Summary) - Toward Developing Japan’s National Action Plan on Business and Human Rights’ (*Ministry of Foreign Affairs, JAPAN*, December 2018) <[www.mofa.go.jp/files/000455152.pdf](http://www.mofa.go.jp/files/000455152.pdf)> accessed 30 July 2023

‘National Action Plan on Business and Human Rights (2020-2025)’, (*Inter-Ministerial Committee on Japan’s National Action Plan on Business and Human Rights*, October 2020) <[www.mofa.go.jp/files/100173319.pdf](http://www.mofa.go.jp/files/100173319.pdf)> Chapter 1.1(7) accessed 30 July 2023 (n 75)

‘School enrolment, secondary (% gross) – East Asia & Pacific’ originally from the UNESCO Institute for Statistics (UIS), (*The World Bank Data, UIS Bulk Data Download Service*, October 24, 2022) <<https://data.worldbank.org/indicator/SE.SEC.ENRR?locations=Z4>> accessed 14 May 2023

‘Executive Summary for Child Labour: Global estimates 2020, trends and the road forward’, (*ILO and UNICEF*, 10 June 2021) <[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_800278.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_800278.pdf)> accessed 30 July 2023

‘Results of JBIC’s Environmental Review (on Projects for which JBIC Received Screening Form after April 1, 2015)’ (*Japan Bank for International Cooperation*) <[www.jbic.go.jp/en/business-areas/environment/projects/review\\_monitoring\\_2015.html](http://www.jbic.go.jp/en/business-areas/environment/projects/review_monitoring_2015.html)> accessed 15 May 2023

‘Final Statement on Specific Instance Involving Mizuho Financial Group, Inc., Sumitomo Banking Corporation and Mitsubishi UFJ Financial Group, Inc., in Relation to the OECD Guidelines for Multinational Enterprises’ (*Japanese National Contact Point (NCP) for the Organisation For Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*, 15 January 2021) <[www.mofa.go.jp/files/100138168.pdf](http://www.mofa.go.jp/files/100138168.pdf)> accessed 16 May 2023

‘Market Force v MUFG, SMBC and Mizuho’, (report from *OECD Watch Complaint*, 18 September 2018), <[www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/](http://www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/)> accessed 16 May 2023 (n 82)

‘Arrangement and Sector Understandings – Coal-Fired Electricity Generation’, (*OECD*, 18 October 2021) <[www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/](http://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/)> or [www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/](http://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/)

[credits/documents/Participants%20agreement%20on%20coal-fired%20power%20plants%20\(02-11-2021\).pdf](#)> accessed 27 June 2023

‘Project Finance and Political risk Guarantee for Nghi Son 2 Coal-Fired Power Generation Project in the Republic of Vietnam – Supporting Japanese Company’s Participation in IPP Project in Vietnam’ (*JBIC*, 13 April 2013), <[www.jbic.go.jp/ja/information/press/press-2018/0413-010921.html](#)> accessed 28 June 2023

‘Comparison of coal power plant emission standards’, (*Centre for Research on Energy and Clean Air (CREA)*, 2023) <[https://energyandcleanair.org/comparison-of-coal-power-plant-emissions-standards/](#)> accessed 9 July 2023

‘OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector’, (*OHCHR*, 12 June 2017) <[www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf](#)> accessed 30 July 2023

‘Nghi Son 2 Coal Power Plant Vietnam’, (*BankTrack*, Created 15 Feb 2018 with last update on 11 Aug 2011), <[www.banktrack.org/project/nghi\\_son\\_2\\_coal\\_power\\_plant/pdf](#)> accessed 28 May 2023

‘Human Rights Report 2022’, (*Mizuho Financial Group*, 2022), <[www.mizuhogroup.com/binaries/content/assets/pdf/mizuhoglobal/sustainability/human-rights/solution/human\\_rights\\_report.pdf](#)> accessed 9 July 2023

‘Revision of the MUFG Environmental and Social Policy Framework’, (*Mitsubishi UFJ Financial Group, Inc. (MUFG)*, 1 April 2023), <[www.mufg.jp/dam/pressrelease/2022/pdf/news-20220401-001\\_en.pdf](#)> accessed 16 May 2023

‘Consideration of ESG risks’, (*Sumitomo Mitsui Financial Group, Inc.*, April 16 2020), <[www.smbc.co.jp/news\\_e/e600579\\_01.html](#)> accessed 9 July 2023

‘Enhancement of Initiatives for Sustainability’, (*Sumitomo Mitsui Financial Group, Inc.*, April 1 2022), <[www.smfg.co.jp/news\\_e/e110198\\_01.html](#)> accessed 9 July 2023

‘SMBC Group Environmental and Social Framework’, (*SMBC Group*, 2020) <[www.smfg.co.jp/english/sustainability/group\\_sustainability/pdf/framework\\_e.pdf](#)> accessed 9 July 2023

‘Talanx: Seriously Clearing Up or Silently Continuing Support for Coal?’ (*Urgewald*, May 2019), <[www.urgewald.org/sites/default/files/Talanx.pdf](#)> accessed 23 May 2023

‘Marubeni’s Sustainability’, (*Marubeni Corporation*, 18 March 2019), 16pp <[https://ssl4.eir-parts.net/doc/8002/ir\\_material14/153829/00.pdf](#)> accessed 10 July 2023

‘Building a Better Tomorrow’ – Sustainable Development Report 2019’ (*Marubeni Corporation*, March 2019)

<[https://marubeni.disclosure.site/en/sustainability/pdf/report/sdr2019\\_en\\_all.pdf](https://marubeni.disclosure.site/en/sustainability/pdf/report/sdr2019_en_all.pdf)> accessed 26 May 2023.

(Marubeni Corporation) <<http://www.marubeni.com/company/network/index.html>> accessed 29 May 2023

(JERA) <[www.jera.co.jp/english/business/projects/](http://www.jera.co.jp/english/business/projects/)> accessed 28 May 2023

‘Friends of the Earth Japan and WALHI vs Marubeni’, or Cirebon Coal Power Plant Project at (*OECD Watch*, 2017) <[www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/](http://www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/)> accessed 2 July 2023

Hoshino K and Toyonaga S, Examiners for Environmental Guidelines Japan Bank for International Cooperation (JBIC), ‘Examination Report on Objection to Cirebon Coal-fired Power Plant Project – Unit 2, West Java, Indonesia’, (*JBIC*, 5 September 2022), <[www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report_en.pdf)> accessed 4 July 2023 (n 114)

Japan Bank for International Cooperation (JBIC) Guidelines for Confirmation of Environmental and Social Guidelines, (adopted January 2015, came into effect April 2015, last revised May 2022, JBIC) (JBIC “Environmental Guidelines”) <[www.jbic.go.jp/en/business-areas/environment/image/Environment\\_Guidelines\\_2022.pdf](http://www.jbic.go.jp/en/business-areas/environment/image/Environment_Guidelines_2022.pdf)> accessed 30 July 2023 (n 115)

‘FoE Japan Fact Sheet’, (*FoE Japan*, May 2018), <[https://sekitan.jp/jbic/wp-content/uploads/2014/01/201805\\_%E3%83%81%E3%83%AC%E3%83%9C%E3%83%B3\\_factsheet.pdf](https://sekitan.jp/jbic/wp-content/uploads/2014/01/201805_%E3%83%81%E3%83%AC%E3%83%9C%E3%83%B3_factsheet.pdf)> accessed 4 July 2023, 3

『工場及び事業場から排出される大気汚染物質に対する規制方式とその概要』, [‘Regulatory System and Summary of Air Pollutants Emitted from Factories and Business Establishments’], (*Ministry of the Environment, JAPAN*) <[www.env.go.jp/air/osen/law/t-kisei1.html](http://www.env.go.jp/air/osen/law/t-kisei1.html)> accessed 4 July 2023

『石炭火力発電所の環境影響評価』 [‘Environmental Impact Assessment of Coal-fired Power Plants’], (*Ministry of the Environment, JAPAN*) <[www.env.go.jp/council/01chuo/y010-22/mat03\\_4-2.pdf](http://www.env.go.jp/council/01chuo/y010-22/mat03_4-2.pdf)> accessed 4 July 2023 (n 130)

『PM2.5 に関する総合的な取り組み（政策パッケージ）の概要』 [Outline of Comprehensive Measures Regarding PM2.5], (*Ministry of the Environment, JAPAN*, December 2013), <[www.env.go.jp/council/07air-noise/y078-06/900427115.pdf](http://www.env.go.jp/council/07air-noise/y078-06/900427115.pdf)> accessed 30 July 2023

Uragou A, Raven Limited Company; Roosita H, Sudijanto A, Primiantoro E T., Pradipta S, Widyajayanti L, Simon E, and the Ministry of Environment and Forestry, INDONESIA, 『日本企業の海外における事業展開に際しての環境影響評価ガイドブック～インドネシア編～』 ‘Environmental Impact Assessment Guidebook for Overseas Business Expansion by Japanese companies – Indonesia’, (*Institute for Global Environmental Strategies (IGES)*,

March 2016) <[http://assess.env.go.jp/files/0\\_db/seika/0209\\_01/20160715\\_02.pdf](http://assess.env.go.jp/files/0_db/seika/0209_01/20160715_02.pdf)> accessed 7 July 2023

(ITOCHU) <[www.itochu.co.jp/en/about/profile/](http://www.itochu.co.jp/en/about/profile/)> accessed 2 June 2023

‘Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER’ regarding the HR violations at Central Java Coal-fired Power Plant Project in Indonesia, (*OECD Watch*, 29 July 2015) <[www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/](http://www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/)> accessed 2 June 2023 (n 136)

‘Execution of Long-Term Power Purchase Agreement for a New 2 GW Coal-Fired IPP Project in Indonesia’ (*ITOCHU*, 7 October 2011) <[www.itochu.co.jp/en/news/press/2011/111007.html](http://www.itochu.co.jp/en/news/press/2011/111007.html)> accessed 30 July 2023

‘Annual report 2009’ (*J-POWER group*, 2009) 14-22 <[www.jpowers.co.jp/english/ir/library/pdf/2009/2009.pdf](http://www.jpowers.co.jp/english/ir/library/pdf/2009/2009.pdf)> accessed 25 June 2023

『磯子火力発電所』[‘Isogo Fire Power Plant Information’] (*J-POWER group*) <[www.jpowers.co.jp/learn/facilities/isogo.html](http://www.jpowers.co.jp/learn/facilities/isogo.html)> accessed 24 June 2023

Shimada K and Kobayashi H, Examiner for Environmental Guidelines Japan Bank for International Cooperation (JBIC), ‘Examination Report on Objection to Central Java Coal-fired Power Plant Project, Central Java, Indonesia’, (*JBIC*, 19 June 2017) <[www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report_en.pdf)> accessed 14 June 2023 (n 175)

‘Process of Revising JBIC Guidelines for Confirmation of Environmental and Social Considerations (Revision in 2022)’ (*JBIC*, 2022) <[www.jbic.go.jp/en/business-areas/environment/business.html](http://www.jbic.go.jp/en/business-areas/environment/business.html)> accessed 28 June 2023

‘Economic Diplomacy -OECD Guidelines for Multinational Enterprises’ (*Ministry of Foreign Affairs*, JAPAN 20 September 2022) <[www.mofa.go.jp/mofaj/gaiko/csr/housin.html](http://www.mofa.go.jp/mofaj/gaiko/csr/housin.html)> accessed 26 June 2023

‘About JBIC, Corporate Governance’ (*JBIC*) <[www.jbic.go.jp/en/about/governance.html](http://www.jbic.go.jp/en/about/governance.html)> accessed 26 June 2023

‘Annual Report of the Examiners for Environmental Guidelines (FY2017)’ (*JBIC*) <[www.jbic.go.jp/en/ir/image/2017E\\_00\\_full.pdf](http://www.jbic.go.jp/en/ir/image/2017E_00_full.pdf)> accessed 28 June 2023

‘Members and Reporting’ (*the Equator Principles*) <<https://equator-principles.com/members-reporting/>> accessed 11 July 2023

‘News Release “Indonesia: Batang Power Plant started commercial operation”’, (*Electric Power Development Co., Ltd. (J-Power)* 7 September 2022) <[www.jpowers.co.jp/english/news\\_release/pdf/news220907e.pdf](http://www.jpowers.co.jp/english/news_release/pdf/news220907e.pdf)> accessed 11 July 2023

『インドネシア・バタン石炭火力：漁業者に再び大きな被害～漁網に数々の黒い塊。落下した石炭か？』[‘Indonesia Batang coal-fired power plant: Another huge damage to

fishermen – numerous black lumps in fishing nets seen. Are they coal fallen out?'] (*FoE Japan*, 24 December 2020), <<https://foejapan.org/issue/20201224/3460/>> accessed 11 July 2023

『伊藤忠が石炭火力発電から完全撤退へ、商社が飲み込まれる脱炭素の激流』  
[ITOCHU to completely withdraw from coal-fired power generation, a torrent of decarbonization that is swallowing up trading companies] (*Diamond Online*, 31 May 2021) <<https://diamond.jp/articles/-/272676>> accessed 24 June 2023

2019 KOMIPO Sustainability Report (*KOIMPO*, 2019) <<https://www.komipo.co.kr/eng/content/248/main.do?mnCd=EN040101#n>> accessed 27 July 2023

“Environment Protection Activities – KOMIPO Systems Responding to Environmental Issues, Climate Change, Fine Dust, etc.”, (*KOIMPO*) <<https://www.komipo.co.kr/eng/content/250/main.do?mnCd=EN040201>> accessed 9 July 2023

‘Human Rights Management’ (*Korea Eximbank (The Export-Import Bank of Korea)*) <<https://www.koreaexim.go.kr/he/HPHEOM025M01>> accessed 27 July 2023

‘Fitch Affirms Export Import Bank of Korea at ‘AA-‘; Outlook Stable’ (*Fitch Ratings*, 23 May 2023) <<https://www.fitchratings.com/research/banks/fitch-affirms-export-import-bank-of-korea-at-aa-outlook-stable-23-05-2022>> accessed 18 July 2023

‘Investor Relations – Sustainability’ (*Korea Development Bank*) <[https://www.kdb.co.kr/CHGLIR05N00.act?\\_mnuId=IHIHEN0028&JEX\\_LANG=EN](https://www.kdb.co.kr/CHGLIR05N00.act?_mnuId=IHIHEN0028&JEX_LANG=EN)> accessed 27 July 2023

『『ビジネスと人権』に関する取組事例集～「ビジネスと人権の指導原則」に基づく取り組みの浸透・定着に向けて～』 [‘Collection of Case Studies on Business and Human Rights Initiatives’] (*Ministry of Foreign Affairs of Japan*, September 2021) <[www.mofa.go.jp/mofaj/files/100230712.pdf](http://www.mofa.go.jp/mofaj/files/100230712.pdf)> accessed 27 July 2023

『味の素グループ デュー・デリジェンス国別影響評価報告書 2019 タイ』 [‘Ajinomoto Group Due Diligence Country Specific Impact Assessment Report 2019’], (*The Global Alliance for Sustainable Supply Chain*, 6 September 2019) <[https://www.ajinomoto.co.jp/company/jp/activity/csr/pdf/2019/ASSC\\_HRDD2019.pdf](https://www.ajinomoto.co.jp/company/jp/activity/csr/pdf/2019/ASSC_HRDD2019.pdf)> accessed 28 July 2023

‘Equator Principles Association launches new due diligence tools to enhance access to grievance mechanisms & enable effective remedy’ (*2022 EP Association*, 25 October 2022) <<https://equator-principles.com/equator-principles-association-launches-new-due-diligence-tools-to-enhance-access-to-grievance-mechanisms-enable-effective-remedy/>> accessed 16 July 2023

‘Respect for Human Rights’ (*Marubeni*, March 21 2023) <<https://marubeni.disclosure.site/en/themes/21/>> accessed 31 August 2023

‘The ITOCHU Group Human Rights Policy’ (*Itochu*, April 2020)  
<[https://www.itochu.co.jp/en/csr/society/human\\_rights/index.html](https://www.itochu.co.jp/en/csr/society/human_rights/index.html)> accessed 31 August 2023

‘The J-POWER Group Basic Policy on Human Rights’ (*J-POWER*, June 2022)  
<[www.jpowers.co.jp/english/sustainability/contribution/pdf/2206policy\\_e.pdf](http://www.jpowers.co.jp/english/sustainability/contribution/pdf/2206policy_e.pdf)> accessed 31 August 2023

## **BLOGS**

Mares R, ‘The New EU Directive on Corporate Sustainability Due Diligence: Origins, Compliance Effects and Global Significance’ (*The Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, 14 September 2022) <<https://rwi.lu.se/blog/the-new-eu-directive-on-corporate-sustainability-due-diligence-origins-compliance-effects-and-global-significance/>> accessed 29 April 2023

Schlicht G A., ‘Reflecting on the UN Global Compact: what went wrong?’ (London School of Economics, 26 July 2022) <<https://blogs.lse.ac.uk/businessreview/2022/07/26/reflecting-on-the-un-global-compact-what-went-wrong/>> accessed May 1 2023.

## **Newspaper articles**

*The Chunichi Shinbun*, (Tokyo, 5 December 2003).

‘Indonesian rights commission tell Japan to review power project’ *The Japan Times*, (Tokyo, 9 January 2016).



## Table of Cases

### <Case 1>

‘Market Force v MUFG, SMBC and Mizuho’, (report from *OECD Watch Complaint*, 18 September 2018), at <[www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/](http://www.oecdwatch.org/complaint/market-forces-v-mufg-smbc-and-mizuho/)> accessed 16 May 2023

### <Case 2>

‘Friends of the Earth Japan and WALHI vs Marubeni’, or Cirebon Coal Power Plant Project at (*OECD Watch*, 2017) <[www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/](http://www.oecdwatch.org/complaint/friends-of-the-earth-japan-and-walhi-vs-marubeni/)> accessed 2 July 2023

Kazuaki Hoshino and Shinsuke Toyonaga, Examiners for Environmental Guidelines Japan Bank for International Cooperation (JBIC), ‘Examination Report on Objection to Cirebon Coal-fired Power Plant Project – Unit 2, West Java, Indonesia’, (*JBIC*, 5 September 2022) <[www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/image/1701report_en.pdf)> accessed 4 July 2023

### <Case 3>

‘Leaders of Paguyuban UKPWR vs ITOCHU and J-POWER’ regarding the HR violations at Central Java Coal-fired Power Plant Project in Indonesia, (*OECD Watch*, 29 July 2015) <[www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/](http://www.oecdwatch.org/complaint/leaders-of-paguyuban-ukpwr-vs-itochu/)> accessed 2 June 2023

Koji Shimada and Hiroshi Kobayashi, Examiner for Environmental Guidelines Japan Bank for International Cooperation (JBIC), ‘Examination Report on Objection to Central Java Coal-fired Power Plant Project, Central Java, Indonesia’, (*JBIC* 19 June 2017) <[www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report\\_en.pdf](http://www.jbic.go.jp/en/business-areas/environment/disagree/images/1602report_en.pdf)> accessed 14 June 2023