

THE SALIMA SOLAR PROJECT

COMMUNITY-LED RESEARCH AND OUTREACH FINDINGS

May 2020

“They should have allowed us to express our ideas and be heard. My land was sold without my consent and it pains me. I do not have enough land to cultivate.” This was a lamentation of one of the Kanzimbe villagers affected by the Salima Solar Project in Salima District, Malawi.

About the Project

The [Salima Solar Project](#) (the “Project”) involves the construction and operation of a 60 megawatt solar photovoltaic plant in Salima District, Malawi. The Project includes: the construction of a maintenance area, storage facilities, temporary accommodation, and offices; and the installation of transformers and associated cabling. Located within Traditional Authority Kalonga in Group Village Headmen (“GVHs”) Kanzimbe, Mayambo and Sadzu, the project has acquired 183.3 hectares of land. This has already resulted in the acquisition of land and according to information from GVH Mayambo during an in-person interview, relocation of four homes living near the Project site.

The Project documents promise many positive impacts, such as improving the country’s electricity capacity and providing employment. Nonetheless, the Project site is located on existing farmlands, whose land acquisition has resulted in the physical and economic displacement of people from their lands and livelihoods, many of which are location-specific (for example, crop production and animal grazing).

Investment Description and Project Actors

The Multilateral Investment Guarantee Agency (“MIGA”), a member of the World Bank Group, and the [Netherlands Development Finance Company](#) (“FMO”) are involved in the Project. MIGA’s support is through a [guarantee of USD 59 million to the project](#). MIGA categorized the Project as having a Category B (potentially limited adverse environmental and social risks) rating.

Additionally, FMO has provided a [USD 13.57 million guarantee to SUMEC Group Corporation](#), and a [USD 8.20 million loan to JCM Salima UK Limited](#). FMO categorized these projects as having a B+ (medium high) environmental and social risk rating. As of June 2020, FMO is considering another [tranche of funding for JCM Salima UK Limited](#).

JCM Matswani Solar Corporation Limited (“JCM Matswani” or “the implementing company”), a consortium jointly led by JCM Power Corporation Limited (“JCM Power”) of Canada and InfraCo Africa Limited, UK have been selected by Electrical Supply Corporation of Malawi Limited (“ESCOM”), the state-owned electricity utility of Malawi, to develop, construct and operate the Project. According to the [MIGA project website](#), “JCM [Power] is a Canadian private equity firm

established in 2010 by a conglomerate of individuals, funds, and investment firms, with the aim of investing in clean power.”

Finally, SUMEC Group Corporation (“SUMEC”) was selected as the Engineering, Procurement and Construction, and Operations and Maintenance contractor for the power plant and the 132-kV transmission line. Once constructed, the line will be handed over to ESCOM, the state-owned electricity utility of Malawi. At the time of writing the report, JCM Power clarified that they had terminated their contract with SUMEC, and that their remaining role in the Project for the future was yet to be determined.

Community-Led Research Methodology

Community-led research is a process through which the community relies on its own local knowledge to identify an issue, think deeply about it, and propose solutions. While civil society partners facilitate the process and assist the communities in capturing and analyzing the data collected, the affected communities take the lead in sharing their knowledge and experiences. This participatory research methodology is rooted in the recognition of communities’ agency and expertise to lead their vision of development. The testimony provided in the community-led research reflects the lived experiences of communities affected by development projects. Additional information about our approach to community-led research can be found [here](#) and the Survey template, which forms the basis of the questions used by communities in the research, is available [here](#).

The community-led research process followed a preliminary investigation conducted by the [Centre for Human Rights and Rehabilitation \(“CHRR”\)](#) in March 2019, which sought to understand community consultation and involvement in the Project and community concerns and perspectives. From the results of that investigation, it was deemed necessary to conduct a more comprehensive collection of information and experiences. In April 2019, [communities engaged project financiers](#), highlighting community concerns in advance of board consideration of the investment. The communities also requested more time to collect the information in their communities. MIGA approved the guarantee for the Project on 17 May 2020.

From 23 to 27 September 2019, CHRR and the [International Accountability Project \(“IAP”\)](#), with the support of [Both Ends](#), facilitated a community-led research process with affected communities in GVHs Kanzimbe, Mayambo and Sadzu. The community-led research team worked with community members to adapt the [Survey in the Community Action Guide](#) to fit their circumstances and needs. In completing this community-led research process, affected communities sought to document their knowledge of, and experience in, the Project process, including consultation and land valuation, their concerns as to how this Project will affect their lives, and their recommendations for mitigating any environmental and social harms.

The community-led research was structured in the form of community meetings, individual interviews and focus group discussions. More than 300 community members participated in the community meetings and 106 community members participated in one-on-one survey interviews. Additionally, there were 10 focus group discussions (FGDs) consisting of separate groups of youth, women, the elderly, men and community chiefs. In total, 80 people participated in the FGDs, and 30 of the participants were women.

Following the community-led research process, CHRR and IAP visited the community again on 1 April 2020 to validate the preliminary research findings and provide updates to the communities about the status of Project. A summary of the report was translated into the local language prior to the validation meeting. During the meeting, the report summary was read to the participating community members, to which they provided their comments. Through this process of validation, community members were provided opportunities to clarify an issue, where they believed the draft report was not clear or needed correction. Community members were also provided opportunities to update the researchers on various issues and developments since the research was conducted; and they could also agree with the statements and issues, as read out and discussed. The larger group was then divided into two smaller groups - one group consisting of men and another of women - and then the same process was repeated. Further and deeper discussions were then done on the issues. The community members validated the initial findings.

In addition, CHRR and IAP conducted workshops, with the assistance of the [Gender Justice Unit](#), and [Trust PSS](#) to build community awareness of, and provide therapeutic and legal pathways on, the issues of gender based violence and sexual exploitation reported by the community members. Also in attendance by invitation was the Malawi Human Rights Commission, which shared their work providing referral pathways to survivors of gender-based violence and sexual exploitation and abuse. CHRR and IAP continue to support the community members through the creation of community-led Accountability Clubs and engagement with JCM Power and Project proponents on the issues set out in this report.

Given the objectives of community-led research, it bears emphasis that the scope of this report - and its primary focus -- is to convey the experiences of affected communities, shared through their perspectives and testimonies.

Community-Led Research Findings

The community-led research unearthed concerns from community members on issues of: land acquisition and compensation; community consultation and participation in project decision-making processes; the overall adequacy of disclosed project information; environmental impacts; and labor issues. Alarming, the community-led research process also unearthed reports from community members of alleged sexual exploitation and gender-based violence relating to the Project and SUMEC. To the extent that community members consented to sharing these findings, they are discussed below.

Inadequate project information and inadequate community consultation

According to the [September 2018 Environmental and Social Impact Assessment \(ESIA\) prepared by JCM Power](#), “[e]xtensive stakeholder engagement has been undertaken as part of the ESIA, the land acquisition activities, and the corporate social responsibility feasibility study.”¹ Information shared by JCM Power through their response to this report also indicates

¹ JCM Power and InfraCo Africa, *Environmental and Social Impact Assessment for the Proposed 60 MW Solar Power Plant in Kanzimbe Village, TA Kalonga, Salima District, Central Region, Malawi: Final Report* (September 2018) (the “September 2018 ESIA report”), At p. IV, available at: https://www.miga.org/sites/default/files/2019-03/JCM%20Malawi_ESIA.PDF.

that “prior to construction starting JCM [Power], with the assistance of its consultants ERM and their in-country partners WWEC, undertook an extensive stakeholder engagement process ...”²

Regrettably, community members have reported that inadequate community consultation coupled with inaccessible information precluded them from meaningfully engaging in the Project processes. None (0%) of the survey respondents reported being consulted during the planning phase of the Project. In terms of project planning, communities reported that only their chiefs were consulted before the displacement process began. The affected community shared that the first engagement with the Project was on the day that the land acquisition process started. One survey respondent shared: “We were only involved in land surveys for them to determine our compensation.” Another survey respondent stated: “Only the senior chief was consulted and was not properly engaged as subjects.” The affected communities also reported that they had not been adequately involved in the Project processes, including planning, valuation for compensation amounts, ESIA exercises and its report validation.

Additionally, 96% of survey respondents reported that they did not have the information they needed to provide informed opinions and ideas about the Project, suggesting critical gaps in the consultation process and provision of information. Other information communities expressed that they lacked pertained to land acquisition and compensation processes. As discussed below, the September 2018 ESIA report,³ for example, was produced only after phase 1 of land acquisition had been completed and towards the end of phase 2 of land acquisition, and community members reported that it was not shared with the affected communities, non-technical summaries of the report were not provided and translated into the local language to enable greater accessibility.

The researchers also noted that the community had no knowledge of the existence of JCM Matswani, which is the implementing company. When asked if the respondents knew who was implementing the Project, only 31% responded that they knew. When asked what the name of the company was, the answers varied between JCM Power and SUMEC. This represents a problem as to the information that was shared with the community in regards to the companies involved in the Project and their roles.

Flawed Land Acquisition Process

“The chiefs and government officials forced us to sell our land. We were told that if we did not comply, our land would be taken for free because the government can do as it pleases.”

-- community member and survey respondent from Kanzimbe GVH

The concerns raised by community members about the adequacy of consultation likely also impacted their ability to freely and meaningfully engage on a myriad of issues pertaining to the acquisition of their land. Community members reported that they did not feel well-informed and free to negotiate, and they were not given what they considered to be fair compensation during the land acquisition process.

² JCM Power response to draft community-led research report, dated 30 June 2020, at p. 9.

³ JCM Power, September 2018 ESIA report, at p. VI.

The land acquisition process was executed by the Ministry of Lands, Housing and Urban Development and JCM Power. According to the September 2018 ESIA prepared by JCM Power:

“The land acquisition for the Project has been undertaken in two phases. Phase I refers to an initial 80 ha plot of land and Phase II refers to additional 88 ha plot of land. The land acquisition process for Phase I was a Government-led process, led by the Salima District Office and undertaken at the end of 2017, prior to the development of the ESIA. The Phase II land acquisition is still underway at the time of completing this ESIA.”⁴

Survey respondents report that during the land acquisition that their rights and land acquisition procedures were not explained to them and they expressed doubt whether all rights and procedures were followed correctly.

During the community-led research process, communities expressed the following problems with the land acquisition and compensation process:

- Lack of meaningful consultation - Alarming, not a single person that participated in the survey (0%) reported being consulted about the Project before being informed that they would have to sell and move from their lands. They also reported that they were not consulted on the sale of their lands prior to land acquisition. They commented that they first learned about the Project from their chiefs the day before their land was measured to determine its value. This lack of consultation exacerbated other barriers to understanding the valuation and land acquisition process, as noted below.
- Use of unfamiliar units to measure and value land - Affected communities reported that officials from the Ministry of Lands measured the land in hectares. However, communities are familiar with measuring land in acres, not hectares. For this reason, communities felt that they were forced to sign off on measurements that they did not fully understand. According to community members, JCM Power reportedly rectified this by explaining to the community the conversion between hectares and acres. The communities nonetheless expressed that they did not understand this and wished their land was measured in a unit of measurement that they are familiar with.
- Lack of transparency in how compensation was assessed - The affected communities reported lack of transparency in how compensation amounts were assessed. Communities reported that, weeks after a non-transparent land and asset evaluation process (discussed above), they were given pieces of paper with their compensation amount written on them. Contrary to what was reported in the September 2018 ESIA report, community members mentioned that it was not explained to them how the compensation amount was derived. They reported to only have been told how much (the amount) a size of land was valued. Apart from mango trees, they were also told how much other indigenous and planted trees were valued. For these reasons, community members expressed doubt whether the compensation they received was in line with their entitlements. Community members wished they were given an option to negotiate for the amount to sell their land, which was not an option granted to anyone.

⁴ JCM Power, September 2018 ESIA report, at p. VI.

- Inadequate compensation - The affected communities reported to have been compensated with less than the full replacement cost for their land. The majority reported to have failed to replace their land with one of the same size and quality with the compensation amounts given to them. As one survey respondent reported: *“They forced us to give up our land and it was sold at a very low price that we can not even afford to buy another land like we had before.”* Affected community members also reported that land sellers around the area hiked up the price of land after learning of the land acquisition compensation, which made it even more difficult for them to buy another land of the same value. JCM Power also failed to provide financial literacy training for Phase 1 of the land acquisition process that would have ensured proper management of the compensation.
- Lack of alternatives to cash compensation - Community members reported that they were not provided with an alternative to cash compensation. As they were not consulted about the Project or given an opportunity to propose changes, they expressed that they were compelled to follow the plans and decisions that had already been made for them regarding compensation. Some community members expressed their belief that land-for-land relocation would’ve been a better option, because they would’ve been able to find better land or at least one of the same value at a nearby location, of the same value (size and fertility). This contradicts information from JCM Power in their response to the draft report which indicates that project affected persons *“were informed that they had a choice and they could take either land-for-land compensation or cash compensation.”*⁵
- Use of manipulation, intimidation and coercion - Contrary to what is reported in the ESIA report and on FMO’s project disclosure webpage, most of the affected community members reported that they were not willing to sell their land, implying the resettlement process was not voluntary for at least some community members. Additionally, 35% of those surveyed who self-identified as not willing to sell their land reported that officials from the Ministry of Lands used manipulation, intimidation and coercion tactics (described in detail below) to gain consent to selling their land and sign forms indicating their willingness to sell.
- Compensation received in Installments - The affected communities reported that those whose land was bought in the first phase were paid in one lump sum. As for those in the second phase, payments were made in installments, cash payment on the first day whose ceiling was determined by the company and the rest deposited into bank accounts whose access was restricted by the company and the bank. Section 9 (2) of the Malawi Lands Acquisition and (Amendment) Act 2017 dictates that compensation should be paid in one lump sum. The community also reported that they were forced to open bank accounts where their compensation money would be kept. This can be confirmed by information from JCM Power in their response to the draft report; *“[t]he opening of bank accounts and deposit of compensation was done in order to reduce security risks for the PAP’s as well as to encourage a savings culture. This was explained to the PAP’s during the Financial Literacy Training.”*⁶ Communities expressed that the company did this on a premise that they were shielding their money from being

⁵ JCM Power response to draft community-led research report, at pp. 25-26.

⁶ JCM Power response to draft community-led research report, at pp. 26-27.

stolen by robbers. Unfortunately, this decision was made without the community's consultation. The affected community members expressed concern as to how they would be able to replace their lost land with compensation money, for which access was restricted.

On the first installment of handing out compensations, cash was given out by the bank, and then they were told that the bank would be coming to the community every week where they could make withdrawals from their balances. They also reported being told that they had the option of visiting the bank at the local branch to make withdrawals. After the first installment was given out, it was reported that the bank never came to the community again. Some people are unable to access the bank to withdraw their balances. One case cited is that of an old woman who is failing to access her MK170,000, which is in the hands of the bank. For these reasons, the communities believe that the implementing company failed to implement an effective compensation process that would ensure that the affected communities are able to replace their land.

Lack of information on grievance redress mechanism and issues with access during land acquisition

Since, as noted in the ESIA, land acquisition was done in two phases, community members reported that the Grievance Redress Mechanism and Livelihood Restoration committees were formed after the initial land acquisition (Phase 1 Acquisition) had already been completed. This also meant that affected communities who sold their land during phase 1 were unable to register their complaints or concerns about the land acquisition process. Even up to the time of the research, it was reported that Sadzu GVH had no livelihood restoration committee.

Equally important, most community members stated that they did not have faith in the capacity of the grievance redress committees to address their complaints or have them forwarded to the company for follow up. They expressed their concern that grievances are rarely addressed, and as such, they no longer file their complaints with them or any other groups/persons in the community, but sometimes file with the implementing company's community liaison officer whenever she visits the community. At the same time, some community members mentioned that there have been some concerns that have been addressed by the company, mostly on issues related to work conditions at the Project site.

The vast majority (93%) of surveyed respondents reported interest in filing a complaint with the independent accountability mechanisms of the financiers, FMO and MIGA. Unfortunately, 88% of the survey respondents reported that they do not have any information about how to file a complaint with the banks involved in this Project.

Community Manipulation, Intimidation and Coercion

"I allowed the sale of my land to go through because they (Ministry of Land officials) said my land would be seized for free if I did not comply."

--- A survey respondent from Kanzimbe GVH

“We were promised jobs at the project site, but this is not happening, and we were promised fertilizer, seeds and separate compensation money, but none has been given.”

---- A survey responded from GVH Mayambo

Meaningful consultation should be free from coercion, harassment, and intimidation. In one-on-one conversations, community members shared that the officials from the Ministry of Lands used manipulation, intimidation and coercion tactics to get them to consent to the sale of their lands.

Since they rely on the land for their basic livelihoods, some community members objected to having their land measured and valued for compensation. Other community members reported that they were promised benefits, including being the first to be employed when construction began, if they consented to selling their lands. In considering this promise, community members reported that they equated the selling of their land with obtaining a job at the Project site, and saw the harms from selling their land would be rectified by the financial income gained through work at the Project site. They were also reportedly promised solar electricity panels and other equipment that would enable them to have access to solar electricity in their homes, seeds and fertilizer for crop cultivation, and they were told that they would be given loans to startup businesses. Community members reported that thus far, none of these promises have been fulfilled, and there has been no communication from the company indicating if or when these promises would be addressed.

With regard to compensation, the communities reported that JCM Power told the community that apart from the land purchase cash that they would receive, they would also receive a separate compensation (20% of their compensation). When the community later asked the implementing company about the additional compensation, the company denied making that statement. For this reason, the community reported feeling deceived by the company to get their buy-in. However, since these promises were not recorded or signed, the community feels powerless to legally compel the company to fulfill these promises.

Economic displacement and loss of livelihoods

“I was economically displaced, such that the land that was taken, I used to farm on that land and now I cannot farm anymore because I do not have land.”

-- survey respondent from GVH Mayambo

“I depend on farming, the coming of this project has made me lose my land.”

--- survey respondent from GVH Kanzimbe

“I solely depend on farming, as such I will face economic problems since JCM [Power] has taken my farm.”

--survey respondent from GVH Kanzimbe

26% of survey respondents reported that their lives have been made worse with the introduction of the Project in the community, while an addition of 5% reported that, while their quality of life

was okay at the time of the research, they believed their quality of life would worsen. Community members cited land acquisition and inadequate compensation as the main reasons for the worsening situation. Land acquisition restricted the community's access to their land for grazing livestock. Additionally, some community members who had been previously employed by fellow villagers to do contract work on their farms have since lost their jobs. Apart from losing land for grazing livestock, the community also reported that there are poor harvests now compared to before due to smaller land size and poor fertility of the new land they bought.

According to the September 2018 ESIA report prepared by JCM Power, "[i]n order to mitigate the impacts of economic displacement, a Livelihood Restoration Program (LRP) is in the process of being developed."⁷ As noted above, even up to the time of the research, it was reported that Sadzu GVH had no livelihood restoration committee. The community members spoken to did not have information about the LRP.

Health Hazards and Environmental Pollution

Community members from GVHs Kanzimbe and Mayambo reported that the dust that is being generated from the Project site has resulted in reduced air quality. The community decried the project implementing company's failure to fulfill their promise where they told the community that dust would be reduced through the use of water. Unfortunately, this is being done on the access road only.

Additionally, a group of households living adjacent to the fencing of the Project site have reported being affected by bad odor from sewage disposal. They raised a complaint with JCM Power and were told chemicals would be used to reduce the bad smell. The communities mentioned that the chemicals used have made no difference and this is still a persistent problem.

It was reported that on the project site, portable toilets are used, and women are employed to carry - often with no protective wear - and empty them into a septic tank. The community reported that, apart from the health hazards of handling sewage with not protective wear, the use of portable toilets is viewed as a taboo in their culture. They prefer a normal toilet or something in semblance to it to be used.

As per their local tradition, households usually have their meals outside their homes. They are unable to do so anymore as a result of the smell of sewage emanating from the Project site and are decrying the Project for disturbing their way of life.

Discriminatory and Unequal Employment Conditions

Women in the community expressed their concerns that there seemed to be an unequal provision of employment at the Project, and they reported facing discrimination that appeared to cater primarily to men. Additionally, women who have young children reported that they were denied jobs at the site. One woman noted, *"there is no benefit from the project. Maybe I could*

⁷ September 2018 ESIA report at p. VI.

benefit if I got employed at the project site, but I understand that they do not employ women who have little children, and I [do] have little children.”

Community members reported that employees are subjected to long working hours, contrary to the normal working hours stipulated by Malawi labor laws. Workers are forced to work from 7am to 5pm. Community members reported that the power plant does not pay adequate salaries with one woman describing working seven days a week for a monthly wage of MWK50,000 (approximately USD 68).

Gender-Based Violence and Sexual Exploitation

JCM Power’s September 2018 ESIA recognized the risk of gender-based violence in the Project:

“Additionally, one of the main challenges reported by health workers and women during the social surveys is gender based violence (GBV), rape and early marriage. This impacts on girls’ education as they are forced to leave school due to early pregnancy. In Kanzimbe, reportedly girls and women are enticed by men with money and other valuables such as mobile phones in exchange for sex, leading to unplanned pregnancies and STIs. This suggests that young women are vulnerable to impacts relating to STI/HIV transmission.”⁸

Yet, at the time of the research, it was unclear what, if any, mitigation plans were in place to address these risks. Indeed, the community-led research unearthed community allegations related to gender-based violence and sexual exploitation of women and children. In order to protect the identities of the affected communities and to support community members, CHRR and IAP have decided, at this time, to withhold detailed accounts of these incidents unless expressly consented to by communities.

In April 2020, CHRR, IAP, the Gender Justice Unit, and Trust PSS conducted workshops and focus group discussions with the affected community on issues of gender based violence, sexual exploitation, and abuse, and the different referral pathways available, including legal remedy and trauma counseling. The Malawi Human Rights Commission was also present to share their work providing referral pathways to survivors of gender-based violence and sexual exploitation and abuse. Following those meetings, a parent formally lodged a complaint with the Commission, concerning an allegation related to a child. Parallel to this legal proceeding, CHRR and IAP continue to support the community members through the creation of community-led Accountability Clubs and engagement with JCM Power and project proponents on plans to address gender-based impacts of this project.

Community members shared that they have seen an increase in domestic and/or sexual violence since the introduction of the Project within the community -- specifically, 23% of survey

⁸ September 2018 ESIA report, at p. 182.

respondents reported that they have seen an increase in domestic and/or sexual violence. Community members who participated in the focus group discussions in April 2020 reported that there were increased incidences of domestic abuse within their households, among other claims of gender-based violence.

Unfulfilled Project Benefits to the Affected Communities

Relocated community members reported what they understood to be an oral agreement with JCM Power on the benefits the company would bring to the community. As reported by community members, this included, among others, employment on the Project site for those who would agree to sell their land and sign the forms, the provision of potable water and improved healthcare at the local clinic, the construction of school blocks, and better roads.

At the time of research, community members reported that none of these have been fulfilled and there has been no communication from the company about when this will be implemented. However, during the follow up meeting in April 2020, the community reported that some activities have started happening, such as the building of school blocks and the rehabilitation of the water supply at the school. The community reported that most of the agreed benefits have not been fulfilled. Community members further reported that they are not involved in the planning and information of the drafted plans and their implementation timelines have not been provided to them.

Community and Supporting CSO Recommendations

To JCM Matswani Solar Corporation Limited, SUMEC Group Corporation, and other project proponents:

- Ensure the free, active and meaningful participation of community members going forward. As noted above, none of the survey respondents reported that they were meaningfully consulted during the planning phase of the Project. More generally, community members reported having been poorly engaged and involved in the project process. At a minimum, ensuring the meaningful participation of communities includes:
 - Providing timely and accessible project information to the affected communities, including the ESIA report and other environmental and social documents, in the local language and a format that is easily accessible to them. Provision of project information and consultation should be iterative throughout the Project cycle.
 - Requiring that all environmental and social mitigation plans, livelihood restoration plans, and stakeholder engagement be created in consultation with communities. This should include revision of the Livelihood Restoration Plan to incorporate community input and priorities.

- o Meaningfully involving communities as decision makers in the Project processes, including in implementing benefit sharing.
- o Creating a consultation environment that is free from coercion, harassment, or intimidation of any form.
- Ensure that community members are provided adequate and transparent compensation for economic or physical displacement. Community members should be provided with sufficient compensation to replace their lost land and trees on the farms. Compensation should comply with the Lands Acquisition (Amendment) Act, 2017, including Section 10(2). Providing compensation in installments does not facilitate the replacement of the acquired land. The company should rectify any harm done through this violation and should ensure that affected communities are able to replace their lost land.
- Ensure that the dust generated from the Project site is minimized and does not adversely impact the surrounding communities through the measures indicated in the Project's Environmental and Social Action Plan and as agreed with the affected communities, and should ensure proper disposal of sewage that would not cause a nuisance and health hazard to surrounding communities.
- Fulfill, adequately involve in the processes and provide iterative information to the affected community on the Project benefits that had been previously discussed and agreed upon with communities, including construction of school blocks, improvement of healthcare provision and provision of employment to the affected communities, as requested by community members. The community asks the Project implementing company to include them in the planning and implementation processes of the CSR and LRP activities, which would also help the community to have a sense of ownership of the services.

To the Government of Malawi:

- Ensure that the Project complies with Malawi law, in addition to the environmental and safeguard policies of the FMO and MIGA.
- Ensure the provision of adequate compensation, in accordance with the Lands Acquisition (Amendment) Act, 2017, Section 10 (1) (a), which requires that compensation be given at the market value of the land. Land valuation was done in a manner of non-transparent and non-involvement of the affected communities. The Ministry of Lands, Housing and Urban Development should ensure that the affected communities receive the full market value for loss of their land and its valuation process be understood by all.
- With the Ministry of Lands, Housing and Urban Development, address the losses suffered by communities as a result of compensation being disbursed in multiple installments. Any loss due to this violation should be covered by the responsible party.
- Through the Environmental Affairs Department ("EAD"), inspect the Project site for the alleged environmental pollution caused by the Project's activities and ensure adequate

mitigation measures. The EAD should also continuously monitor the activities of the project and ensure that they comply with national laws - such as Section 4 (4)(c) of the Environmental Management Act, 2016 - to ensure a clean environment for the communities living closest to the Project site.

- With the Ministry of Labour, Youth, Sports and Manpower Development, ensure the equal provision of employment by not being discriminated against.
- Ensure that those perpetuating the sexual abuse and exploitation are prosecuted to the full extent of the law. The Malawi Human Rights Commission should investigate the alleged sexual violence that has been reported.
- The Ministry of Lands, Housing and Urban Development should ensure that the JCM Matswani provides project information to the affected communities in line with the Lands Acquisition (Amendment) Act, 2017 that provides for provision of information to communities on matters that affect them.

To Project Financiers, MIGA and FMO:

- Ensure that the Project complies with Malawi national laws governing land acquisition, environmental management, and labor, as noted above.
- Ensure that the Project complies with safeguard policies concerning consultation. The affected communities state they feel the Project failed to adequately and meaningfully consult them and to provide them with timely and accessible information. FMO and MIGA's PS1: Assessment and Management of Environmental and Social Risks, requires "consultation with local communities on matters that directly affect them." The financiers should therefore ensure that henceforth, JCM Power meaningfully consults, adequately engage with and timely provide the affected communities with information in a manner and language that is easily accessible to them. Furthermore, FMO should disclose their steps towards Broad Community Support.
- Safeguard the space for affected communities to seek information about and be consulted free from intimidation, coercion, or manipulation, and make clear that reprisals or intimidation, in any form, will not be tolerated. As noted above, the affected communities reported that they were manipulated, intimidated or coerced into selling their lands. FMO and MIGA's PS1: Assessment and Management of Environmental and Social Risks and Impacts, calls for continuous community engagement that is "free of external manipulation, interference, or coercion, and intimidation."
- Ensure that the Project complies with safeguard policies for land acquisition and economic and physical displacement. FMO and MIGA's safeguard policies, specifically, IFC Performance Standard 5 (PS5): Land Acquisition and Involuntary Resettlement, underscores the need for providing compensation for loss of assets at full replacement cost. The financiers should ensure that JCM Power complies with these safeguard policies by rectifying any harm done in the land acquisition process and ensuring that

affected communities are compensated at full replacement cost for their lost land. Additionally, support to mitigate economic displacement should also be provided to affected communities, designed with their inputs and priorities.

- Ensure that JCM Power provides the affected communities with the Project information and any harm caused due to the company's failure to provide the information prior to the resettlement should be rectified. FMO and MIGA's PS5: Land Acquisition and Involuntary Resettlement calls for ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- Ensure that JCM Power rectifies any harm done by the non-transparent and inconsistent application of compensation standards. FMO and MIGA's PS5: Land Acquisition and Involuntary Resettlement, requires that "compensation standards be transparent and applied consistently to all communities and persons affected by the displacement. The Project used unfamiliar units of measurement thereby forcing affected communities to accept compensation amounts based on an assessment that was not transparent; and grievance redress and livelihood restoration committees were effective for only Phase 2 of the resettlement process thereby failing to provide the same grievance redress opportunity for phase 1 resettled community members.
- Ensure that a robust environmental mitigation plan is implemented to reduce ambient pollution. FMO and MIGA's safeguard policies, specifically PS3: Resource Efficiency requires the banks' clients to consider ambient conditions and apply pollution prevention principles and techniques, or where avoidance is not possible, minimize adverse impacts. The financiers should ensure that the Project does not continue to pollute the air and the environment, does not continue to expose the community to health hazards and does not continue to adversely impact the health of the surrounding communities.
- Ensure the Project complies with safeguard policies on labor and employment, including equal employment opportunities for women. FMO and MIGA's PS2: Labor and Working Conditions calls for fair treatment, non-discrimination and equal opportunity in provision of employment. Affected women reported that the Project discriminates against them in the provision of employment.
- Require Project proponents to provide accessible information to communities on the existence of and procedures for accessing the independent accountability mechanisms of the FMO and MIGA. The majority (93%) of respondents reported to have interest in filing a complaint with the independent accountability mechanisms of the financiers, FMO and MIGA. Unfortunately, they also reported a lack of knowledge about the independent accountability mechanisms of the investors. Should filing complaints with the investors still be a course of action they wish to pursue, the investors are asked to actively share information on their complaints mechanisms with the affected communities.

ADDENDUM - JULY 2020

CHRR, IAP, and Both ENDS have been in dialogue with JCM Power since early 2020, after the community-led research was undertaken. In order to facilitate a constructive dialogue, a draft of this report was shared with JCM Power on 17 June 2020 for comment. JCM Power shared its response on 30 June 2020.

The objective of the community-led research report and the ongoing dialogue with JCM Power has been and remains to solve the issues that have been brought forward by communities. We will not revisit JCM Power's response in its entirety here, as this report centers the community's views and concerns -- experiences which were entrusted to CHRR, IAP and Both ENDS and then validated in consequent workshops.

The views expressed in this report underscore critical asymmetries of information, power, and processes, and the inadequacy of a consultation process that, whether intended or not, effectively excluded key beneficiaries. In sharing these views, we urge the Project proponents to accept and acknowledge the communities' collective work in sharing their experiences, to incorporate these concerns into implementation, and to rectify the environmental and social concerns raised, in close consultation with community members.

Below, we wish to respond to specific points in JCM Power's response:

- Regarding **inadequate provision of information and inadequate community consultation**, JCM Power disputes many of the community's claims contained in this report. Notably, it "*disputes that inadequate consultation was undertaken*"⁹ and that "*project information was inaccessible*,"¹⁰ citing its "*extensive stakeholder engagement process*."¹¹ However, the views expressed in this report --- and the very discrepancies in facts and project processes that JCM Power relies on in its response -- further support the assertion that the consultation process was ultimately inadequate to facilitate the informed understanding and meaningful participation of affected communities.

JCM Power provided additional clarification and details about the companies involved in the project and their roles, and specific project plans and activities. Additionally, JCM shared a folder containing 13 project documents, 2 of which were previously disclosed on the MIGA project website (no project documents were disclosed by FMO). It is unclear, however, if disclosure to communities of these documents was prioritized and what modalities may have been used to ensure the community members' informed understanding of the project, its proponents, and implementation.

- In response to community claims on **gender-based violence and sexual exploitation**, JCM Power notes a series of steps undertaken to address these issues, including the creation of a Gender Based Violence and Harassment Action Plan. Though we acknowledge JCM Power's swift response, at the time of the initial community-led

⁹ JCM Power response to draft community-led research report, at p. 17.

¹⁰ *Id.*

¹¹ JCM Power response to draft community-led research report, at p. 9.

research, however, it was unclear what, if any, mitigation plans were in place to address these risks.

Additionally, while these measures have been shared with CHRR, IAP and Both ENDS, at the time of writing and engagement with JCM Power, their response had not yet been shared with community members and it was unclear how, if at all, communities were consulted on these actions. It is also unclear to what extent JCM will ensure that affected communities are consulted on its institutional plan to address gender-based violence and harassment and how the plan will address the inherent power inequalities and root causes of gender-based violence.

- In response to **what communities have reported as unfulfilled project benefits**, JCM Power replied, “[t]he CSR programmes will be delivered over the life of the project in accordance with the plan. JCM would be happy to elaborate more about the implementation plan if CHRR/IAP require.”¹² To reiterate the main recommendation of the report, we ask JCM Power to prioritize sharing this information with the affected communities first before the CSO groups supporting them. The communities are at the center of the Project and their involvement in the process is of the utmost importance. They should be empowered enough to meaningfully engage in the processes and at any point, not only when the implementing company makes community visits. Access to information is fundamental and key to fulfilling community involvement in the project.
- Regarding communities’ claims of **discriminatory and unequal employment conditions**, JCM disputes the affected women’s claims that they have not been provided with the same opportunity for employment as men. On this issue, the report would like to remind JCM Power that the report and its statements are community voices. The report therefore recommends to JCM Power to follow up with the community on not only this issue but all issues that they have shared, and to go beyond their CSR and LRP reports and plans in ensuring the wellbeing of the community. The report arguably highlights the gaps in JCM Power’s plans, and taking them at face value and following up on the issues will strengthen the plans as well as build a stronger relationship between the company and the community.
- Regarding the **Livelihood Restoration Plan**, JCM Power replied: “A *Livelihood Restoration Plan (LRP)* has been developed in accordance with international best practice (IFC PS5) and is being implemented. All 227 PAPs are included in the LRP.”¹³ However, as noted in the September 2019 community-led research and further validated in April 2020, the community members did not mention any knowledge of the LRP. This speaks to a gap in access to information and consultation that was brought to light during the community-led research.
- Regarding the **sharing of the research findings with the company**, JCM Power replied: “It is a concern that issues raised in the report were not communicated to the project at the appropriate time so that they could be addressed. Or is it perhaps the case that many of the issues raised were addressed and that the report is in some areas now

¹² JCM Power response to draft community-led research report, at p. 43

¹³ JCM Power response to draft community-led research report, at p. 7.

*outdated?*¹⁴ The issues raised in the report have been raised with JCM Power in several instances, prior to the sharing of the draft report in June 2020. One must also consider how the ability of communities to effectively raise issues has been hampered by the inadequacy of information disclosure and consultation. Although some progress has been made on several issues, as of the time of validating the research findings, the majority of these concerns remain unaddressed. While CHRR, IAP and Both ENDS are informed on the actions JCM Power is taking, during the last community visits, community members were not aware of any of the proposed activities to resolve the issues.

¹⁴ JCM Power response to draft community-led research report, at p. 10.