



Report on a Survey on Legislative Implementation of a Human Rights Due Diligence Mandate

~70% of Responding Companies & Organizations Support Legislation~

19 December, 2023

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Human Rights Now

Human Rights Now (HRN), an international human rights NGO based in Tokyo, conducted a survey in collaboration with the Business and Human Rights Resource Centre starting from mid-October 2023. The survey aimed to gather insights on the enactment of legislation mandating the implementation of human rights Due Diligence (HRDD) for companies and organizations.²

1. Purpose of the Survey

From July 24 to August 4, spanning 12 days, the Working Group on Business and Human Rights of the United Nations Human Rights Council ("UN WG") conducted an official visit to Japan. On the final day of the investigation, the UN WG released an "End of Mission Statement" ("UN WG Statement") disclosing their provisional findings.³⁴

In this UN WG Statement, the following remarkable revelations were made:

Most businesses that the Working Group met with indicated the desirability of mandatory HRDD, which can assist with “levelling the playing field” among businesses and allow for greater alignment among the Government’s policies and standards. In the absence of more robust HRDD requirements, the business community suggested that SMEs will have little incentive to adopt the UNGPs. It was also suggested that for the financial sector, there is a need for a legal basis to advance HRDD practices and, as such, the Government needs to take action.

In light of this, based on the information in the UN WG Statement after it conducted hearings with 19 companies and organizations (with the company names displayed in gray highlight),

¹ We received a response from Kirin Holdings on January 24, 2024, and have updated this report accordingly.

² Human Rights Now, “*Jinken Dyū Dirijensu (HRDD) no jissen o zenshin saseru hōritsu no seitei ni kansuru kaku kigyō-tō e no ankeito chōsa jissai ni kansuru o shirase*” [Announcement regarding the implementation of a questionnaire survey of companies regarding the enactment of legislation to advance the practice of human rights due diligence (HRDD)], 25 Oct. 2023, <https://hrn.or.jp/news/24569/>.

³ Japanese version:

<https://www.ohchr.org/sites/default/files/documents/issues/development/wg/statement/20230804-eom-japan-wg-development-japanese.pdf>

⁴ English version:

<https://www.ohchr.org/sites/default/files/documents/issues/development/wg/statement/20230804-eom-japan-wg-development-en.pdf>



Human Rights Now

HRN decided to seek opinions on the legislation of HRDD within each company and organization. Additionally, considering the investigation conducted on the issue of sexual exploitation and abuse of talents affiliated with the former Johnny & Associates, as mentioned in the UN WG Statement, nine representative organizations⁵ that had indicated their corporate policies on the issue of the former Johnny & Associates as of autumn 2023 were also included in the survey. Based on these criteria, surveys were conducted with a total of 28 organizations as follows.

Consumer Goods Forum, Japan

Asahi Group Holdings

Kirin Holdings

Global Compact Network Japan

Sony

Ajinomoto

Keidanren (Japan Business Federation)

SMILE-UP. (Former Johnny & Associates)

Akao Nenshi

Takase Kanagata

Mitsubishi UFJ Financial Group

Fast Retailing

National Conference of
Association of Small Business Entrepreneurs

Tokyo Electric Power Company Holdings

McDonald's Company (Japan)

Fuji Oil

Fujitsu

Mitsubishi

Rakuten Group

P&G Japan

Suntory Holdings

Kao

Meiji

Mos Food Services

Daiichi Sankyo Healthcare

Tokyo Marine Holdings

Nissan Motor

Japan Airlines

⁵ Nikkei, “*Janīzu mondai, torihiki kigyō no sekinin to wa senmon-ka ni kiki*” [Johnny's problem, asking an expert what are the responsibilities of trading companies], 15 Sept. 2023, <https://www.nikkei.com/article/DGXZQOUC121XR0S3A910C2000000/>.



2. Background of the Survey

Since the introduction of the United Nations Guiding Principles on Business and Human Rights ("UNGPs") in 2011, there has been a growing international call for companies to embrace initiatives that respect human rights. In Japan, the "National Action Plan on Business and Human Rights (2020-2025)" was released in October 2020, followed by the establishment of the "Guidelines on Respecting Human Rights in Responsible Supply Chains" in September 2022. However, these guidelines are not legally binding, and their effectiveness has been questioned with regards to the prevention of human rights violations and victim remediation.

Globally, particularly in Western countries, there is a trend towards the enactment or revision of laws mandating the implementation and reporting of HRDD. There has also been an introduction of indirect measures, such as trade regulations including consideration of human rights in exports and imports and in public procurement, that indirectly promote HRDD. In neighboring South Korea, a bill mandating HRDD was presented to the parliament in September 2023.

The recent visit by the UN WG to Japan was conducted in this context. From July 24 to August 4, over a span of 12 days, the UN WG conducted an official visit, engaging in hearings and on-site investigations in Tokyo, Osaka, Aichi, Hokkaido, and Fukushima. The hearings and field studies involved government officials, the business sector, civil society, industry associations, labor unions, workers, researchers, lawyers, and other stakeholders. On the final day of the investigation, the UN WG released the UN WG Statement, disclosing their provisional findings.⁶⁷ The UN WG Statement comprehensively revealed that the current situation of business and human rights in Japan deviates from international standards and is in a serious state. From the perspective of the UNGPs, numerous significant human rights issues that require urgent attention and action were identified.

Given this backdrop, the purpose of this survey was to solicit broad opinions from various companies and organizations regarding the legalization of HRDD, to bring transparency to these perspectives, and to contribute to public awareness.

⁶ Japanese version:

<https://www.ohchr.org/sites/default/files/documents/issues/development/wg/statement/20230804-eom-japan-wg-development-japanese.pdf>

⁷ English version:

<https://www.ohchr.org/sites/default/files/documents/issues/development/wg/statement/20230804-eom-japan-wg-development-en.pdf>



3. Implementation Method and Summary of Responses

(1) Survey Method

The survey was conducted through postal mail as well as by requesting responses via inquiry forms, email, or telephone communication.

As a result, the response rate was approximately 79%, with responses obtained from 22 out of the aforementioned 28 organizations. Among the remaining 6 organizations, the following six companies—SMILE-UP., McDonald's Company (Japan), Mitsubishi, Sony, and Takase Kanagata—did not provide responses. The Keidanren (Japan Business Federation), communicated that they refrained from responding, stating "As this survey is for companies, we kindly refrain from providing responses on behalf of our organization." The GCNJ explained, "We understand that you expect individual responses from each company based on the phrase 'Your company...!' in the questionnaire. However, within GCNJ, member companies hold diverse perspectives. Therefore, we feel it may not be appropriate for us to provide a representative response as an organization. We are open to individual hearings."⁸

(2) Summary of Responses: About 70% of Companies and Organizations Favor Legislation

Among the companies and organizations that responded, it was revealed that 72.7% (16 organizations) consider legislation desirable. This aligns with the findings of the UN WG Statement, indicating that a significant majority of the surveyed organizations are positively inclined towards legislative measures. For the six organizations that did not provide explicit responses, there was no opposition to legislation, although none explicitly expressed support. In other words, there were no companies or organizations explicitly opposing legislation.

Figure 1: Response Results

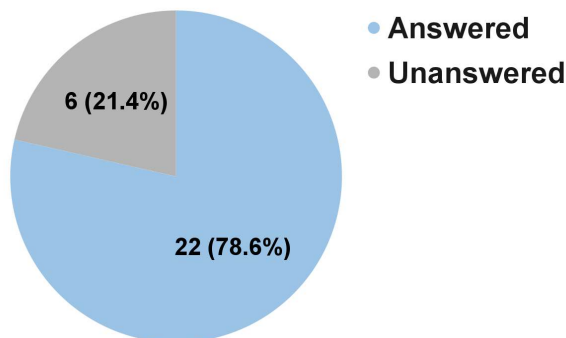
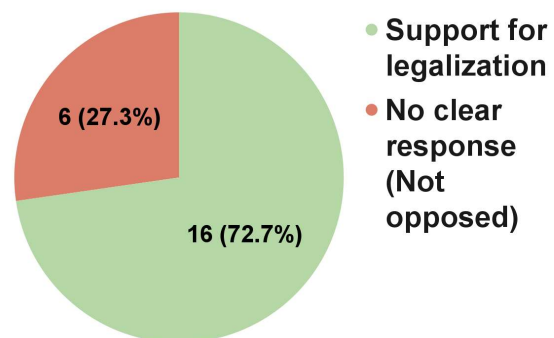


Figure 2: Perspectives on Legalization



For a detailed overview of each company's responses, please refer to the attached document titled "List of Responses".

⁸ Human Rights Now (HRN) conducted an individual interview with the Global Compact Network Japan on January 11, 2024. Regarding Question 1, the following explanation was provided: "The CEO of the United Nations Global Compact Headquarters, Sanda Ojiambo, expressed support for the mandatory human rights due diligence in 2020. Based on this, our local network is also promoting the implementation of human rights due diligence by companies. We welcome appropriate legislation as a means to advance this promotion." Reference: United Nations Global Compact (2020). *UN Global Compact announces support for mandatory human rights due diligence*. (<https://unglobalcompact.org/news/4638-11-16-2020>), Retrieved 2024.01.11.



4. Response to Question 1 (Opinion on Legislation)

Question 1: Does your company believe it is desirable for the Japanese government to enact legislation mandating Human Rights Due Diligence (HRDD) or legislation advancing the practice of HRDD under certain conditions? If yes, please provide the reasons.

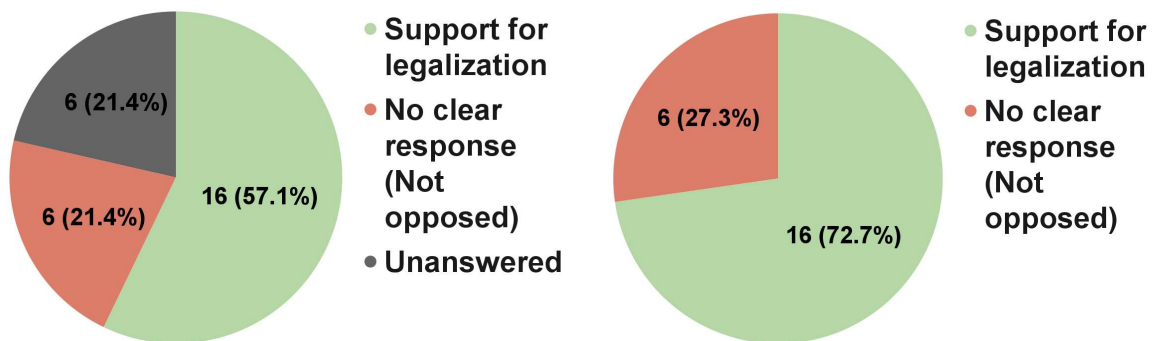
Among the responding companies and organizations, 72.7% (16 organizations) explicitly expressed support for the legal obligation of HRDD under specific conditions. The reasons cited for this support included the promotion of human rights initiatives, enhancement of international competitiveness through alignment with international standards, improvement of fairness and transparency in corporate activities, and facilitation of collaboration in supply chains. Many companies and organizations expressed concerns that voluntary efforts alone are insufficient, emphasizing the necessity of legal obligations.

Regarding the conditions for legislation, companies and organizations called for ensuring alignment with international standards and guidelines, formulating industry-specific practical guides for challenges that cannot be resolved by individual companies alone, and considering the size and sector of the companies. It was widely recognized that a HRDD law in line with international standards would promote companies' human rights activities and contribute to establishing a sustainable business environment.

For the six organizations that did not provide clear responses, while there was no opposition to legislation, their responses did not explicitly express support. Therefore, they have been categorized as "No Clear Response."

In the following sections, we will examine responses to subsequent questions concerning the basis and content of legislation.

Figure 2: Perspectives on Legalization





5. Benefits of Legal Introduction

5-1. Fair Competition Conditions

Question 2: Does your company believe that the enactment of laws mandating Human Rights Due Diligence (HRDD) or legislation advancing the practice of HRDD will create "fair competition conditions" among companies?

5-2. Improved Alignment with Government Guidelines and Other Policies/Standards

Question 3: Do you believe that the enactment of laws mandating Human Rights Due Diligence (HRDD) or advancing HRDD practices through legislation would enhance the alignment of corporate human rights initiatives with government guidelines, such as "Guidelines for Respecting Human Rights in Responsible Supply Chains" and other government policies or standards?

It goes without saying that the primary purpose of legislation is to prevent human rights violations and provide relief to victims. However, it was found that many companies and organizations believe that the enactment of laws will result in the creation of "fair competition conditions". As a prerequisite for the emergence of fair competition conditions, companies and organizations highlighted the importance of maintaining consistency with international standards and guidelines and ensuring that the specific content, scope, and implementation methods are appropriate.

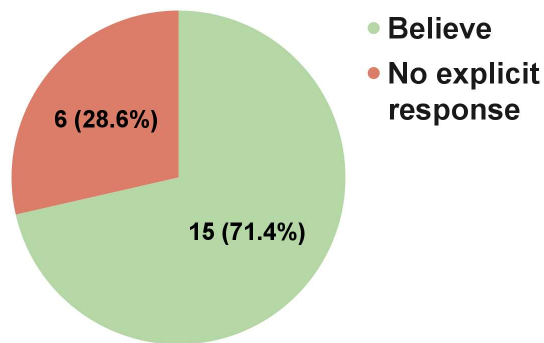
Furthermore, many organizations indicated that alignment with government guidelines and other policies or standards would increase due to clearer government positions resulting from legislation. As a further condition for enhancing alignment with other policies and standards, regarding the content of the law, many opinions emphasized the need to align with international standards, such as the United Nations Guiding Principles, stating that

given the global trend toward mandating HRDD in various countries and regions, with many multinational companies already taking steps to comply, if the law enacted in Japan is not based on international norms, there is a possibility of discrepancies with companies' existing human rights policies, guidelines, and operations. In such cases, it could pose a significant burden for companies. Therefore, it is crucial to ensure that the content of the legislation in Japan is based on international standards.

These responses indicate that many of the surveyed companies and organizations are concerned that without aligning the content of the law with international standards, they may not reap the benefits of legislation; instead, there is a fear that it might hinder corporate activities. This underscores the need for the enactment of appropriate laws in line with international standards.



Figure 3: Belief in the Emergence of "Fair Competition Conditions" through Legal Regulation



6. Target Companies and Obligation Content

6-1. Small and Medium-sized Enterprises (SMEs)

Question 4: If legislation mandating Human Rights Due Diligence (HRDD) or legislation advancing the practice of HRDD is enacted, do you believe that making SMEs subject to such legislation would lead to motivating SMEs to adopt the UN Guiding Principles on Business and Human Rights (UNGPs)? In that case, do you think SMEs should be subject to the same obligations as large companies, or should there be differences in obligations, such as imposing an obligation of effort on SMEs?

Regarding this question, while many companies and organizations answered that making SMEs subject to such legislation would motivate them to adopt the UNGPs, all 14 organizations that provided clear responses emphasized the importance of considering differences in company size and resources. They discussed introducing differences in the start date of implementation and the details of obligations or they mentioned the necessity of government support.

From this, it can be inferred that companies and organizations share a common understanding that appropriate consideration and support for small and medium-sized enterprises (SMEs) are important.

In this context, the National Conference of the Association of Small Business Entrepreneurs also stated,

The enactment of laws is considered one factor that increases the interest of SMEs in the UNGPs and motivates them to engage in HRDD. However, many SMEs have limited management resources, and it is believed that some companies may find it challenging to implement HRDD. If legislation is enacted, considerations such as making it an effort obligation for SMEs are deemed necessary.



In Germany's Supply Chain Due Diligence Act, France's Duty of Vigilance Law, and the currently debated Corporate Sustainability Due Diligence Directive in the EU, there are considerations for SMEs, such as making it an effort obligation or providing a grace period for companies below a certain size. Therefore, it is suggested that, in the context of legislation in Japan, some form of consideration for SMEs, including the establishment of public helpdesks and capacity building, would be necessary.

6-2. Financial Sector

Question 5: Do you believe that a legal basis for advancing the practice of Human Rights Due Diligence (HRDD) is necessary for the financial sector, and the government should take measures in that direction? For example, when enacting legislation, do you think the government should include financing recipients as subjects for HRDD?

Regarding the financial sector, among the 14 organizations that provided clear responses, 71% (10 organizations) believe that financing recipients should be included as subjects for HRDD, supporting the direction of advancing the practice of HRDD in the financial sector. Reasons for agreement include the importance of the financial sector's involvement in advancing HRDD for sustainable corporate activities.

However, there are cautious opinions, expressing concerns that uniformly requiring HRDD for financing recipients may hinder smooth financial operations. Some also pointed out that it might not be realistic for large financial institutions with diverse clients to target all financing recipients. These responses emphasized the need for careful consideration of the scope, implementation level, and frequency. Additionally, opinions were shared suggesting a prioritization of implementing HRDD within individual companies first, followed by the need for discussions and consultations involving stakeholders in the financial sector.

Financial institutions have significant influence over addressing the negative impacts on human rights associated with financing recipients. To avoid market distortions where financial institutions that invest in advanced initiatives for the respect of human rights face losses compared to those that do not invest in such initiatives, it is necessary to promote effective HRDD strategies, such as appropriate prioritization based on the UNGPs, while aiming for legislation that includes the financial sector.



7. Considerations for Legislation

Question 6: If there are points that your company believes the government should consider when enacting a law to advance the practice of Human Rights Due Diligence (HRDD), such as the content and scope of obligations or methods to ensure effectiveness, please provide your response.

Responses from companies and organizations highlighted the following considerations:

Reflection of International Standards:

- Ensure that the content of the enacted law concretely and comprehensively reflects the principles of the UNGPs and other international standards.

Consideration of Targets:

- Narrow down target companies based on sectors with high human rights risks and according to business scale.

Consideration of Japan's Industrial Structure and Corporate Characteristics:

- Consider Japan's industrial structure and corporate characteristics while using international standards.
- Avoid uniquely Japanese legislation while adhering to international standards and establish mechanisms that align with the actual situation.

Enhancement of Monitoring and Evaluation Functions:

- To ensure the effectiveness of the law, adequate monitoring is essential. However, there is a lack of resources for assessments in Japan, so allocate resources to address this issue.

Addressing Human Rights Violations and Remedies:

- Ensure that if human rights violations are identified, there is a reliable process for providing remedies and cooperation based on the relationship with the company.

Government-Business etc. Collaboration and Information Disclosure:

- To create mechanisms reducing the burden on companies, it is crucial to promote industry-wide responses and cross-sector collaboration simultaneously with the introduction of legislation. The government and businesses should collaborate in addressing these challenges.

Consideration for Small and Medium-sized Enterprises (SMEs):

- To advance efforts for the respect of human rights in SMEs, it is essential to facilitate an environment that brings out the initiative of SME business owners. This can be achieved through the dissemination of guidebooks and case studies tailored for SMEs, as well as the implementation of expert dispatch programs.

Mechanisms to Encourage Corporate Voluntary Efforts:

- In addition to obligations and penalties, introduce mechanisms and incentives to encourage voluntary efforts by companies.

Strengthening Governance Structures:

- Ensure high transparency in information disclosure through the strengthening of governance structures, including internal controls within companies.



8. Summary of Survey Results

Through the survey conducted in response to the UN WG Statement, it became evident that many individual companies and organizations express support for legislation. While the survey was limited to 28 organizations, and a broader study involving all prime-listed companies is anticipated, it is noteworthy that, even among the entire set of 28 organizations including SMEs, there was no clear opposition to legislation.

Many surveyed companies and organizations believed that legislation would play a role in promoting human rights initiatives, enhancing international competitiveness through compliance with global standards considering advancements in legislation in Europe and the United States, improving fairness and transparency in corporate activities, and facilitating collaboration in supply chains. This highlights a gap between the Japanese government, economic organizations, and others taking a stance that legislation for mandatory HRDD is premature and more progressive companies and organizations actively advancing such initiatives.

In approaching legislation, it is crucial to ensure the effectiveness of preventing human rights violations and providing remedies. This involves securing content aligned with international standards and guidelines, considering the size and sector of companies when setting targets. Learning from precedents in Europe and other regions, urgent discussions on the specific content of domestic legislation are needed.

Furthermore, in parallel with legislation, there have been calls to establish mechanisms for preventing the rubber stamping of human rights due diligence (HRDD) and ensuring effective remedies. This includes advancement of the development of structures for providing advice on HRDD for individual companies and organizations, progressing with the setup of systems for monitoring, evaluation, and information disclosure. In this regard, as emphasized in the UN WG Statement, recognizing the gap in understanding and implementation of HRDD between Tokyo and Other Local Area Cities, and between large and multinational corporations versus small and family-owned businesses, it is imperative for the government to provide oversight and support and to establish a public helpdesk to address individual inquiries from companies.

Networking and support for building relationships are also necessary to facilitate dialogue with appropriate stakeholders, both domestically and internationally, based on each company's human rights risks.



9. Recommendations to the Government

Considering the findings, it is imperative for the Japanese government to promptly draft legislation for the mandatory implementation of HRDD and initiate Diet deliberations.

Reports on December 14 of this year indicate that negotiators for the European Parliament and Council reached an agreement on the framework for the EU directive to mandate HRDD (Corporate Sustainability Due Diligence Directive, CSDDD).⁹ Japanese companies with trade relations with the EU, as well as their subcontractors, will soon face demands for HRDD implementation from their trading partners or prime contractors. Given the current international situation and the competitive environment for businesses, and especially from the perspective of preventing and remedying serious human rights violations that extend across borders, legislating HRDD in Japan is an urgent and unavoidable task.

To ensure that **the proposed legislation** aligns with international standards and establishes an effective HRDD law, the following essential elements should be incorporated:¹¹

1. Inclusion of all internationally recognized human rights
2. Inclusion of the entire value chain
3. Applicability to all entities conducting business activities within Japan, including national and local governments
4. Initially, the imposition of legal obligations for HRDD¹² based on the UNGPs on large enterprises and effort obligations on SMEs
5. Establishment of a responsible administration and enforcement framework
6. Integration of HRDD into the bidding requirements for public procurement
7. Imposition of fines for non-compliance with disclosure obligations
8. Provision of civil liability for companies failing to implement HRDD

⁹ European Council, “Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights”, 14 Dec. 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>.

¹⁰ Nikkei, “EU, kigyō ni kyōkyū-mō no ‘jinken. kankyō risuku kanri’ o gimu-ka”, [EU requires companies to manage human rights and environmental risks in their supply chains], 15 Dec. 2023, <https://www.nikkei.com/article/DGXZQOGR14CQ80U3A211C2000000/>.

¹¹ Human Rights Now, “English text of HRN’s Recommended ‘Human Rights Due Diligence Bill’ for Japan”, 21 April 2023, https://hrn.or.jp/eng/news/2023/11/21/hrdd_bill/.

¹² A series of actions taken by a business operator or national or local government to identify, prevent, and mitigate all negative human rights impacts resulting from its business activities or business relationships with other parties, to evaluate the effectiveness of its efforts, and to explain and disclose information about how it has addressed those actual or potential negative human rights impacts.