



Call for Responsible Action by the Japanese Government and Corporations in accordance with the UN Guiding Principles on Business and Human Rights Following the Visit of the UN Working Group on Business and Human Rights to Japan

7 August 2023, Tokyo

Human Rights Now

<https://hrn.or.jp/>

From 24 July to 4 August 2023, the UN Working Group on Business and Human Rights (UNWG) conducted a 12-day country visit to Japan, conducting hearings and on-site investigations with government officials, business actors, civil society, industry groups, trade unions, workers, researchers, lawyers, and other stakeholders in Tokyo, Osaka, Aichi, Hokkaido, and Fukushima. The UNWG released an "End of Mission Statement" on the last day of the investigation, revealing its preliminary findings.¹²

Human Rights Now (HRN), an international human rights NGO based in Tokyo, extends its appreciation to the UNWG for its diligent investigations conducted across various regions of Japan.

The End of Mission Statement comprehensively highlights significant issues with the current state of business and human rights in Japan from the perspective of international standards, and it identifies numerous critical challenges that need to be addressed from the standpoint of the UN Guiding Principles on Business and Human Rights (UNGPs). The Japanese government and companies, with their obligations and responsibilities under the UNGPs, must earnestly acknowledge the End of Mission Statement and immediately address the challenges it identifies.

Section 1: State Duty to Protect Human Rights

1. Disparity in Understanding between Tokyo and Other Local Area Cities

First, in relation to the "State Duty to Protect Human Rights," which constitutes the "first pillar" of the UNGPs, it was observed that there is "a general lack of awareness of the UNGPs and the NAP [National Action Plan], especially outside of Tokyo." Furthermore, it was stated that

There is a need to ensure that all relevant actors across all 47 prefectures, including businesses and business associations, as well as trade unions, civil society, community representatives, and human rights defenders, fully understand their human rights duties and responsibilities under the UNGPs and the NAP. Thus far, these actors seem not to have been fully engaged in the development of the NAP, with many stakeholders at the local level indicating no awareness of the NAP's existence.

The disparity in understanding between Tokyo and other local area cities has not been adequately addressed in previous domestic discussions on business and human rights. It is

¹ JPN:

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

² ENG:

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

imperative for the Japanese government to recognize these challenges and develop specific policies to bridge this gap in local areas.

2. Issues in the Formulation, Review Process, and Effectiveness Assessment of the NAP

Next, important recommendations were made concerning the formulation, review process, and effectiveness assessment of the NAP. Specifically, the “review should pay special attention to business-related human rights abuses experienced by marginalised communities such as migrant workers, and strengthen access to remedy and corporate accountability in line with the UNWG’s previous guidance on updating NAPs.” Additionally, the “revised NAP should include a gap analysis of business and human rights policies, identify priority issues, and clarify the modalities for implementation, including clear responsibilities of all relevant entities, timeframes, and key performance indicators (KPI) to monitor and evaluate success.” These recommendations are crucial, and the Japanese government must adhere to them during its mid-term review and revision of the NAP. Particularly, the necessity for a gap analysis has been repeatedly highlighted throughout the NAP formulation process, and the government’s failure to conduct it has impacted the overall effectiveness of the NAP. Immediate action should be taken to address this issue in upcoming revisions.

3. Thorough Adherence to the UNGPs by Government-Owned Enterprises

The UNWG further emphasized that the Japanese government should take measures such as requiring systematic and meaningful reporting on environment, social, and governance (ESG) factors that include human rights indicators and ensuring victims’ access to remedy by, inter alia, requiring businesses’ full cooperation with judicial and non-judicial grievance mechanisms, as well as the provision of effective remediation for abuses concerning government-owned enterprises (SOEs), such as the Japan Bank for International Cooperation (JBIC) and Tokyo Electric Power Company (TEPCO). These recommendations are of utmost importance considering that JBIC has been mentioned in relation to human rights violations in overseas development projects and that TEPCO has been also criticized for human rights and labor rights violations in its response to the Fukushima Daiichi nuclear disaster. The Japanese government is urged to demand that corporations adhere to the UNGPs and, in parallel, take proactive steps, including establishing legal obligations, to ensure comprehensive compliance with UNGPs in its own business activities, including public procurement.

Section 2: Corporate Responsibility to Respect Human Rights

1. Overview of Three Key Challenges

Regarding the "Corporate Responsibility to Respect Human Rights," which constitutes the second pillar of the UNGPs, three key challenges are highlighted. The first challenge is to address significant gaps in the understanding and implementation of the UNGPs between various types of enterprises, particularly between large and multinational corporations versus small and family-owned businesses. The second challenge entails the Japanese government further involving large and advanced corporations in the practice of the UNGPs, to foster a shared understanding of both proactive practices and remaining challenges. The third challenge emphasizes the necessity for capacity-building to implement the UNGPs among small and medium-sized enterprises (SMEs) through collaboration among the government, large corporations, and civil society.

2. Advocacy for Legislation Mandating Human Rights Due Diligence (HRDD)

A salient point to note is the indication by the UNWG that

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 this regard, while the Japanese government and business associations may consider it premature to legislate mandatory HRDD, given their recent development of guidelines on HRDD in September of the previous year, a gap in understanding between these entities and companies actively pursuing HRDD has become evident. In a global context, particularly in Western countries, the trend towards legislating mandatory HRDD is seen as necessary to ensure its effectiveness and achieve remedies. Hence, it is not surprising that voices advocating for mandatory HRDD, from the perspective of ensuring “levelling the playing field”, are emerging among companies competing in the global market.

HRN advocates for the legislation of mandatory HRDD, recognizing that companies not engaging in HRDD under voluntary guidelines are likely to exist and that human rights violations occur within the value chains of such companies. From a preventive perspective and to ensure timely and appropriate remedies and corrections, HRN calls for the mandatory legalization of HRDD, which is also outlined in the legal draft prepared by HRN and publicly available for reference.³

Additionally, there is a need for further efforts in capacity-building for enterprises, including heightened human rights due diligence for businesses in conflict-affected contexts such as Myanmar and Ukraine, as well as responsible withdrawal. Collaboration between civil society and progressive private sector actors is crucial for promptly advocating the legislation of HRDD to the Japanese government.

Section 3: Access to Remedy

1. Limited Awareness of Judges about a Wide Range of Human Rights Issues

The UNWG highlighted that “[o]ne critical issue we observed is the low awareness of judges about the UNGPs and broader human rights issues in the context of business activities, such as those concerning LGBTQI+persons.” In response, they stated that “we strongly recommend implementing mandatory human rights training for judges and lawyers, including training on the UNGPs.” Notably, not only the UNGPs but also international human rights standards (including legally binding international human rights conventions within the domestic context) are often overlooked within Japan's judicial system. This trend has led to recurring recommendations from various UN bodies. This issue is structural, and associated with legal education and training systems. The Japanese government should allocate the necessary budget and ensure that the Supreme Court provides judges with obligatory and periodic human rights training, as well as support the Japan Federation of Bar Associations in offering mandatory, regular training sessions for lawyers. These efforts should facilitate active participation in international conferences and workshops on human rights organized by the

³ <https://hrn.or.jp/news/23643/>

UN and others.

2. Absence of a National Human Rights Institution (NHRI)

The UNWG expressed that it is "deeply concerned" by the absence of a "National Human Rights Institution (NHRI)," which has become a standard framework internationally for ensuring human rights protection. They noted that "the lack of a dedicated NHRI in Japan...creates a major gap in Government efforts to promote respect of human rights by businesses and corporate accountability." The UNWG strongly urged the government "to establish a robust and independent NHRI in line with the Principles Relating to the Status of National Human Rights Institutions (or Paris Principles)." The absence of an NHRI is also a structural issue that the Japanese government has not actively addressed, despite repeated recommendations from various UN agencies over the years. In the implementation of the UNGPs, it is not only essential to call for the establishment of grievance mechanisms within companies, but it is also imperative for the Japanese government to take the lead in setting up a national human rights institution. In this regard, collaborative efforts between civil society and forward-thinking private sector actors are also deemed feasible.

3. Ineffectiveness of the National Contact Point (NCP)

The UNWG pointed out the issue of the National Contact Point (NCP) established by the Japanese government in 2000 based on the OECD Guidelines, stating,

with only fourteen cases taken up in its twenty-three years of existence, more steps are needed to enhance the visibility, institutional capacity, and expertise of the NCP to provide effective remedial outcomes. It is also critical that the NCP is seen to be independent and credible by all stakeholders,

highlighting the shortcomings of the NCP as a national-level remedial mechanism. In fact, civil society evaluations of the effectiveness of NCPs in providing remedies have been notably low, with the perception that they are nearly ineffective when utilized. While visibility is important, it is crucial that they demonstrate specialized and fair judgment in specific cases and ensure effective remedies in order to gain trust from stakeholders.

4. Lack of Protection for Whistleblowers in Corporate Grievance Mechanisms

The UNWG points out a significant issue regarding grievance mechanisms established by businesses, stating, "While most of the large businesses that the Working Group spoke with had operational grievance mechanisms in place, some stakeholders expressed fear of reprisals (such as losing their jobs) from reporting workplace misconduct." This highlights a serious concern in the current situation. The establishment of grievance mechanisms serves little purpose if they are not utilized by stakeholders. Not only do they fail to contribute to effective remedies for human rights violations, but they also expose corporations to reputational risks in media coverage and legal proceedings. In this regard, the UNWG also mentioned in the section on the Technical Intern Training Program that "the Working Group learned of some positive practices, for example of recipient unions that assist workers to understand their rights and act as grievance mechanisms," indicating that there is potential for improvement in the situation through the involvement of labor unions in grievance mechanisms. Additionally, the establishment of a cross-corporate grievance mechanism platform could secure the anonymity of whistleblowers and ensure fair handling of reports. However, the operation of such a platform must adhere to Principle 31 of the UNGPs to ensure transparency and independence.

Section 4: Specific Human Rights Issues

The UNWG has outlined the following human rights issues within Japan's domestic value chains and is calling for specific actions from the Japanese government and companies in accordance with the UNGPs. It reaffirms that the scope of the UNGPs extends beyond human rights risks and violations in overseas value chains to include those within domestic value chains, emphasizing the importance of addressing these issues comprehensively.

1. Women

Gender pay gap, non-regular employment, low representation of women in corporate leadership, promotion discrimination, and sexual harassment.

2. LGBTQI+

Discrimination in the workplace, discriminatory practices (such as disclosure of legal name and attaching pre-transition photos to resumes), and absence of comprehensive anti-discrimination laws.

3. Persons with Disabilities

Limited employment opportunities for persons with disabilities, workplace discrimination, wage disparities, lack of access due to inadequate support systems, and intersectional discrimination based on gender, race, sexual orientation, and disabilities.

4. Indigenous Peoples

Lack of a national census, discrimination in education and the workplace, racial harassment at Upopoy, disrespect for indigenous rights, absence of Free, Prior and Informed Consent (FPIC) in development projects, and denial of collective rights to land and natural resources.

5. Buraku Communities

Hate speech (particularly online and in the publishing industry), workplace discrimination, discriminatory hiring practices, and delays in judicial remedies.

6. Trade Unions

Difficulties in forming labor unions, barriers to freedom of assembly including strikes, arrests, and prosecution of union members for labor movement activities.

7. Health, Climate Change, and the Natural Environment

Lack of awareness of the link between the impact of business activities on human rights, including the rights to health and to a clean, healthy and sustainable environment; insufficient efforts by the government and companies towards a transition to a zero-carbon economy; lack of government mechanisms to address stakeholders' concerns about environmental issues, particularly when it comes to indigenous peoples.

8. Fukushima Daiichi Nuclear Disaster

Forced labor, exploitative subcontracting practices, unsafe working conditions, challenges faced by hospital workers and school staff immediately after the disaster, forced decontamination and decommissioning work for debt repayment, exploitation through wage differentials and danger allowances, deaths from heatstroke and other work-related accidents, concerns of retaliation in Tokyo Electric Power Company's grievance mechanisms, lack of

compensation for cancer-related illnesses caused by cleanup and decontamination work, discharge of contaminated water.

9. Per- and Polyfluoroalkyl Substances (PFAS)

Water contamination in Tokyo, Osaka, Okinawa, and Aichi; lack of water and soil surveys; failure to conduct health monitoring.

10. Technical Intern Training Programme and Migrant Workers

Barriers to information access due to language and media; complex application processes; dismissal of workers who experienced accidents in the workplace; inability to receive treatment for work-related injuries; poor living conditions; excessive fees charged by intermediaries in countries of origin; wage discrimination; hate speech and discrimination against Korean and Chinese workers.

11. Media and Entertainment Industry

Exploitative working conditions, lack of labour law protection for workers and a clear legal definition of harassment, a culture of impunity for sexual violence and harassment, the lack of remedial action taken by broadcasting stations to sexual harassment and abuse of female journalists, extreme overwork in the anime industry, abusive subcontracting relationships, lack of protection for creators' intellectual property rights, deeply concerning suspicions of sexual exploitation and abuse involving hundreds of talents at Johnny & Associates talent agency, deeply alarming allegations by Japanese media companies in covering up these scandals over decades, doubts about the transparency and legitimacy of investigations conducted by Johnny and Associates' Special Team.

12. Summary

While the human rights issues outlined above do not encompass all of Japan's domestic human rights challenges, they have been identified by the UNWG as particularly significant risks. Therefore, the Japanese government and companies have an obligation to engage with stakeholders, including those directly affected, identify the existence and extent of human rights risks in their value chains, and take necessary actions in line with international human rights standards, including the UNGPs. It is emphasized that in addressing individual human rights issues it will be difficult to achieve effective remedies without first resolving the structural challenges addressed in Sections 1 to 3 above.

This observation aligns with the conclusion of the UNWG, which asserts that

the Working Group remains concerned that systemic human rights challenges in Japan are not being sufficiently addressed through State and private sector initiatives in the business and human rights realm. There is a pressing need to completely dismantle structures of inequality and discrimination against vulnerable groups, including women, persons with disabilities, Indigenous Peoples, Buraku communities, technical interns, migrant workers, and LGBTQI+ individuals.

Therefore, with the aim of "fully dismantling structures of inequality and discrimination," the Japanese government has an obligation to address both individual human rights issues and systemic challenges. Additionally, businesses are also required to fulfill "Corporate Responsibility to Respect Human Rights" by addressing human rights issues within their value chains, while also advocating for the implementation of policies to address systemic challenges as part of the "State Duty to Protect Human Rights," in collaboration with civil society, urging the Japanese government to take action.

Section 5: Conclusion

HRN, following the End of Mission Statement, earnestly calls on the Japanese government and businesses to promptly take action towards implementing the recommendations and observations from the UNWG with regard to compliance with the UNGPs.

In particular, the Japanese government is called on to urgently incorporate gap analysis and evaluation indicators in the NAP, to formalize and legislate HRDD obligations, and to establish an NHRI. These measures should be taken seriously and pursued with the utmost dedication to achieve their realization as soon as possible.

Similarly, businesses are advised to thoroughly assess human rights risks within their own value chains in relation to all the significant human rights challenges highlighted by the UNWG. If their involvement in human rights abuses becomes evident, immediate actions towards effective remedies for victims should be taken. Departing from past practices where Japanese companies primarily focused on human rights risks within their overseas supply chains, it is imperative for them to identify human rights risks within their domestic value chains and organizations in accordance with the End of Mission Statement. This process should involve engagement with stakeholders, including affected parties. Especially within the media and entertainment industry, as noted by the UNWG, structural issues within the industry should not be minimized by attributing them solely to specific companies. Instead, they should be recognized as industry-wide problems and addressed as human rights violations and risks throughout the value chains of media companies and others.