



Additional Statement of Recommendations to the United Nations Business and Human Rights Working Group

24 April 2024

As an international human rights NGO based in Tokyo, Japan, Human Rights Now (HRN) is dedicated to promoting and protecting human rights worldwide, with a particular focus on Asian countries. HRN presents this statement of recommendations to the United Nations Business and Human Rights Working Group.

In this statement, HRN provides insights on the current status of human rights due diligence (HRDD) by Japanese companies and some proposals aimed at enhancing human rights protection, including the urgent call for the establishment of a Help Desk, the implementation of mandatory legislation on Human Rights Due Diligence, the creation of a Minister for Human Rights, and the provision of human rights reports in Japanese. Critiques are also provided regarding the revision of the Technical Intern Training Program and the role of the National Contact Point in Japan. These recommendations are intended to fill existing gaps in human rights protection and to strengthen efforts to ensure business accountability for human rights issues.

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1) The Current Implementation Status of Human Rights Due Diligence and the Urgency for Establishing a Help Desk and Mandatory Legislation on Human Rights Due Diligence

In recent years, there has been a growing awareness of business responsibilities towards human rights. However, it remains evident that Japanese companies fall short in their efforts towards HRDD, lagging significantly behind international standards.

According to the "2023 Survey on the Actual Conditions of Overseas Japanese Companies |



Global Edition",¹ released by the Japan External Trade Organization (JETRO) in November 2023, out of 18,726 surveyed companies, only 28.5% of Japanese companies (including 4,025 large enterprises and 2,134 small and medium-sized enterprises) have implemented HRDD. This figure accounts for just a fraction of the total surveyed, with 71.5% of companies failing to implement it. Reasons cited for non-implementation include lack of directives from headquarters or business partners, managerial considerations, an absence or limitations of supply chains, shortage of manpower or inability to allocate resources, lack of understanding of specific methodologies, insufficient understanding of HRDD, and perceived insignificance due to company size or business model. Despite the small sample size of 73 companies due to the survey targeting Japanese companies, it's worth noting a significant increase in HRDD implementation among Japanese companies in South Korea, where legislation for the first Asian human rights and environmental due diligence law has been proposed to the National Assembly, by 35.6%, a substantial increase of 9.1 points compared to the previous year. Japanese companies in Australia, the UK, and Germany, where moves towards legislating HRDD obligations are progressing, are also reported to have advanced in HRDD compared to the previous year.

Furthermore, the "Results of the 3rd Survey on Corporate Behavior Charter"² released by the Japan Business Federation (*Keidanren*) in January 2024 reveal that 76% of respondent companies are making progress on initiatives (including partial implementation or planned implementation) based on the UNGPs. However, this data stems from responses of only 286 out of 1,539 member companies of *Keidanren*, indicating a response rate of 19%. Moreover, the phrase "making progress on initiatives" includes "partial implementation and planned implementation," making the criteria ambiguous, leaving uncertainties regarding the actual implementation of HRDD aligned with the UNGPs.

For example, while "human rights policy" (90%) and "measures taken to incorporate human rights policy internally" (64%) are frequently disclosed, there seems to be a lack of progress in disclosing information regarding the stage of HRDD implementation, such as "implemented corrective measures or cooperation for them" (28%), "criteria for prioritization" (31%), and "means to track implementation status and results" (41%). It can be inferred that information disclosures regarding HRDD implementation are not progressing in Japan.

Additionally, from the summary table regarding human rights risks perceived as high importance, it can be inferred that the human rights risks of a company's/group's own employees are emphasized compared to those of business partners' employees, and it is doubtful whether prioritization according to the criteria required by the UNGPs, the severity of actual and potential adverse human rights impacts (scale, scope, remediability), is being conducted.

Moreover, in terms of establishing mechanisms for corrections and complaint handling, there's a reported need for improvement to ensure accessibility to a wide range of stakeholders, including socially disadvantaged individuals who are more susceptible to human rights violations, instead of being biased towards their own company/domestic subsidiaries/affiliate employees.

Considering the continued inadequacy of HRDD implementation by Japanese companies in comparison to international standards, it is necessary to establish a public Help Desk to provide guidance and support for individual companies, as is institutionalized in Germany, and to proceed

¹ 2023年度海外進出日系企業実態調査|全世界編. (2023). 独立行政法人日本貿易振興機構. https://www.jetro.go.jp/ext_images/Reports/01/20839957f6d40fe4/20230021rev2.pdf?fbclid=IwAR1fsAeT8572BRW2GoH3aFzd4cyFWzdImLdtF4RKYEL6JHJ0h8Xjyd-mtEI

² 第3回 企業行動憲章に関するアンケート結果. (2024). 一般社団法人 日本経済団体連合会. <https://www.keidanren.or.jp/policy/2024/005.html>



with legislation mandating information disclosure and implementation of HRDD for large enterprises as the next step beyond mere guidelines.

2) Establishment of a Minister for Human Rights

Japan currently lacks a domestic human rights institution to centrally coordinate and advance human rights policies at the national level. While there is a Human Rights Bureau within the Ministry of Justice, its primary role is limited to activities such as human rights education and the handling of complaints in areas under the jurisdiction of the Ministry of Justice (domestic human rights issues). It does not possess the authority to integrate and centrally promote human rights policies. In March 2021, during the second Kishida Cabinet, the post of Special Advisor on International Human Rights Issues to the Prime Minister was established, with the House of Representatives member, Gen Nakatani assuming the position.³

The Special Advisor on International Human Rights Issues to the Prime Minister is a position established based on Article 21 of the Cabinet Act:⁴ “The Special Advisors to the Prime Minister shall, concerning important policies of the Cabinet, advise the Prime Minister and, by order of the Prime Minister, make representations to the Prime Minister.” However, while this post advises the Prime Minister directly, it lacks its own budget or staffing. Consequently, there are limitations to Japan's ability to integrate and lead on various human rights policies at the national level through the Special Advisor on International Human Rights Issues to the Prime Minister post.

Despite this limitation, Special Advisor Nakatani established the "Inter-Ministerial Committee for Japan's National Action Plan on Business and Human Rights", striving to promote policies on business and human rights in Japan. The guidelines for HRDD by the Japanese government, the “Guidelines on Respecting Human Rights in Responsible Supply Chains”,⁵ formulated primarily by the Ministry of Economy, Trade and Industry in September 2022 and made public, along with government decisions⁶ issued in April 2023, requiring human rights-respecting efforts based on these guidelines to be made in bidding documents and contracts for public procurement, are outcomes of these efforts.

However, the post of Special Advisor on International Human Rights Issues to the Prime Minister became vacant with the Cabinet reshuffle in September 2023 under the Kishida administration. As a result, Japan's human rights policies, particularly those centered on business and human rights, have stagnated. While the aforementioned Inter-Ministerial Committee for Japan's National Action Plan on Business and Human Rights continues, its contents are unclear, and there have been no significant developments since September of last year.

³ 内閣総理大臣補佐官 中谷 元 (なかたに げん) | 第2次岸田改造内閣 内閣総理大臣補佐官名簿 | 内閣. (n.d.). 首相官邸ホームページ

https://www.kantei.go.jp/jp/101_kishida/meibo/hosakan/nakatani_gen.html

⁴ 内閣法 | e-Gov法令検索. (n.d.). Elaws.e-Gov.go.jp.

<https://elaws.e-gov.go.jp/document?lawid=322AC0000000005>

⁵ Guidelines on Respecting Human Rights in Responsible Supply Chains. (2022). The Inter-Ministerial Committee on Policy Promotion for the Implementation of Japan's National Action Plan on Business and Human Rights. https://www.meti.go.jp/english/policy/economy/biz_human_rights/1004_001.pdf

⁶ 公共調達における人権配慮について. (2023). ビジネスと人権に関する行動計画の実施に係る関係府省庁施策推進・連絡会議. https://www.cas.go.jp/jp/seisaku/business_jinken/dai7/siryoku4.pdf



HRN is currently advocating for legislating mandating HRDD in Japan and is lobbying related ministries (the Ministry of Economy, Trade and Industry; the Ministry of Foreign Affairs; the Ministry of Justice; the Ministry of Health, Labour and Welfare; and Ministry of Agriculture, Forestry and Fisheries) and members of the Diet. However, discussions on which ministry should oversee the law's implementation have been met with hesitant responses from all relevant ministries, and there have been calls from members of the Diet for the need for a Minister for Human Rights to coordinate relevant ministries.

Therefore, to effectively formulate and implement various human rights policies that are needed in society, not only in the field of business and human rights but also in other areas stipulated in the National Action Plan, it is necessary to establish a post within the government (such as within the Cabinet Office) with its own budget and staffing to integrate and lead on Japan's human rights policies in addition to a National Human Rights Institution independent of the government. Consequently, there is a call for the Minister for Human Rights to host the Inter-Ministerial Committee for Japan's National Action Plan on Business and Human Rights, fostering collaborative efforts among the relevant ministries towards realizing human rights policies.

3) Provision of Country Human Rights Reports in Japanese

Recognizing the need for greater transparency and accountability in addressing human rights violations worldwide, we propose:

The Ministry of Foreign Affairs(MOFA) publishes human rights reports in Japanese to provide corporations with essential information on human rights situations in countries where they operate or plan to expand. This could be an important resource for companies to assess risks, ensure compliance, conduct due diligence, meet stakeholder expectations, and advocate for human rights globally.

Drawing inspiration from existing models like the U.S. Department of State's Country Reports on Human Rights Practices⁷ and Human Rights Watch's World Reports,⁸ the reports could play a crucial role in promoting human rights, fostering dialogue, and holding governments accountable for their actions.

The reports would also offer valuable insights to guide corporate decision-making for companies in Japan with information already available from public sources.

The Liberal Democratic Party's (LDP) "Project Team for Reviewing the Country's Human Rights Diplomacy" has published a statement for the "Establishment of an Environment for Companies to Proactively Engage in Human Rights Due Diligence (HRDD)"⁹ to identify, prevent, and mitigate human rights risks associated with economic activities. In the recommendations, there is a section that proposes the need to "Provide information tools that enable companies to identify countries and sectors with particularly high human rights risks." They state that "Since there are

⁷ Country Reports on Human Rights Practices - United States Department of State. (2017). United States Department of State.

<https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>

⁸ Human Rights Watch. (2023). World Report 2024 | Human Rights Watch.

<https://www.hrw.org/world-report/2024>

⁹わが国の人権外交のあり方検討プロジェクトチーム 第二次提言 ～「ビジネスと人権」に関するわが国のあり方～. (2022). 自由民主党政務調査会.

https://storage2.jimin.jp/pdf/news/information/202718_1.pdf



already several resources created by international organizations and private institutions published in English, concrete measures should be considered, including budgetary measures to utilize these resources in Japanese.”

This report will be important for several reasons:

Due Diligence: HRDD is a key component of corporate responsibility. Country human rights reports serve as a source of information for conducting thorough due diligence assessments, identifying risks, and taking appropriate actions to prevent or mitigate adverse impacts.

Risk Assessment: These reports could provide valuable insights into the human rights situation in countries where companies operate or source their products. By understanding the human rights landscape, companies can assess potential risks to their operations, value chains, and reputation.

Compliance: Companies are increasingly expected to respect human rights as outlined in international standards such as the UN Guiding Principles on Business and Human Rights (UNGPs).

Stakeholder Expectations: Investors, customers, employees, and other stakeholders increasingly expect companies to respect human rights throughout their operations and supply chains. By staying informed about human rights conditions in various countries, companies can respond to stakeholder expectations more effectively.

Sustainable Operations: Respecting human rights is not only a legal and ethical imperative but also contributes to long-term business sustainability. Country human rights reports help companies identify opportunities to promote human rights, foster social stability, and build stronger relationships with local communities.

In conclusion, the publication of human rights reports in Japanese by the MOFA stands as a pivotal step towards fostering corporate accountability, promoting dialogue, and safeguarding human rights globally, thereby enhancing the integrity and sustainability of business operations in Japan and beyond.



4) Issues in the Revision of the Technical Intern Training Program

In February 2024, the Japanese government made a significant decision to amend the Technical Intern Training Program, officially titled "Regarding the Government's Response Based on the Final Report of the Advisory Panel of Experts on the Ideal Form of the Technical Intern Training Program and the Specified Skilled Worker System." Based on this policy, revisions to the Technical Intern Training Program, the Specific Skills System, and the Permanent Residency System were considered, and in March of the same year, a bill proposing amendments to the Immigration Control and Refugee Recognition Act, known as "A Bill to Amend Some of the Immigration Control and Refugee Recognition Act and the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees", was submitted to the Diet.¹⁰

In this bill, the Technical Intern Training Program is to be abolished, and a new " *Ikusei Shuro* ' (training work)"¹¹ system is to be introduced. The Technical Intern Training Program has faced criticism for primarily serving as a means to secure labor for domestic industries, diverging significantly from its intended purpose of international contribution through human resource development. In response, the program is being phased out under the notion of "progressive resolution" and will be replaced with a new system aimed at both securing talent domestically within Japan and fulfilling its original purpose of human resource development.

However, the *Ikusei Shuro* System fails to overcome several problems of the previous Technical Intern Training Program.

Firstly, under the Technical Intern Training Program, interns are not allowed freedom of transfer, meaning they cannot change workplaces. This has led to numerous human rights violations such as unpaid overtime and harassment, as interns cannot speak out against illegal labor practices for fear of forced repatriation against their will.¹²

¹⁰ Overview of the Amended Bill. (2024). The Ministry of Justice.

<https://www.moj.go.jp/isa/content/001415280.pdf>

The Bill. (2024). Immigration Services Agency. https://www.moj.go.jp/isa/05_00042.html

¹¹ Kazumichi Kubota. (2024). Cabinet approves replacement plan for foreign intern trainee program.

<https://www.asahi.com/ajw/articles/15199599>

¹² 外国人労働者の権利が制限されない受入れ制度の創設を求める声明. (2024). Labour Lawyers Association of Japan.

<https://roudou-bengodan.org/proposal/%E5%A4%96%E5%9B%BD%E4%BA%BA%E5%8A%B4%E5%83%8D%E8%80%85%E3%81%AE%E6%A8%A9%E5%88%A9%E3%81%8C%E5%88%B6%E9%99%90%E3%81%95%E3%82%8C%E3%81%AA%E3%81%84%E5%8F%97%E5%85%A5%E3%82%8C%E5%88%B6%E5%BA%A6%E3%81%AE/>



In this regard, under the *Ikusei Shuro* System, unlike the Technical Intern Training Program, two significant changes are proposed. Firstly, transfers are permitted under certain unavoidable circumstances. Secondly, transfers based on the intern's own intentions are allowed under specific conditions (Article 9-2, Clause 4 of the proposed law). However, regarding the aforementioned first point, the criteria for "unavoidable circumstances" are vague, and there are concerns regarding the independence and promptness of the third-party organization responsible for determining the applicability of such circumstances, the Organization for *Ikusei Shuro* (currently the Organization for Technical Intern Training, OTIT). Additionally, concerning the second point, since the *Ikusei Shuro* System primarily aims at human resource development, it is emphasized that "continuous work at a single hosting institution throughout the three-year period is considered desirable." Consequently, transfers are considered exceptions, and it may be permissible to restrict transfers for the entire three-year period in principle. This could perpetuate the current situation where workers are unable to voice their concerns due to the risk of not being allowed to transfer.

Secondly, in the Technical Intern Training Program, private organizations are involved in the process of sending and receiving interns, and these organizations sometimes function as unscrupulous brokers, leading to the exploitation of interns. In the *Ikusei Shuro* System, private organizations are not explicitly excluded from involvement in the sending and receiving process (Article 9, Clause 11 of the proposed law). Furthermore, government policy stipulates that mechanisms should be introduced to ensure that fees are not unreasonably high and that such fees are appropriately shared between the receiving institution and the foreign worker. This implicitly permits workers to pay fees to both sending and receiving institutions. However, charging fees to workers in private employment placement is prohibited by ILO Convention No. 181. Additionally, the ILO's "General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs" published in 2019 require that businesses do not pass recruitment fees or related costs onto workers. Therefore, private organizations should not be involved in the reception of workers in the *Ikusei Shuro* System.

Thirdly, the Technical Intern Training Program does not allow interns to bring their families when they come to Japan. Consequently, interns are forced to choose between terminating pregnancies or returning home, leading to tragic incidents such as interns abandoning infants born in Japan and facing criminal charges. The *Ikusei Shuro* System maintains the same restriction on family accompaniment, where family members are not allowed to accompany the worker (listed in Appendix I, Section 4 of the proposed law). To be eligible for family accompaniment, individuals would need to obtain a Specified Skilled Worker (ii) residency status. If, hypothetically, eight years of employment (three years in the *Ikusei Shuro* System and five years in the Specified Skilled Worker (i) System) were required for this status, it could lead to the breakdown of family relationships. This would particularly affect children's rights, violating the principle of family unity (International Covenant on Civil and Political Rights, Articles 17 and 23; Convention on the Rights of the Child, Article 3). While Japan is not a signatory, such conditions could potentially conflict with Article 44 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which emphasizes the protection of migrant workers' families and their right to live together.

Therefore, a fundamental review of the *Ikusei Shuro* System is essential to align it with international human rights standards and address these issues.



5) Issues with the National Contact Point (NCP)

The Japan NCP is an Interagency NCP that includes representatives from three ministries within the government. The Japan NCP Committee, an advisory body for discussions on the dissemination and implementation of the Code of Conduct, is composed of three Japanese ministries, *Keidanren* (Japan Business Federation), and *Rengo* (Japanese Trade Union Confederation). None of these include civil society organizations.

The OECD Due Diligence Guidance for Responsible Business Conduct (2018) also lists community-level communities, civil society organizations, human rights defenders, and consumers as stakeholders, raising questions about the inclusiveness of the current NCP Committee. OECD Watch recommends that NCPs include independent experts selected through an open, transparent and impartial process or ensure proportionate representation of ministries as well as representatives from business associations, trade unions and/or NGOs (Multipartite NCPs). These NCPs should be less prone to bias with the involvement of multiple stakeholder groups with different interests.¹³

According to the Ministry of Foreign Affairs, in the 23 years since its establishment in 2000, a total of 15 specific instances were submitted to NCP Japan; considering that the Japan Business and Human Rights Dialogue and Relief (JaCER), established in 2022, had received over 70 cases in 2 years,¹⁴ the number of submissions to NCP Japan is not in line with the reality of the situation. This trend is common across all NCPs, with a total of only 41 specific instances received in 2022¹⁵ by 51 NCPs globally. The role of NCPs to sustain efforts to make all stakeholders aware of the OECD Guidelines and Due Diligence Guidance and to make NCPs visible are not being fully fulfilled.

According to the OECD, the development of a Promotional Plan is a best practice to identify their context-specific priority areas and allocate resources efficiently.¹⁶ Japan has not yet developed the plan which has already been developed in many countries. In addition, in terms of the promotion of OECD guidelines, NCP Japan did not make an effort to promote targeting NGOs in 2022.¹⁷ In the UK, which received the largest number of specific instances in 2022 (59 cases),¹⁸ 12 events were organized for stakeholders, including civil society organizations with a promotional plan.¹⁹ Japan NPC hosted zero events. Considering that NCP Japan has 11 staff members²⁰ which is the largest number among all NCPs, it is expected that the promotional plan will be formulated as soon as possible to strengthen public awareness activities.

¹³ Remedy Remains Rare. (2015). OECD Watch.

<https://www.oecdwatch.org/wp-content/uploads/sites/8/2015/06/Remedy-Remains-Rare.pdf>

¹⁴ Grievance list. (2024). JaCER. <https://jacer-bhr.org/data/media/List20240329JPN.pdf>

¹⁵ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>

¹⁶ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>

¹⁷ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>

¹⁸ Database of specific instances. (accessed 19 April 2024). OECD.

<https://mneguidelines.oecd.org/database/>

¹⁹ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>

²⁰ OECD (2023), Annual report on the Activity of National Contact Points for Responsible Business Conduct 2022, <https://mneguidelines.oecd.org/annual-report-of-NCPs-for-RBC-2022.pdf>



NCPs are also problematic in terms of high standards of proof. NCPs have a high burden of proof at the initial assessment phase, and many complainants are rejected due to insufficient evidence or a breach of the OECD Guidelines. Additionally, 70% of the outcomes of specific instances concluded in 2022 did not reach an agreement, 44% of those due to refusals of engagement. Of all thirteen specific instances completed in Japan, three were rejected and eight were concluded without agreement. There was only one case that was fully resolved by the NCP Japan.²¹ This indicates that the NCP is not functioning as an effective remedy for complainants.

NCP Japan should not require excessively high standards of proof. It should make efforts for companies to engage more in the process when allegations are brought up. Moreover, in cases where human rights violations are reasonably suspected, NCP Japan should make strong recommendations to companies in its final statement.

For more information please contact:
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²¹ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. (2024). MOFA. <https://www.mofa.go.jp/mofaj/gaiko/csr/housin.html>