



Working Group on the
National Action Plan
(NAP) on Business and
Human Rights

**Second Letter of Request and
“Stakeholder Common Request (2nd)”
(Tentative translation)**

Second Letter of Request

TO:

The Inter-Ministerial Committee on Japan's NAP on Business and Human Rights

FROM:

Working Group on the NAP on Business and Human Rights

All Stakeholder Members

2 June 2020

The stakeholders of the Working Group on the National Action Plan on Business and Human Rights (NAP) submitted a Letter of Request (First Letter of Request) to the government on 21 November 2019. The stakeholders believe that the government draft of the NAP ("Draft NAP") published for the public comment procedure on 17 February 2020 did not fully reflect the First Letter of Request and thus there should be further discussion on each request and the reasons for the decisions.

Expressing their opinion on the Draft NAP, many stakeholders shared the view of the importance of ensuring transparency and effectiveness of the process of implementation, monitoring, and updating the NAP. Discussions were held to make these points reality.

Furthermore, the COVID-19 pandemic is having an enormous impact on the economic and social activities of all people as described below in this letter. Concerns have been expressed about the adverse business-related impact on human rights caused by the policy response to the crisis, particularly those for anti-pandemic measures. In that sense, the COVID-19 crisis highlights the significant impact on human rights that can be related to business activities and the relevancy and importance of the United Nations Guiding Principles (UNGPs), including its standards. Further discussion is needed for the NAP to be more relevant and more effective in response to the COVID-19 crisis. Solutions need to incorporate how to prevent, mitigate, and remedy adverse human rights impacts, especially those against the vulnerable.

We request that the government response reflects at least the minimum consensus of the stakeholders ("**Stakeholder Common Request**") in NAP in a meaningful and concrete manner and incorporate these requests with an appropriate mechanism to ensure they happen.

We also ask that this second letter of request, including the Stakeholder Common Request, be put on the agendas of the 6th session of the working group meeting, the forthcoming advisory committee meeting and the meetings thereafter. It should be distributed at the meetings and is to be made public in a timely manner. Additionally, we request that stakeholders' opinions that are additional to the Stakeholder Common Request, the views shared by the Advisory Committee member in its second meeting, and the opinions received through the public comments procedure are to be discussed within the NAP formulation process. A government's explanation of the judgment, whether to adopt or reject, should also be discussed, providing the reasoning used to reach the judgement.

Stakeholder Common Request (2nd)

1. Reflect Stakeholder Common Request in the First Letter of Request

While the Stakeholder Common Request submitted to the government last year represented a minimum consensus of the Stakeholders and should have been a prerequisite of the NAP, they are not adequately reflected in the draft NAP. The Stakeholders unanimously request that the government prepare a correspondence table clarifying the extent to which the draft NAP reflects the Stakeholder Common Request in the First Letter of Request. They should also discuss whether each request should be more precisely reflected in the NAP with reasons, while considering how to reflect the opinions given by the members of the Advisory Committee in its second meeting as well as the comments received through the public comments procedure.¹

2. Ensure stakeholder involvement within the system of NAP implementation, monitoring, and update

In order to secure the credibility of the NAP and effectively achieve its objectives, the Stakeholders unanimously request that the NAP include a system for implementation, monitoring and update of the NAP that is transparent, inclusive and effective, based on the following elements – See Annex 1, a model system of implementation, monitoring, and update of the NAP.

A. Set up a system to go through the PDCA cycle for implementation and monitoring:

- a. Identify a governmental entity or set up an ad-hoc committee for promoting policy coherency and coordinating cross-ministerial collaboration. Consider setting up a committee to play a leading role within a specific ministry such as the Cabinet Office
- b. Identify a ministry or agency for each action outlined in the NAP. Ensure the participation of departments within the ministry that are dealing with domestic matters and that are directly in charge of human rights protection and the promotion of respect by business as required by the UNGPs
- c. Define and document specific measures of action, deadlines, key performance indicators (KPIs), etc. for each specific action outlined in the NAP (based on SMART indicators – Specific, Measurable, Achievable, Relevant, and Time-bound)
- d. Formulate KPIs for each action outlined as well as for impact assessment of the NAP as a whole
- e. Seek cooperation and collaboration with relevant organisations specifically for the NAP implementation (e.g., government agencies, think tanks, domestic/international employers' and workers' organizations, NGOs/NPOs, relevant international organizations). Identify the role of relevant organizations mandated to engage with Japanese business overseas, including the local overseas offices of government-related agencies

¹ See [ILO Background Paper](#) "Analysis of the instruments relevant to the NAP formulation: Summary of references by major issue categories", which includes Stakeholder Common Request and related guidelines of UNGPs and UNWG Guidance on NAP

- f. Hold meetings on a regular basis when the government reports on the progress relating to NAP implementation to stakeholders. Prepare progress reports by the government
- g. Secure financial resources for NAP implementation and monitoring

B. Ensure transparency and inclusiveness throughout the process

- a. Set up a multi-stakeholder monitoring committee (possibly a dual committee system - working group / advisory committee)
- b. Adopt hearing procedures to receive voices from individuals and supporting organizations, including socially vulnerable groups at high risk of being adversely impacted

C. Impact assessment / update process

- a. Prepare government reports summarizing the results of implementation and monitoring
- b. Assess the impact of the NAP and identify the governance gaps between existing policies and remaining adverse human rights impact
- c. Engage with Stakeholders in the NAP and update the process based on the above assessment. Reflect the opinions of the Stakeholders

3. Incorporate the impact of the COVID-19 crisis on human rights and its response into the NAP

The COVID-19 pandemic is posing an enormous impact on the economic and social activities of all people. Given that the current policy response to the crisis, particularly those for anti-pandemic measures, has caused substantial hardship for business continuity and for maintaining a sustainable supply chain, this calls for responsible conduct and mutual cooperation among all the actors supporting the society and the economy of the country, especially the government.

The human rights impacts of COVID-19, either domestic or overseas, include: increased unemployment, deteriorated working conditions, expanded hazardous labour (including child labour, forced labour and human trafficking), discriminatory treatment of non-regular and foreign workers, a strong adverse impact on the informal sector, as well as privacy intrusion due to digital surveillance. There have been and continues to be adverse impacts at home, especially against women and children due to unemployment and deteriorating working conditions.

On the other hand, there have been reports of companies taking action to overcome challenges brought on by the crisis and lifting vulnerable people out of difficult situations. The current situation, where human rights are under threat, calls more urgently than ever for government policy measures that enable business to appropriately address the adverse human rights impact and maximise the positive impact. This is critical not only for fulfilling the state's obligation to protect human rights, but also to adapt to the new norms brought about by the crisis while building a resilient economy and society, and realizing the benefit of “build back better”, all of which constitute the foundation for achieving Sustainable Development Goals (SDGs) while leaving no one behind. In this sense, COVID-19 is a challenge for business as well as human rights related to individual dignity. The UN Working Group also pointed out the relevance of

UNGPs in dealing with COVID-19, emphasising that governments and business need to take a “sustainable people-centred” approach to fighting COVID-19.²

We request the government reaffirm the rationale of the NAP formulation in the context of COVID-19’s socio-economic impact, domestically and globally. We also request that the government provide a practical policy in the NAP on how to utilise and implement the UNGPs, taking into account the challenges presented by COVID-19, and implement the NAP in line with this policy. This policy is needed for everyone in order for the NAP to be implemented and promoted with the understanding and cooperation of society as a whole. Japan's NAP should promote responsible business conduct, maximise positive impacts of business on human rights, and convey the message that our world, because it has experienced COVID-19, will act toward sustainable development. To this end, we request the government be more creative in drafting Japan’s NAP, which will possibly be the first NAP in the world that has been formulated in the face of a pandemic crisis.

Annex

1. A model procedure for NAP implementation / monitoring / update
2. Excerpt from draft NAP and stakeholder opinions
3. Excerpts from UNWG Guidance on NAP

² [Statement by the UN Working Group on Business and Human Rights](#) - Ensuring that business respects human rights during the Covid-19 crisis and beyond: The relevance of the UN Guiding Principles on Business and Human Rights