

Stakeholder Joint Comments

On the Publication of the Business and Human Rights National Action Plan

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

9 November 2020

On 16th October 2020, the Japan's National Action Plan on Business and Human Rights ("**NAP**") was released. All stakeholder members ("**SHs**") of the Working Group on the NAP would like to express our respect for the efforts in preparing the NAP by the relevant government ministries and agencies, particularly the Human Rights and Humanitarian Affairs Division, Foreign Policy Bureau, Ministry of Foreign Affairs. We welcome the clarification of the linkage between the existing policies and business and human rights in the NAP and the identification of the ministries and agencies in charge of the "Actions to be implemented", as it would be an important entry point for the government's promotion of measures on business and human rights with maintaining policy coherency.

The NAP is an important policy document based on the UN Guiding Principles to help states meet their obligations to protect human rights, encourage responsible business conduct to prevent, mitigate and remedy adverse impacts on human rights, and provide access to remedy. It should go beyond organizing existing relevant policies; it needs to be able to continuously assess the specific adverse human rights impacts of domestic and cross-border corporate activities, analyse gaps in existing measures, and effectively address them.

To that end, SHs have had a set of mutual dialogue to discuss what should be included in the NAP, and submitted to the government two rounds of common requests that formed a minimum consensus among stakeholders ("**Stakeholder Common Requests**"), requiring that the requests to be reflected in the NAPs ([Stakeholder Common Request No. 1](#) and [No. 2](#)). As shown in the attached document ("Status of reflection of the first and second Stakeholder Common Requests in the "Measures" section of the NAP), SHs regret that the Stakeholder Common Requests have not fully reflected in their NAPs, while recognising a partial reflect. A common understanding of the challenges need to be developed between relevant government ministries and SHs.

The formulation of the NAP is just a starting point for governmental actions. In implementing specific actions based on the NAP, relevant ministries and agencies should work together to take consistent measures as a country based on the assessment and analysis of adverse impacts and

governance gaps. From these perspectives, it is important to ensure a transparent, inclusive and effective implementation and monitoring process of the NAP.

In this regard, the NAP states that "a mechanism will be set up for continuous dialogue based on a relationship of trust between relevant ministries/agencies and stakeholders ¹ (including opportunities to review the implementation of the NAP) promptly after the finalisation of the NAP". However, the details of this mechanism remain unclear. The NAP also states that the Inter-Ministerial Committee will promptly start discussion on (1) an effective and sustainable follow-up mechanism, (2) information sharing that leads to the introduction of corporate human rights due diligence, and (3) review of the progress of corporate human rights due diligence. These process should be developed and implemented based on a meaningful dialogue with stakeholders.

Therefore, SHs request the government to systematise the measure referred in the Stakeholder Common Request 2, "Establishing a system for stakeholder-involved implementation, monitoring and revision of the NAP." SHs have been promoting mutual understanding through dialogue within and between respective organizations in the process of developing the NAP to date. What is unique compared to the NAP development process over the world is that, in Japan SHs with different views and positions reached out an agreement to propose and publish the common request based on the common recognition of the need to promote measures on "Business and Human Rights". Being fully attentive of the effect of this initiative, SHs will continue our efforts to promote an open dialogue among ourselves.

Given that the spread of the COVID-19 pandemic has changed and may continue to change the impact of corporate activities on human rights, it becomes rather important in implementing the NAP that the government's policy response to be developed through ongoing dialogue with stakeholders.

All things considered, SHs continue to request the government to reflect the matters needed to substantially and effectively implement UNGPs as referred in the Stakeholder Common Requests in relation to the process of implementing, monitoring and revising the NAP, and to set up a more concrete, open and inclusive system for stakeholder involvement in these processes. Recognizing that the NAP is a document of paramount importance for the government to take concrete actions in accordance with the UNGPs, SHs also request to actively, continuously and effectively raise awareness of UNGPs and the NAP within your government and society at large.

Upon the publication of the NAP, we look forward to seeing the government's implementation of a coherent policy on "Business and Human Rights" and the prompt initiation of a monitoring system that ensures the stakeholder involvement.

¹ For the purposes of this document, "Stakeholders" refers to a wider range of stakeholders involving business and human rights, not necessarily limited to the stakeholder members of the Working Group on the NAP (SHs).

Attachment

Reflection of the Stakeholder Common Request No. 1 and 2
In the "Measures" of the NAP on Business and Human Rights

Working Group on the NAP on Business and Human Rights
All Stakeholder Members

Requested items in the Stakeholder Common Request No.1	Reflection ²	Remarks
■ Non-financial Reporting		
[1] Formulate guidance on non-financial reporting of human rights DD, etc.	×	N/A.
[2] Clarify the linkage with the Guidance for Collaborative Value Creation	×	N/A.
[3] Establish consultation desks that offer guidance and good practices	×	N/A.
[4] Establish portal sites that offer guidance and good practices	×	N/A.
[5] Continuously discuss mandatory reporting in consideration of the size of the enterprises	×	N/A.
■ Foreign Workers		
Foreign Workers: Technical Intern Training Program		
[6] Invest human and financial resources to strengthen the function of the Organization for Technical Intern Training, particularly the labour inspectorate	△	There is no direct reflection in the NAP, while there are relevant statements in the measures No. 137-142 and 165-169 of the Comprehensive Measures.
[7] Take measures within bilateral government agreements to eliminate the obligation owed by workers	△	There is no direct reflection in the NAP, while there are relevant statements in the measures No. 29, 33 – 38, etc. of the Comprehensive Measures.
[8] Raise awareness of foreign technical interns on the measures taken in accordance with the "Guideline concerning the Improvement of Employment Management", etc.	△	There is no direct reflection in the NAP, while there are relevant statements in the PT Report pp 61-63.
[9] Raise awareness of and provide training for the implementing organizations on the measures taken in accordance with "Guideline concerning the Improvement of Employment Management", etc.	○	The NAP includes relevant statements.
[10] Provide assistance to implementing organizations that are SMEs	△	There is no direct reflection in the NAP. There needs to be an explicit statement in the NAP to include SMEs in implementing the measures No. 133, 139, 147, 149, etc. of the Comprehensive Measures.
Foreign Workers: Specified Skilled Workers		
[11] Invest human and financial resources to ensure rigorous enforcement of applicable laws and regulations	△	There is no direct reflection in the NAP, while there are relevant statements in the measures No. 15-28 in the Comprehensive Measures.
[12] Invest human and financial resources to fulfill the function of labour inspectorate	△	
[13] Guarantee the freedom to choose own workplace	×	N/A.
[14] Take measures within bilateral government agreements to eliminate the obligation owed by workers	△	There is no direct reflection in the NAP, while there are relevant statements in the measures No. 30 and 33 – 38, etc. of the Comprehensive Measures.
[15] Raise awareness and support to related companies	○	The NAP includes relevant statements.
Foreign Workers: other policy measures for the protection of the rights of foreign nationals		
[16] Promote supply chain management, including human rights DD	△	The NAP states, "raise awareness of the NAP and human rights DD among business through industry associations, etc." However, it is unclear whether this is sufficient to promote supply chain management in relation with foreign workers.
[17] Effective consultation service: Provide consultation in one's mother language	○	The NAP includes relevant statements.
[18] Effective consultation service: Cooperate with legal experts	×	N/A.
Foreign Workers: realizing a society of harmonious coexistence		
[19] Promote "Comprehensive Measures for the Acceptance and Coexistence of Foreign Human Resources"	○	The NAP includes relevant statements.
[20] Disseminate among society the "Comprehensive Measures for the Acceptance and Coexistence of Foreign Human Resources"	△	There is no direct reflection in the NAP. Measures No. 4-6 of the Comprehensive Measures do not specifically stipulate the dissemination of Comprehensive Measures.
■ Human Rights Due Diligence and Supply Chains		
[21] Develop human rights DD guidelines based on the OECD DD guidance	×	N/A.
[22] Provide tools to promote the use of human rights DD guidelines	×	N/A.
[23] Develop human rights DD guidelines specialized in forced labour	×	N/A.
[24] Develop human rights DD guidelines specialized in child labour	×	N/A.
[25] Develop human rights DD guidelines specialized in human trafficking	×	N/A.

² "○", "△" and "×" in the "Reflections" column can be translated "Fully-reflected", "Partially reflected or weak", and "Not-reflected".

[26] Promote and assist corporate initiatives through collecting and disseminating good practices in relation with human rights DD	△	Although the NAP includes in the "Human Rights Education and Awareness" section, a measure related to "recognition awards for companies that address social issues, including respect for human rights", it is not a collection of good practices by the government. There is no guarantee that the recognition awards will become a support or a promotion of from the perspective of "business and human rights," including human rights DD initiatives, stakeholder dialogue, labor-management dialogue, stakeholder collaboration, etc.
[27] Promote and assist corporate initiatives through collecting and disseminating good practices in relation with stakeholder dialogue between companies and SHs	△	
[28] Promote and assist corporate initiatives through collecting and disseminating good practices in relation with labour-management dialogue and SH engagement/collaboration based on the ILO MNE Declaration	△	
[29] Engage in dialogue through bilateral or multilateral cooperative frameworks between governments in order to address issues in overseas countries identified through the corporate human rights DD	△	Each measures outlined in "promoting and expanding 'Business and Human Rights' in the international arena" within the NAP does not include specific measures to solve the challenges faced overseas.
[30] Support for the development of institutions to resolve the issues identified in the Human Rights DD	△	Although the NAP includes the provision on "support for the development of legal systems in developing countries," there is no specific measures to solve the challenges faced overseas.
[31] Develop a guidebook for SMEs on human rights DD	×	N/A.
[32] Collect and disseminate good practices of SMEs	×	N/A.
[33] Provide sufficient information and necessary support for SMEs	△	The NAP includes measures related to "providing information to SMEs through a portal site" and "carrying out seminars for SMEs." However, it is unclear whether these can be considered "necessary support."
[34] Establish a consultation desk for human rights DD and supply chain initiatives	×	N/A.
[35] Support expert referral services for human rights DD and supply chain initiatives	×	N/A.
[36] Ensure policy coherency through cooperation between diplomatic missions and relevant ministries and agencies	△	While "policy coherence" is provided in Chapter 1 of the NAP, there are no specific measures to ensure that.
[37] Conduct awareness raising and dissemination of the ILO MNE Declaration and the OECD MNE Guidelines	△	The NAP includes measures to "continue to disseminate" the ILO MNE Declaration and the OECD MNE Guidelines. However, it is unclear whether such continuation alone is sufficient.
■ Public Procurement		
[38] Consider a scoring system that evaluate positively the corporate initiatives to respect human rights	×	N/A.
[39] Implement awareness raising and training for public officials involved in public procurement	△	The NAP includes in the "Human Rights Education and Awareness" section, a description related to "consider the treatment of the theme of 'Business and Human Rights' in the lectures for public officials to be held at relevant government agencies." However, it does not clearly specify that public officials involved in public procurement are the target of the lectures, and only states that the measure will be "considered".
[40] Improve grievance mechanism under public procurement system from the perspective of ensuring access to effective remedy	△	The NAP includes "enforcing procurement rules that may be relevant to 'business and human rights' including grievance mechanisms". However, it is unclear whether it covers improvements in terms of ensuring access to effective remedy.
[41] Provide support for public procurement in local governments to ensure that measures are taken in accordance with the abovementioned policies	×	N/A.
■ Access to Remedy		
[42] Strengthen and facilitate collaboration among the three ministries responsible for the NCP	○	The NAP includes relevant statements.
[43] Guarantee fairness and neutrality of the NCP to ensure the trust by all parties	△	While the NAP states "while striving to ensure impartiality and neutrality," there is no description of a gap analysis in the operation of the existing system, and it is unclear whether this is sufficient to ensure trust from the parties.
[44] Conduct public relations activities on the functions and processes of the NCP for the purpose of enhancing the awareness and understanding of the system	△	While the NAP states "continue public relations activities," there is no description of a gap analysis in awareness and understanding of the public, and it is unclear whether "continue" public relations is sufficient.
[45] Make efforts to recognize the private sector initiatives for grievance	○	The NAP includes relevant statements.
[46] Support, as necessary, for the private sector initiatives for grievance	△	While the NAP includes the measures to "support and promote private initiatives provided by various stakeholders by means of public awareness, etc.," it is unclear whether this is necessary and sufficient support,

Requested items in the Stakeholder Common Request No.2	Reflection	Remarks
[47] Identify a governmental entity or set up a committee for promoting policy coherency and coordination across ministries and agencies	△	While the NAP includes the establishment of the inter-ministerial committee, the purpose, role and composition of the committee remain unidentified in the document.
[48] Identify a ministry or agency responsible for each action outlined in the NAP	○	The NAP includes relevant statements.
[49] Ensure participation of departments within the ministries directly responsible for human rights protection and the promotion of respect by business as required by the UNGPs	△	The domestic departments within the ministries in charge have not been identified.
[50] Define and document specific measures of action, deadlines, key performance indicators (KPIs), etc., for each action outlined in the NAP	△	While there is an identification of the measures of action, deadlines and KPIs, etc. have not been specified.
[51] Formulate KPIs for impact assessment of the NAP as a whole	×	N/A.

[52] Seek collaboration with relevant organizations specifically for the NAP implementation (e.g. government agencies, think tanks, domestic/international employers' and workers' organizations, NGOs/NPOs, relevant international organizations)	△	The NAP includes relevant actions, but they are limited.
[53] Hold meetings on a regular basis where the government reports on the NAP implementation, and Prepare reports by the government	△	The NAP states that the implementation status will be reviewed annually at the inter-ministerial committee, but it does not include the report preparation.
[54] Secure financial resources for the NAP implementation and monitoring	△	The NAP remains unclear on this point.
[55] Set up a multi-stakeholder committee for monitoring	○	The NAP includes relevant statements.
[56] Adopt hearing procedures to receive voices from individuals and supporting organizations, including socially vulnerable groups at high risk of being adversely impacted	×	N/A.
[57] Prepare government reports summarizing the results of implementation and monitoring	×	N/A.
[58] Conduct an impact assessment of the NAP itself, as well as an analysis of the governance gap between existing policies and remaining adverse human rights impact	×	There is no relevant statements. The remarks by the government in the Advisory Committee touched upon this point, but not described in the NAP. It is not included in the response to public comments ("Views").
[59] Engage with Stakeholders and reflect their opinions through the NAP update process	○	The NAP includes relevant statements.
[60] Adequately consider the challenges posed by COVID-19	△	The challenges are described only briefly.
[61] Provide a practical policy for addressing the challenges posed by COVID-19 based on UNGPs	△	The challenges are described only briefly, and the practical policy for addressing the challenges is not reflected in a concrete manner.

※ "○", "△" and "×" in the center column titled "Reflections" are provisional judgement and can be diversely interpreted. Therefore further dialogue between the government and SHs is needed to reach common understandings.

※ The "△" in the "Reflection" column represents the case where the relevant statement can be found in separate documents referred in the NAP but not directly mentioned in the NAP itself, and the case where it is unclear whether the NAP meets the requirements of the stakeholder's request since there is no direct mention.

※ For an accurate understanding, each letter of "Stakeholder Common Request" (21 November 2019 and 2 June 2020) and the "NAP" should be checked.

※ Abbreviations

- "Comprehensive Measures": Comprehensive Measures for the Acceptance and Coexistence of Foreign Human Resources (Revised version, 2020)
- "PT Report": Report of Investigation and Review, Project Team on the Operation of the Technical Intern Training Program, Ministry of Justice (28 March 2019)
- 'SH' = Stakeholders
- "Human Rights DD" = Human Rights Due Diligence