

Statement by Civil Society
regarding
Japan's National Action Plan on Business and Human Rights

January 23, 2020

Civil Society Platform for Japan's National Action Plan
on Business and Human Rights (BHR-NAP Platform)

1. Introduction

At the 5th Forum on Business and Human Rights in November 2016, the Japanese government announced it would formulate National Action Plan on Business and Human Rights (NAP), and subsequently assigned the Ministry of Foreign Affairs of Japan (MOFA) the central role in gathering the voices of all stakeholders in the process of preparation. In 2018, the government organised a series of meetings to exchange views with invited stakeholders as part of a baseline study on business and human rights, and, it published the 'Baseline Study on Business and Human Rights' in December. In April 2019, the government created the 'Advisory Committee' and 'Working Group' for this process.

The UN Guiding Principles on Business and Human Rights (UNGPs), which all NAPs should be based on, outlines the fundamental three pillar framework: the state duty to protect against human rights abuses by businesses; the corporate responsibility to respect human rights; and access by victims to an effective remedy. BHR-NAP Platform has, together with other stakeholder organisations, participated in the formulation process, so as to ensure that the voice of civil society is at the core of the NAP.

In May 2017 and in November 2018 respectively, we published two statements, 'To the Government of Japan Regarding the National Action Plan on Business and Human Rights' and 'Statement from Civil Society Regarding Japan's National Action Plan on Business and Human Rights'. In those statements, we called on the Japanese government to ensure a meaningful NAP formulation process. We also presented the views of civil society on a wide variety of business and human rights issues, during the public comment period and in meetings held by the Advisory Committee and the Working Group. In brief, we urged the Government of Japan to:

- ① Base the formulation process, including the review and update process, on the Guidance on National Action Plans on Business and Human Rights published by the UN Working Group on Business and Human Rights (UNWG NAP Guidance), to ensure inclusiveness and transparency in accordance with the UNGPs;
- ② Base the principal part of the NAP on international human rights standards and the UNGPs;
- ③ Ensure policy coherence through all relevant ministries, agencies, and local governments by raising awareness of and knowledge about business and human rights issues among representatives of those bodies;
- ④ Ensure that officials responsible for NAP formulation engage in meaningful dialogues with non-governmental stakeholders;

- ⑤ Conduct a meaningful baseline study and ensure that adverse human rights impacts and gaps are exhaustively identified;
- ⑥ Ensure a strong government commitment to address adverse human rights impacts;
- ⑦ Take full account of the views of vulnerable or marginalized individuals and groups, based on the principles of non-discrimination and equality;
- ⑧ Include the necessity of a national human rights institution and a concrete roadmap towards its establishment, in full conformity with UN Paris Principles.

Though we recognise some efforts on the part of the government, BHR-NAP Platform remains gravely concerned that these calls have not sufficiently heeded, over the three year formulation process. Only six months are left until the scheduled publishing of the NAP. We urge the government once again to incorporate the above recommendations into the NAP, both in the formulation process and the update process.

※ The following 'Views on the formulation process of the NAP' consists of quotations from the UNGPs, the UNWG NAP Guidance, and the Sustainable Development Goals (SDGs).

2. Views on the formulation process of the NAP

(1) Base the NAP on the UNGPs

The objective of a NAP is to implement the UNGPs, and to be in conformity with the UNGPs. We call on the government to adhere to the fundamental premise that 'A NAP is properly founded on the UNGPs' in the formulation process and in the update process.

NAPs should specify specific policies with regards to the three pillars in the UNGPs, namely Pillar I: The state duty to protect human rights; Pillar II: The corporate responsibility to respect human rights; and Pillar III: Access to remedy for victims of business-related abuses. NAPs are defined in the UNWG NAP Guidance as an 'evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs)'.

The government has repeatedly stated its commitment to the UNGPs. However various issues remain unaddressed, including the lack of policy coherence, and the lack of a gap analysis, as described below. In order for the NAP and its update process not to violate the above commitment, it is necessary to reaffirm that the NAP should be based on the UNGPs.

In addition, in recognition that the UNGPs' ultimate goal is the realization of a sustainable society where the human rights of every person is respected, the government should state clearly that the 'NAPs must be underpinned by the core human rights principles of non-discrimination and equality' (UNWG NAP Guidance).

◆Relevant Principles in the UNGPs

'These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.' (General Principles)

'These Guiding Principles should be implemented in a non-discriminatory manner, with particular

attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.’ (General Principles)

◆Relevant Parts in the UNWG NAP Guidance

‘First, NAPs need to be founded on the UNGPs. As an instrument to implement the UNGPs, NAPs need to adequately reflect a State’s duties under international human rights law to protect against adverse business-related human rights impacts and provide effective access to remedy. A NAP further needs to promote business respect for human rights including through due diligence processes and corporate measures to allow for access to remedy. Moreover, NAPs must be underpinned by the core human rights principles of non-discrimination and equality.’

‘Consistent with the UNGPs, NAPs must be underpinned by the core human rights principles of non-discrimination and equality. This means that particular attention should be given to identifying and addressing the challenges faced by individuals and groups that may be at heightened risk of becoming vulnerable or marginalized, including by taking into account differential impacts based on gender.’

(2) Ensure inclusiveness and transparency in the NAP process

To this point, the formulation process has not had the required level of inclusiveness or transparency. We call on the government once again to ensure inclusiveness and transparency in the formulation process and the update process.

The issues in the field of business and human rights are relevant to all stakeholders in society, including citizens, consumers, workers, and business enterprises. All these stakeholders will be impacted by the NAP. Therefore, the NAP should be formulated through an inclusive process opened to all of society, with a true multi-stakeholder consultation that will make the NAP both legitimate and effective. In accordance with the principle of inclusiveness, it is necessary to take full account of the views of vulnerable or marginalized individuals and groups, many of whom are likely to receive adverse human rights impacts.

Transparency is essential to ensure inclusiveness. Whilst some stakeholder consultation was held by the government, transparency is far from adequate, including in terms of the government’s accountability for adequate consultation and in terms of responding to comments from the public. In order to ensure that the NAP is effective, transparency over the six months remaining in the formulation process and the update process must be strengthened.

◆Relevant Parts in the UNWG NAP Guidance

‘NAP processes, including NAP development, monitoring and update must be both inclusive and transparent and take the views and needs of individuals or groups who may be impacted and other relevant stakeholders into account. This is central to a rights-compatible approach and the degree to which relevant stakeholders participate in the NAP process will determine, amongst other things, the legitimacy and effectiveness of a NAP.’

(3) Ensure policy coherence through all relevant governmental actors

Policy coherence throughout the current formulation process, including the published documentation regarding the contents of the NAP, is questionable. We call on the government once again to commit to ensuring policy coherence in the formulation of the NAP,

in its update, and in terms of alignment with the SDGs.

We have acknowledges some efforts made by the government. Most ministries and agents have been involved in the formulation process. However, policies and measures elaborated in the NAP do not reach at the level of policy coherence required by the UNGPs. Continuous endeavours to ensure policy coherence across the government departments are required. Policy coherence must also to be emphasised in the implementation process of any policies in the NAP.

Moreover, it is necessary to be fully aware of internationally recognized human rights standards, so as to ensure any policies are based on a common understanding of business and human rights. Policy development and implementation must be in accordance with International Human Rights Standards exemplified by the Universal Declaration of Human Rights, the international covenants on human rights, and the ILO Core Labour Standards.

Furthermore, it is important that the NAP be in alignment with the SDGs, as elaborated in 'Transforming our world: the 2030 Agenda for Sustainable Development'. The government adopted implementation guidelines for the SDGs in December 2019, but it must be recalled that human rights is at the heart of the SDGs. The government should ensure that all ministries and agencies are aware of the importance of the SDGs, so that businesses fulfill their responsibility to respect human rights.

◆Relevant Principles in the UNGPs

'States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.' (Principle 8)

'There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence. Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices – including those responsible for corporate law 11 and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments' human rights obligations.' (Commentary of Principle 8)

◆Relevant Parts in the UNWG NAP Guidance

'Conducting training and capacity building in relation to the UNGPs and the NAP is vital for horizontal policy coherence across all Government entities.'

'Collaboration among different Government branches led by a dedicated entity is crucial for the coherent implementation of specific actions and the NAP as a whole. Government actors should ensure continued cross-departmental collaboration'

◆Relevant Paragraph in the SDGs

'Private business activity, investment and innovation are major drivers of productivity, inclusive economic growth and job creation. We acknowledge the diversity of the private sector, ranging from micro-enterprises to cooperatives to multinationals. We call upon all businesses to apply their creativity and innovation to solving sustainable development challenges. We will foster a dynamic and

well-functioning business sector, e protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard, such as the Guiding Principles on Business and Human Rights¹⁷ and the labour standards of the International Labour Organization, the Convention on the Rights of the Child¹⁸ and key multilateral environmental agreements, for parties to those agreements.’ (Paragraph 67, ‘Transforming our world: the 2030 Agenda for Sustainable Development’)

(4) Ensure the effectiveness of the NAP by conducting a gap analysis

The formulation process has proceeded without conducting a gap analysis, raising major concerns regarding the effectiveness of any NAP to address as to human rights issues adequately. We urge the government to make ensure a full-scale gap analysis, and to stipulate clearly the necessity of a gap analysis during the update process.

In a series of meetings in 2018, the government did attempt to explain the frameworks of relevant policies and measures. However, the effectiveness of such frameworks to address real-world issues was not discussed, and the five priority areas described in ‘Towards the formulation of the NAP on business and human rights in Japan’ were not based upon any gap analysis.

Any policies and measures in the NAP must be based on a recognition of the salient issues and challenges, and must be aimed at addressing those issues in the most effective way. A gap analysis is vital to identify relevant issues from the perspective of business and human rights, and to assess the effectiveness of current policies and measures. If the process continues to proceed without such analysis, the effectiveness of policies and measures is questionable. It also means that the formulation process was not founded on the UNGPs, giving rise to serious questions about the legitimacy of the NAP.

◆ Relevant Principles in the UNGPs

‘In meeting their duty to protect, States should:

(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;’ (Principle 3)

‘The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.’ (Commentary of Principle 3) collaboration’

◆ Relevant Parts in the UNWG NAP Guidance

‘[The section as for Government response] should clarify how the Government currently addresses adverse business-related human rights impacts and outline commitments for further activities.’

‘The planned activities [in the NAP] are the result of the Government’s deliberations on how it plans to address protection gaps identified in steps 6 [identify gaps in State and business implementation of the UNGPs] or 13 [Evaluate impacts of the previous NAP and identify gaps]’

‘NAP updates should take into account changing actual and potential adverse human rights impacts by business, as well as in the international regulatory environment.’

(5) Ensure the regular update process

The UNWG NAP Guidance states that the update process is one of essential criteria in addition to basing the NAP on the UNGPs and the inclusive and transparent processes. While recognising the government acknowledges that the NAP is to be updated, we call on the government to conduct regular update with a full account of necessary factors to the NAP formulation process such as inclusiveness and transparency.

The current speed of changing the society brings the rapid changes on contexts in the field of business and human rights. It also results in new issues in other words. The NAP process is to be continuous efforts rather than one-off events. In this regard, we call on the government to include the following respects in the first NAP in Japan.

- ① The update cycle should be every 3 years. Although it is mentioned in the current discussion that the update cycle is every 5 years, 5 years is too long to make the NAP a 'living document' in response to the fast changing society.
- ② Monitoring is necessary to be a preparation for updating the NAP. The monitoring to be conducted not solely by the government but by multi-stakeholders.
- ③ Monitoring requires indicators. Such indicators are also explicitly stated in the first NAP.
- ④ In the update process as well as the formulation process, analyzing gaps to identify adverse impacts on human rights, identifying priority areas based on the gap analysis, ensuring inclusiveness and transparency in the process, and full consultation with relevant stakeholders are required. If these are difficult to reach at the adequate level in the first NAP, the government should aim to achieve in the update process.

◆Relevant Parts in the UNWG NAP Guidance

'Governments need to strive for cumulative effects and progress by regularly reviewing, measuring the effectiveness of, and updating their NAP. NAP updates should take into account changing actual and potential adverse human rights impacts by business, as well as in the international regulatory environment.'

'In order to ensure continued multi-stakeholder involvement in, and oversight of, NAP implementation, Governments should consider setting up an independent multi-stakeholder monitoring group.'

'Any NAP update should be based on a thorough evaluation of the effectiveness of the previous NAP in regard to its actual impact in relation to preventing, mitigating, and remedying adverse business-related human rights impacts.¹⁰ When measuring progress, evaluators should refer to the performance indicators defined by the Government in the NAP as one of the benchmarks for the evaluation (see annex II).'
