

**Statement from Civil Society  
Regarding Japan's National Action Plan  
on Business and Human Rights**

November 25, 2018

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

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(INDEX)

1	Introduction	2
2	Reflection on the formulation process of the NAP	2
3	Recommendations	4
	【Recommendations from civil society】	
①	People with disability	5
②	LGBT	5
③	Gender	5
④	Racial discrimination	6
⑤	Child labour	6
⑥	Business and child rights	6
⑦	Foreign workers	6
⑧	Hate Speech	7
	【Remedy】	
⑨	Access to remedy (State based)	7
⑩	Access to remedy (Non-State based)	7
	【Other issues】	
⑪	Procurement	8
⑫	Supply chain	8
⑬	Supply chain (Agriculture, forestry, and fisheries)	8
⑭	Small and medium-sized enterprises (SMEs)	8
	Appendix	
	'To the Government of Japan: Regarding National Action Plan on Business and Human Rights' (May 16, 2017)	9

## **1 Introduction**

This statement outlines the views of civil society organisations regarding the National Action Plan on Business and Human Rights (NAP) that the Government of Japan is currently formulating.

The UN Guiding Principles on Business and Human Rights (UNGPs), which all NAPs should be based on, includes 3 pillars: 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. Civil society is recognised as having a crucial role in ensuring that the voice of victims of human rights abuses is at the core of any NAP, and the importance of engagement with civil society (as well as with other interested stakeholders) is stressed repeatedly expressed in the NAP Guidance published by the UN Working Group on Business and Human Rights (UNWG Guidance).

After announcing at the UN Forum on Business and Human Rights in November 2016 that it would prepare a NAP, the Japanese government organised a series of meetings from March to August 2018, to exchange views with invited stakeholders as part of a baseline study on business and human rights. As of November 2018, 10 such meetings have been held. The Civil Society Platform for Japan's National Action Plan on Business and Human Rights (BHR-NAP Platform) has participated in these meetings, together with other stakeholder organisations, in order to present the views of civil society on a wide variety of business and human rights issues.

In this statement, we reiterate our views on those issues, and call on the government to ensure our views are incorporated into the NAP.

## **2 Reflection on the formulation process of the NAP**

In May 2017, we published a statement urging the Japanese government to ensure that the NAP formulation process is based on the UNWG Guidance, in particular that the government should:

- Base the NAP on the UNGPs;
- Ensure inclusiveness and transparency in the formulation process;
- Have meaningful dialogues with non-governmental stakeholders;
- Conduct a meaningful baseline study should be conducted;
- Identify in an exhaustive manner potential and ongoing adverse human rights impacts;
- Express a strong commitment to address adverse human rights impacts; and
- Take full account of the views of vulnerable and/or marginalised individuals and groups on the basis of the principles of non-discrimination and equality.

BHR-NAP Platform remains gravely concerned that these calls were not heeded by the Japanese government. The meetings held by the government did not have the level of transparency or inclusiveness required to be called a true multi-stakeholder consultation. In addition, though we recognise some efforts on the part of the government, the setting of topics for the meetings were done by the government in a unilateral matter, and failed to adequately address the broad range of adverse human rights impacts by businesses.

We trust that the government shares the view expressed in our May 2017 statement that ‘every human person must be protected from human rights abuses by third parties including business’. In this light, we urge the government once again to take the following actions, in accordance with the NAP Guidance.

- Ensure that the NAP is properly founded on the UNGPs;
- Ensure inclusiveness and transparency on the formulation process of the NAP;<sup>1</sup> and
- Ensure meaningful engagement with interested stakeholders, including civil society organisations, with regard to the setting of topics for discussion, the roadmap of the NAP process, and the actual preparation of drafts, and in particular to take into account the following topics for consultations:
  - ① Labour rights issues, including long working hours and harassment at the workplace;
  - ② Discrimination in employment (including in the recruitment process) and occupation, including discrimination on the basis of nationality and discrimination against the burakumin.
  - ③ Issue concerning the rights of consumers, including product safety, privacy rights, discrimination against foreign nationals e.g. in the renting of properties, hate speech and other human rights abuses on the internet, so called ‘fake news’, and sexual exploitation of youths;
  - ④ Adverse impacts on local communities caused by official development projects and private investment, such as land grab and environmental pollution caused by nuclear accidents or other industrial disasters;
  - ⑤ Issue in conflict areas including conflict minerals, arms development, and arms exports.
- Make a strong, public commitment to allocate sufficient resources in formulating the NAP, ensuring policy consistency through all relevant ministries, agencies, and local governments.

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<sup>1</sup> The NAP Guidance states ‘Inclusiveness and transparency 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 Recommendations

Modern business activities impact all aspects of everyday life, ranging from labour to consumption. These impacts are far-reaching and are international, meaning that the scope of the UNGPs, which call on businesses to address adverse impacts on human rights caused by their business activities, covers a wide range of issues.

As noted above, the topics to be discussed in the meetings were set unilaterally by the government. Without a process of identifying potential and ongoing adverse impacts in consultation with stakeholders, as required by the NAP Guidance, the NAP process can be neither legitimate nor effective. As a first step in the process, the views of as many relevant stakeholders as possible should be taken into account, so as to ensure a comprehensive understanding of the current situation.

The following recommendations are not exhaustive: they are presented on some relevant and important areas that were not covered in the meetings organised by the government. So as to be comprehensive, the NAP process must be opened to society at large, based on the recognition that the process is an open ended one, in that the NAP should be regularly reviewed and updated after its formulation.

#### (Topics in ‘exchange of views’ meetings and issues in this statement )

Topics in meetings	Issues in this statement
[1 <sup>st</sup> Meeting] Procurement	⑪ Procurement
[2 <sup>nd</sup> Meeting] Equality before the law (Persons with disability, LGBT, Women )	① People with disability
	② LGBT
	③ Gender
	④ Racial discrimination
[3 <sup>rd</sup> Meeting] Labour (Child labour, Foreign workers including technical trainees)	⑤ Child labour
	⑦ Foreign workers
[4 <sup>th</sup> Meeting] Access to remedy	⑨ Access to remedy (State based)
	⑩ Access to remedy (Non- State based)
[5 <sup>th</sup> Meeting ] Human rights in international agreements.	—
[7 <sup>th</sup> · 8 <sup>th</sup> · 9 <sup>th</sup> Meeting] Supply chain · SMEs	⑫ Supply chain
	⑬ Supply chain (Agriculture, forestry, fisheries)
	⑭ SMEs
—	⑥ Business and child rights
—	⑧ Hate speech
General remarks	2 Reflection on the formulation process of the NAP

## ① People with disability

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- Establish an effective domestic monitoring mechanism in accordance to the Convention on the Rights of Persons with Disabilities, in light of the lack of adequate legal frameworks at the national and local levels to protect people with disabilities, and of remedy measures for human rights abuses;
- Ensure inclusiveness by ensuring that people with disabilities are able to access the NAP process and have meaningful opportunities to express their views.

(Japan National Assembly of Disabled Peoples' International [DPI-Japan])

## ② LGBT

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- State clearly the need for legislation to prohibit discrimination based on sexual orientation and gender identity, that would also impose a duty on businesses to take harassment prevention measures and reasonable accommodations measures. Necessary provisions should be made for governmental structures at all levels to oversee implementation of these legal obligations;
- Formulate guidelines in the above mentioned areas, including employment.

(Japan Alliance for Legislation to Remove Social Barriers based on Sexual Orientation and Gender Identity [Japan Alliance for LGBT Legislation])

## ③ Gender

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- State clearly the need for the following:
  - Ratify the Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No.111), the Convention concerning Part-Time Work (ILO Convention No.175), and the Convention concerning Decent Work for Domestic Workers (ILO Convention No.189);
  - Ensure the integration of a gender perspective into all areas, as stated in the UNWG NAP Guidance;
  - Ensure the integration of a gender perspective into the operation of the OECD National Contact Point (NCP);
  - Mandate trainings for sexual harassment prevention;
  - Strengthen legal and institutional support to rectify long working hours, which remains the greatest barrier for work-life balance;
  - Correct the underestimation of carework, to promote an equitable sharing of household duties between men and women;
  - Provide support for gender and sexual diversity in the workplace.

(Asia-Pacific Human Rights Information Center [Hurights Osaka])

#### ④ **Racial discrimination**

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- State clearly the need for legislation to prohibit discrimination against foreign nationals, indigenous peoples including the Ainu, and the burakumin, including in recruitment, the renting of properties, and all other business activities.

(Human Rights Now)

#### ⑤ **Child labour**

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- State clearly the need for legislation to encourage businesses to conduct human rights due diligence, including in their supply chains;
- State clearly the need for basic legislation on environmentally and socially responsible procurement;
- Make a strong, public commitment to address the child labour issue within Japan, including research and investigations and concrete measures in this area.

(Child Labour Network [CL-Net])

#### ⑥ **Business and child rights**

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- With reference to ‘Children's Rights and Business Principles’ and ‘General comment No. 16 on State obligations regarding the impacts of the business sector on children’s rights’, conduct, as part of the NAP formulation process, an analysis on adverse impacts on children by business activities, as well as a gap analysis on the current situation and policy framework;
- State clearly the need for due diligence on children’s rights in business activities, of developing a legal and institutional framework to protect and respect children’s rights, and of greater access to remedy for socially vulnerable peoples, including children.

(Save the Children Japan)

#### ⑦ **Foreign workers**

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- Establish a policy for foreign labour without relying on the technical intern training programme, in light of the vulnerability of technical intern trainees to serious human rights abuses, resulting mainly from not having the freedom to change their place of employment and from often being saddled with a large amount of debt;
- Strengthen the Organisation for Technical Intern Training (OTIT), so as to protect trainees from human rights abuses and ensure meaningful access to a remedy;
- State clearly the need for all companies to be aware of technical intern trainees and foreign workers within their supply chain, and support measures to prevent adverse human rights impacts.

(The Japan Civil Liberties Union [JCLU])

## ⑧ Hate speech

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- State clearly the need for ongoing research into the situation of hate speech, including online;
- Take measures against online hate speech, including through calling on businesses to immediately delete hate speech on a voluntary basis, and the establishment of a platform comprised of the government, industrial associations, and victims of hate speech.

(Human Rights Now)

## ⑨ Access to remedy (State based)

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- Evaluate existing judicial remedies and their effectiveness against Principle 31 of the UNGPs;
- Lower the barrier to judicial remedies for victims by expanding the scope of civil legal aid to include victims who live outside of Japan. Civil legal aid should also be strengthened through the provision of multi-lingual support, including interpretation and translation;
- Include the establishment of national human rights institutions in compliance with the Paris Principles;
- State clearly the need for reviewing the role and processes of the NCP, so that it can function as an effective tool for complaints;
- Improve the accountability, transparency, and independence of the NCP.

(Friends of the Earth Japan)

(Human Rights Now)

## ⑩ Access to remedy (non-State based)

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- Based on the recognition that non-State based grievance mechanisms by businesses are supplemental to State based judicial and non-judicial grievance mechanisms, include prompt actions to construct a State based grievance mechanism;
- In addition to the above, coordinate State based and non-State based grievance mechanisms to find and correct serious human rights abuses at an early stage, especially in cases involving products and services by Japanese businesses;
- Provide governmental support to businesses to construct a non-State based mechanism in collaboration with relevant stakeholders whose human rights are actually and potentially at risk.

(Amnesty International Japan)



## ⑪ Procurement

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- Include a procurement policy in accordance with the UNGPs ;
- Recognise the importance of ratifying the Convention concerning Labour Clauses in Public Contracts (ILO No.94), and of the development of a framework to review the situation of human rights and labour within the supply chains of companies;
- Add clauses to contracts using public funds to ensure measures and procedures for the protection of human rights, and to establish monitoring mechanisms;
- Expand support for suppliers, in particular SMEs, to respect human rights.

(CSO Network Japan)

## ⑫ Supply chain

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- Support businesses by providing guidance and tools to ensure that human rights are respected in their supply chains;
- Consider a measure to require businesses to address human rights issues in their supply chains through, for example, including a legally binding requirement of duty of care.

(The Global Alliance for Sustainable Supply Chain (ASSC))

## ⑬ Supply chain (Agriculture, forestry and fisheries)

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- In light of the the high frequency of labour related human rights abuses in labour intensive industries such as agriculture, forestry, and fisheries, and also in light of the fact that informal sectors account for a significant proportion of production in some countries, promote human rights due diligence through the strengthening of regulations, including imposing a duty of disclosure and the introduction of certification schemes.

(Japan NGO Center for International Cooperation (JANIC))

## ⑭ Small and medium sized enterprises (SMEs)

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- Ensure that the views of SMEs are reflected in the NAP formulation process, including through a study of the current situation of human rights within SME business operations;
- Support SMEs in respecting human rights, in line with existing policy frameworks;
- Commit to policy consistency, including, in particular, a common understanding of the requirements of international human rights standards, amongst relevant ministries, agencies, and local governments responsible for supporting SMEs.

(Asia-Pacific Human Rights Information Center (Hurights Osaka))

## Appendix

### 'To the Government of Japan: Regarding National Action Plan on Business and Human Rights' (May 16, 2017)

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Regarding National Action Plan on Business and Human Rights

Civil Society Platform for Japan's National Action Plan  
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The UN Guiding Principles on Business and Human Rights (UNGPs) were endorsed by the UN Human Rights Council in 2011. In accordance with the UNGPs, the UN Working Group on Business and Human Rights (UNWG), along with other stakeholders, have since 2013 been calling on Governments to develop National Action Plans (NAPs), to ensure that the UNGPs are implemented fully. As of April 2017, there are 14 States that have completed NAPs., and, concerned with ongoing serious human rights violations involving businesses around the world, we, the undersigned representatives of civil society, have continued to call on the Government of Japan to take immediate steps to formulate a NAP.

In the 5th Forum on Business and Human Rights in November 2016, Ambassador Shino stated that Japan planned to formulate a NAP. The formulation of a NAP has also been included in as one planned measure in the document "Measures to Achieve the Sustainable Development Goals (SDGs)", published in December 2016. Taking into account its expressly stated willingness to formulate a NAP, we urge the Government of Japan to take the following actions.

With regard to the fundamental principles of the NAP:

1. Ensure that the NAP is based on the Guidance on National Action Plans on Business and Human Rights (NAP Guidance).

The Nap Guidance, which was published by the UNWG in 2014, outlines the following four 'essential criteria' as indispensable for effective NAPs, namely they must: 1) be founded upon the UNGPs; 2) respond to specific challenges of the national context; 3) be developed and implemented through an inclusive and transparent process; and 4) be regularly reviewed and updated. The NAP Guidance is based on the recognition that there is no 'one-size-fits-all' approach to developing NAPs.

We emphasise the importance of fully meeting these criteria, and note that the NAP Guidance states: "Non-Governmental stakeholders should call upon their Governments to develop NAPs along this guidance and hold them accountable for unjustified deviations from the UNWG recommendations outlined". We share the shared vision enumerated by the Government that "every human person must be free from human rights violations".

2. Ensure that the NAP is properly founded upon the UNGPs.

This would include ensuring that the NAP is based on international human rights instruments, and implementing fully the obligations of the state, including ensuring meaningful access to an effective remedy as outlined in the first pillar and the third pillar of the UNGPs. This would also include the integration of the UNGPs into existing government policies strategies, through the NAP.

3. Ensure that all sections of the Government are aware of Japan's international human rights obligations.

The NAP Guidance explicitly states that “awareness of and knowledge about business and human rights issues should be strengthened among representatives of relevant government departments and agencies” through a NAP process. We consider that this is essential.

With regard to the NAP process:

4. Ensure that officials responsible for NAP formulation engage in meaningful dialogues with non-governmental stakeholders.

We highlight the importance of engagement with interested stakeholders, including civil society organisations, in the NAP process. The NAP Guidance expressly states, "Engagement with relevant non-governmental stakeholders throughout the process is essential for the effectiveness and legitimacy of a NAP". It requests Governments to create a format for cross-departmental collaboration and to be engaged with relevant interested stakeholders at each stage of a NAP process, so it can: 1) identify adverse corporate-related human rights impacts; 2) identify gaps in State and business implementation of the UNGPs; 3) consult on the priorities and concrete actions to be included in the NAP; 4) draft the initial NAP; 5) evaluate the impact of the NAP after finalising, launching, implementing and monitoring it; and 6) draft updated NAP, consult, finalise, and launch it. This engagement is crucial in the NAP process, and we urge the government to ensure that there is meaningful dialogue, as stated by the UNWG.

5. Ensure a meaningful baseline study is conducted.

A meaningful baseline study is vital to the NAP, and should not be conducted solely by the government. Rather, it must involve relevant stakeholders and external experts.

Regarding the identification of adverse human rights impacts:

6. Ensure that adverse human rights impacts are exhaustively identified.

The NAP process should identify adverse human rights impacts throughout the entire value chain of corporations, including the supply chain, and create an exhaustive list

of human rights issues. This includes negative human rights impacts both inside and outside Japan, negative human rights impacts involving companies incorporated in Japan, as well as cases where there is Government involvement, direct or indirect. In identifying gaps in State and business implementation of the UNGPs in relation to identified adverse human rights impacts, all relevant legal and non-legal framework for companies should be examined.

Regarding Government measures with regard to business and human rights:

7. Ensure a strong Government commitment to address adverse human rights impacts.

The NAP Guidance recommends that Governments' current and future commitments to address adverse human rights impacts are included in the NAP. In addition, Annex III sets out a non-exhaustive list of measures that Governments should consider in their response to the first pillar and the third pillar of the UNGP. The Japanese Government should commit to measures to address adverse human rights impacts, with full reference to international human rights standards.

Regarding the core human rights principles of non-discrimination and equality:

8. Take full account of the views of vulnerable or marginalized individuals and groups, based on the principles of non-discrimination and equality.

Vulnerable or marginalized individuals and groups are more likely to be subject to negative human rights impacts, and particular attention should be given to their views and situations. The NAP Guidance mentions "Effective implementation of the UNGPs requires equality and non-discrimination regardless of gender, age, ethnicity, sexual orientation, economic situation, or social status". We put emphasis on the importance of involving such peoples' views in the NAP process.