

(PROVISIONAL TRANSLATION)

The Report of the Baseline Study on Business and Human Rights (Executive Summary)

Toward Developing Japan's National
Action Plan on Business and Human
Rights

December 2018

Executive Summary

1 Introduction

Recently, advances in the globalization of business have thrown a spotlight on respect for human rights in the context of business, which has become a growing discussion at various international fora.

At the Human Rights Council (HRC), Professor John Ruggie of Harvard University, who was appointed as the United Nations (UN) Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises at the 69th session of the UN Commission on Human Rights in 2005, presented the "Protect, Respect and Remedy" Framework (UN Framework) drafted through consultation with civil society and governments, at the 8th session of the HRC in 2008.

The UN Framework categorizes relations between multinational corporations and human rights into three pillars: (1) the State duty to protect against human rights abuses by third parties, including business (2) the corporate responsibility to respect human rights, and (3) access to remedy. While the UN Framework clarifies the state duty and the corporate responsibility that relate to the impacts on human rights by business activities, it places emphasis also on the needs for mechanisms enabling access to effective remedies, and lists specific areas and cases the relevant actors are expected to undertake as their duty or responsibility. The aforementioned framework was unanimously welcomed by the HRC in resolution A/HRC/RES/8/7 which was presented at its 8th session.

For the implementation of the UN Framework, Professor Ruggie drafted "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs)" and proposed it to the 17th session of the HRC in 2011, as part of his report. Consequently, the HRC in resolution A/HRC/RES/17/4 endorsed the UNGPs by consensus including Japan, and established the Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group), consisting of five independent experts whose mandate includes promoting the effective and comprehensive dissemination, exchanging good practices and lessons learned and conducting country visits.

Following the endorsement of the UNGPs, at the 26th session of the HRC in 2014, the HRC adopted a resolution A/HRC/RES/26/22 that encourages all States to develop a national action plan as steps to implement the UNGPs. As of November 2018, more than 20 states¹ including European countries such as the United Kingdom, Colombia and Chile, have already issued action plans.

¹ International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR), <https://globalnaps.org/>

The discussion on business and human rights has been observed not only at the HRC, but also at the other fora including G7/G20 Summits. The 2015 Leader's Declaration G7 Summit in Elmau stated that the G7 strongly supports the UNGPs and welcomes the efforts to set up substantive action plans. Moreover, the 2017 Leader's Declaration G20 Summit in Hamburg also requested G20 members to work toward establishing adequate policy frameworks in their countries such as national action plans.

Regarding Japan's position on business and human rights, the Government of Japan is committed to the implementation of the UNGPs. As part of our commitment to implementing the UNGPs, the Government decided to formulate a National Action Plan (NAP) on Business and Human Rights at the end of 2016. At the 5th UN Annual Forum on Business and Human Rights held in Geneva, Japan officially announced its intention. It is noteworthy that the NAP formulation was incorporated into the Cabinet-approved "Growth Strategy 2018," compiled by the Headquarters for Japan's Economic Revitalization under the leadership of Prime Minister Abe. The strategy specified to formulate a NAP for respecting human rights as basic principles of business behavior, and to encourage progressive undertakings by Japanese companies.

Seeing as business and human rights have been increasingly spotlighted nationally and internationally, as specified in the Growth Strategy, Japan believes that the development of the UNGPs-based NAP pertaining to respect for human rights in business activities, which is becoming a new global standard, will enhance the promotion of human rights in business activities. Encouraging Japanese companies to advance progressive initiatives on respecting human rights in the context of business will also contribute to boosting and maintaining Japanese companies' competitiveness in the market. The Government will continue to promote responsible business conduct by initiating policies toward establishing such an environment, and supporting private companies' initiatives.

Additionally, the development of the NAP is one of Japan's various efforts toward the achievement of the Sustainable Development Goals (SDGs). The NAP formulation was reiterated in Japan's SDGs Implementation Guiding Principles, released in December 2016. Furthermore, it is viewed as one of the main measures in the "Expanded SDGs Action Plan 2018" decided at the 5th meeting of the SDGs Promotion Headquarters in June 2018 as well as the "SDGs Action Plan 2019" decided at the 6th meeting of the SDGs Promotion Headquarters in December 2018, both led by Prime Minister Abe.

The Government of Japan is of the view that not only public sectors but also private sectors play critical roles in achieving SDGs. Considering this, the Government of Japan hopes that

not only public sectors but also a wide range of stakeholders will be engaged as responsibility-holders not just in the NAP formulation phase but also in its implementation phase.

2 Objectives

Having reviewed approaches to the development of NAPs on business and human rights undertaken in other jurisdictions, in the initial stage of the NAP formulation process, the Government of Japan decided to undertake the Government-led baseline study with the aim of capturing the current landscape to what extent current legislation and policies provide for the protection of human rights in the context of business. This report summarizes the outcomes of the study.

It is of the view that the baseline study will contribute to increasing awareness of the topics involved in this new and developing area of business and human rights. And what is more, based on this baseline study, the Government plans to call for public opinions with the aim of identifying priority areas that should be incorporated into the upcoming NAP and will refer to these opinions when considering policies².

3 Baseline Study

This time, for the purpose of carrying out the baseline study on business and human rights, the Government (1) conducted a desk review undertaken by all relevant line ministries and agencies, and (2) organized consultation meetings with multi-stakeholders. By undertaking this study, we could say that this process has assisted the line ministries and agencies in deepening their understanding of the concept of business and human rights.

(1) As recommended by the UN Working Group,³ the line ministries and agencies conducted the desk review by referring to the tool kits provided by the Danish Institute for Human Rights⁴ and the International Corporate Accountability Roundtable, and other

² With the aim of identifying priority area that should be incorporated into the upcoming NAP, the public opinions were called for from December 27, 2018 to January 31, 2019.

³ UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, November 2016, https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf

⁴ The Danish Institute for Human Rights (DIHR) and The International Corporate Accountability Roundtable (ICAR), National Action Plans on Business and Human Rights-A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks, <https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/DIHR%20-%20ICAR%20National%20Action%20Plans%20%28NAPs%29%20Report.pdf> For Japanese version, provisional translations by the Institute of Developing Economies, Japan External Trade Organization was referred. http://www.ide.go.jp/library/Japanese/Research/Project/2017/pdf/2017110007_02.pdf

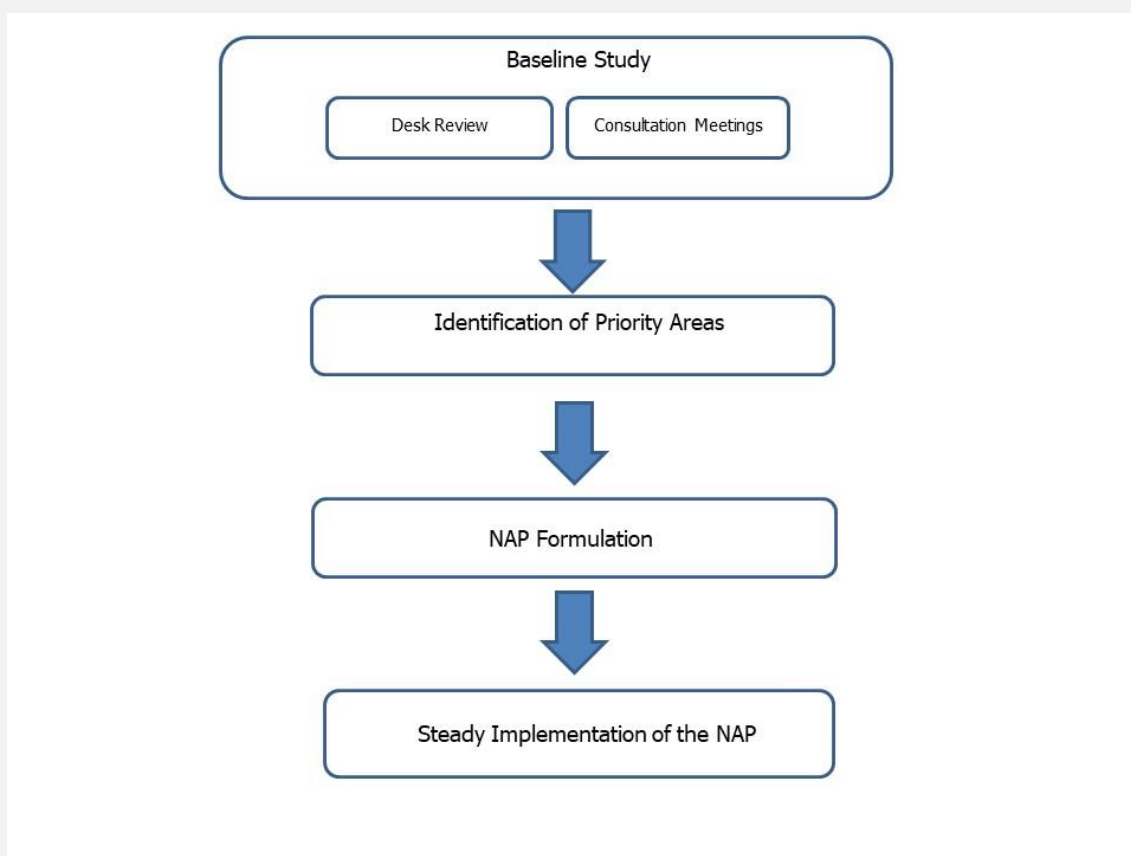
documents⁵ as well as checking to what extent current legislation and policies provide for the protection of human rights in business activities with a particular focus on the first and third pillars of the UNGPs. It should be noted that the scope of this desk review is not limited to business activities within the country.

- (2) Regarding the consultation meetings with stakeholders, the Government called for the participation of leading organizations in the business community, labor community, and civil society. Since March 2018, ten (10) consultation meetings have been held with multi-stakeholders and line ministries, on topics related to business and human rights. Bearing in mind ongoing various discussions in business and human rights at international fora, as well as views from various stakeholders, including the UN, academia, and civil society, the multi-stakeholder consultations covered various topics such as “public procurement,” “equality before the law (persons with disabilities, LGBT, and women),” “labor (child labor, foreign workers including technical internees),” “access to remedy,” “human rights in international agreements,” “supply chain,” and “small and medium-sized enterprises (SMEs).” Particularly, the topic of access to remedy was covered, with consideration given to the importance of how effectively it can be achieved as discussed at the UN Forum on Business and Human Rights in Geneva. Given the situations that as of 2014, SME employers account for 99.7% (3,810,000 employers) of the entire employers in the country, and that SMEs provide 70% (33,610,000 employees) of all employment,⁶ the Government decided to raise the topic of the SMEs also.

⁵ For example, the following document was referred. DIHR, ICAR, and United Nations Children’s Fund (UNICEF), Children’s Rights in National Action Plans (NAPs) on Business and Human Rights, [https://www.unicef.org/csr/files/Childrens_Rights_in_NAPs_WEB\(1\).pdf](https://www.unicef.org/csr/files/Childrens_Rights_in_NAPs_WEB(1).pdf)

⁶ 2018 White Paper on Small and Medium Enterprises in Japan

Chart. Position of the Baseline Study in the NAP Formulation Process



4 The Brief Overview of Current Legislation and Policies

(1) The State Duty to Protect against Human Rights (the first pillar of the UNGPs)

The Government of Japan has developed basic policies for the promotion and protection of human rights and fundamental freedoms as universal values. Through the ratification of human rights treaties and their sincere implementation, Japan promotes and protects domestic human rights. Regarding the protections of human rights in the context of business, Japan attaches importance to the prevention of human rights violations through its legislation and policies. In case human rights violations occur, it is also considered important to punish such violations appropriately or undertake remedial measures to avoid the recurrence of similar violations. Based on this, the following paragraph gives an overview of the existing domestic legislation and policies.

The Constitution of Japan, the supreme law in Japan's legal system, is based on the principle of people's sovereignty; together with pacifism, respect for fundamental human rights is one of the Constitution's important pillars. Concerning domestic legislation and policies, Japan respects human rights, particularly for women, persons with disabilities, children, foreign nationals and minority groups, and takes policies to promote them extensively.

The laws relating to business and human rights cover a broad range of areas exemplified by the Civil Code (Act No. 89 of 1896), Labor Standards Act (Act No. 49 of 1947), Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Act No. 113 of 1972; hereinafter referred to as the "Equal Employment Opportunity Law"), Industrial Safety and Health Act (Act No. 57 of 1972), Basic Environmental Act (Act No. 91 of 1993) and Unfair Competition Prevention Act (Act No. 47 of 1993), that aim for the protection and promotion of workers' rights, the prohibition of forced labor and child labor, the prevention of environmental pollution which might be caused by corporate activities, and the prohibition of bribery. Furthermore, in case violations of the laws occur, corrective and remedial measures are available through the pursuit of criminal responsibility, damage claims, and administrative measures.

In addition to the legal system, as an example, the Government works on promoting and fostering the awareness of human rights in the context of business through the measures of the Basic Plan for Gender Equality developed on the basis of the Basic Act for Gender Equal Society (Act No. 78 of 1999).

Along with the direct approach of regulating the corporate side, the Basic Consumer Act (Act No. 78 of 1968), including "respect for consumers' rights" and "support of self-reliance of consumers" as part of its fundamental principles, was enacted. In addition to clarifying the actions required to be taken by businesses to protect and promote consumers' interests, the Government has established individual laws fleshing out the details of the actions required to be taken by businesses, and continues to make efforts to respect consumers' rights and support their self-reliance.

As awareness-raising activities relating to human rights for companies, to advance the development of sound economic activities, the Ministry of Economy, Trade and Industry has entrusted private organizations and local governments to organize seminars targeted at businesses to increase awareness of human rights and to develop pamphlets.

For example, the Human Rights Bodies of the Ministry of Justice carry out a wide range of human rights awareness-raising activities for nationals in collaboration with private sectors that have strong power of delivering messages using "Warai" or "laughing" and that run sports classes deeply rooted in the community across the country.

In the field of development cooperation, as a principle to secure the appropriateness of development cooperation, the Development Cooperation Charter (decided by the Cabinet in February 2015) incorporates such points as consolidation of democratization in developing countries, situations regarding the rule of law and the protection of basic human rights, implementation of development cooperation which takes full account of the environment, consideration for ensuring equity and consideration for the socially vulnerables (including ethnic minorities and indigenous peoples), and promotion of women's participation. The Government agencies such as Japan International Cooperation Agency and Japan Bank for International Cooperation have introduced respective guidelines for environmental and social considerations and they consider the impact of their projects on human rights, the environment, and society.

Regarding public procurement, the consideration of human rights and environmental aspects by companies is being promoted through the Act on Promotion of Procurement of Goods and Services from Disability Employment Facilities by the State and Other Entities (Act No. 50 of 2012) and Act on Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities (Act No. 100 of 2000). As an initiative related to public procurement based on Article 20 of the Act on the Promotion of Female Participation and Career Advancement in the Workplace (Act No. 64 of 2015), comprehensive evaluation bid systems and planning competition systems among Japan's public procurement system have various mechanisms to evaluate companies, including the evaluation of companies that promote a work-life balance by adding some points in the screening of prospective bidders. Such initiatives lead to enhance awareness of human rights among companies.

Many investment agreements, which have been signed by Japan and have entered into force, incorporate provisions relating to social issues such as the environment, labor, and safety. Additionally, many economic partnership agreements (EPA), which have been signed by Japan and have entered into force incorporate provisions relating to social issues such as the environment, labor, and safety in the chapters relating to those investments, and the Trans-Pacific Partnership Agreement (TPP Agreement), provides for an independent "Environment Chapter" and "Labour Chapter," and the Japan-EU EPA has an independent "Trade and Sustainable Development Chapter," defining provisions relating to the environment and labor, as efforts are being taken to promote the provisions relating to social issues.

As a guide for dialog and disclosure relating to ESG (environmental, social and governance) investing/non-financial information of investors and business executives, the Ministry of Economy, Trade and Industry published the "Guidance for Collaborative Value Creation" in May 2017. This guidance was developed and proposed with the expectation that it will serve

as the “guidelines” for voluntary initiatives of companies. As the “S” in the ESG investing contains elements of business and human rights, this guidance states that companies should identify the elements of “S,” and show how companies recognize the impact, considering that the elements may impact on companies’ mid-to long-term corporate value as well as could be risks toward the continuation of business portfolios.

From the perspective of improving sustainable growth and corporate value over the mid-to long-term, through constructive dialog between institutional investors and companies, the Financial Services Agency implements corporate governance reforms, including the development of Japan's Corporate Governance Code and Japan's Stewardship Code. One of the principles of Japan's Corporate Governance Code specifies that listed companies should take appropriate measures to address sustainability issues, including social and environmental matters. This June’s revisions to the Corporate Governance Code clarified that companies should conform to disclose non-financial information, including various ESG elements, based on the laws and regulations, and should proactively commit to disclose information irrespective of whether the disclosed information is required by law and regulations. Regarding Japan’s Stewardship Code, its last May’s revisions specified business risks and revenue opportunities concerning social and environmental matters in the businesses of investee companies as an example of a viewpoint of institutional investors when grasping the situations of the investee companies from the mid-to long-term perspective.

The SDGs Promotion Headquarters aim to strengthen efforts on the SDGs by sharing good practices of the private sector that contributes to the achievement of the SDGs, including making use of the opportunity of the “Japan SDGs Award.” Besides the viewpoint of whether it will contribute to the SDGs such as integrated efforts to economy, society, and the environment, initiatives related to the respect for human rights such as advancing the participation of female employees and promoting work-style reforms are also considered as inseparable elements in the selection process of the “Japan SDGs Award.”

Given the recognition that mainstreaming the SDGs in the business sector could create new business and investment opportunities, as domestic companies are accelerating their own efforts on the SDGs such as the promotion of ESG investing, “Japan SDGs Award” is expected to be an incentive for companies to raise more attention for human rights.

(2)The Corporate Responsibility to Respect (the second pillar of the UNGPs)

While the baseline study focuses on the first and third pillars of the UNGPs as one of the ways to capture the current efforts of companies toward respecting human rights, this report

presents the survey results on the Charter of Corporate Behavior that the Japan Business Federation (Keidanren) conducted toward its corporate members this July. Additionally, several documents compiled by the Global Compact Network Japan are introduced, serving as references for when Japanese companies in the process of dealing with human rights issues.

To achieve an affluent and vibrant society led by the private sector, in 1991, Keidanren established its Charter of Corporate Behavior from the perspective that it is essential for corporations to behave with a sense of ethical values and responsibility. Given the increasing importance of corporate contributions toward solving various global issues observed in the international community, in November 2017, Keidanren revised its Charter of Corporate Behavior with a pillar of delivering on the SDGs through the realization of Society 5.0. The revised Charter stipulates that corporations “conduct business that respects human rights of all persons.” In the light of the revisions, Keidanren implemented a questionnaire survey with the aim of grasping the situation and case examples of efforts carried out by its corporate and group members.

In the questionnaire survey, of the respondent corporations (22% of the overall members), over 80% responded that they have “already developed,” “planning to develop,” or “under consideration for developing” guidelines relating to respect for human rights. Furthermore, many corporations have set up focal points or departments in charge of dealing with human rights issues, as well as grievance and remedy mechanisms, including human rights consulting services as systems introduced to promote respect for human rights, and it is witnessed that system maintenance or education and training are progressing. On the other hand, the ratio of corporations working on matters relating to a so-called human rights due diligence, namely the continuous process of identifying, preventing and mitigating negative impacts on human rights (human rights risks) in the context of business activities, and of responding to such risks that may occur, remains at around 30%.

In addition to the aforementioned questionnaire survey, regarding corporate initiatives to respect human rights, the Business Policy Forum Japan, in its 2013 report, “Research Report on How to Respect Human Rights when Developing Businesses in Emerging Countries,”⁶ presented the domestic and overseas trends concerning corporate activities and human rights as well as research on cases of initiatives to respect human rights undertaken by domestic and international companies. Additionally, the Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) carried out studies in this field by researching

⁶ Business Policy Forum Japan, Research Report on How to Respect Human Rights when Developing Businesses in Emerging Countries, http://www.bpfj.jp/act/download_file/68127081/12058495.pdf

human rights risks associated with Japanese companies' overseas business expansion and discussed them in their 2017 report "How the 'UN Guiding Principles for Business and Human Rights' are implemented:-A Report toward Developing Japan's National Action Plan (NAP)."⁷ It is of the view that such studies could serve as a reference for the Government in the NAP formulation process.

(3) Access to Remedy (the third pillar of the UNGPs)

Pertaining to "access to remedy," one of the pillars of the UNGPs, it is considered crucial to establish the rule of law in each country, as well as to ensure solutions through domestic judicial mechanisms and accountability. Meanwhile, in the area of business and human rights, non-judicial remedy is considered equally important as judicial remedy. Given this, the following paragraph overviews the existing national legislation and policies.

A. Judicial Remedy

As a remedy measure concerning violations of human rights caused by companies, the Government aims to ensure accountability and remedy through the pursuit of criminal responsibility, damage claims, and administrative measures undertaken based on the laws including the Penal Code, the Civil Code, the Product Liability Act (Act No. 85 of 1994) and the Labor Tribunal Act (Act No. 45 of 2004).

Regarding the criminal liability of companies involved in violations of human rights, there is a general rule that criminal penalties are imposed on individuals who have committed a crime. That being said, if a natural person commits a crime with a dual criminal liability provision (a provision which enables to punish a cooperation or individual with a fine, when an agent, employee or any other worker of the corporation or individual commits a crime in connection with the business of the corporation or individual, in addition to the natural person who commits the crime) regarding the business of the said corporation, and the domestic criminal law is applied, both the natural person and the corporation may be held criminally responsible.

Regarding civil proceedings, the following items are stipulated in the Code of Civil Procedure (Act No. 109 of 1996): access to financial remedy is guaranteed to a certain extent as domestic courts have jurisdiction over civil responsibilities (including damage claims) against companies in Japan.

(A) An action for a tort may be filled with the Japanese courts if the place where the tort

⁷ Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO), "How the UN Guiding Principles for Business and Human Rights are implemented:-A Report toward Developing Japan's National Action Plan (NAP),"

http://www.ide.go.jp/library/Japanese/Publish/Download/Seisaku/pdf/2016_a04.pdf

occurred is within Japan (excluding if the consequences of a wrongful act committed in a foreign country have arisen within Japan but it would not ordinarily have been possible to foresee those consequences arising within Japan) (Article 3, Paragraph 3, Item 8).

(B) The courts have jurisdiction over an action that is brought against a corporation or any other association or foundation whose principal office or business office is located in Japan, and against a corporation, association, or foundation without a business office or other office, or with a business office or other office of unknown location, whose representative or other person principally in charge of its business is domiciled in Japan (Article 3, Paragraph 2, Item 3).

In addition to civil and criminal liabilities against business operators for the purpose of protecting consumers from the infringement of rights by businesses, mechanisms responsible for administrative regulations were established through the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (Act No. 96 of 2013), etc.

The Japan Legal Support Center (“Houterasu”) is making efforts to ensure access to judicial remedy, through providing free legal consultations for Japanese citizens and foreign nationals lawfully residing in Japan who lack the financial means and lending them money to pay attorneys' remuneration to prepare for and pursue civil court proceedings, etc.

B. Non-Judicial Remedy

As a remedy on the basis of the international framework, Japan set up its National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises in 2000. When cases of alleged non-observance of the OECD Guidelines are filed, the Japanese NCP deals with them in accordance with the OECD Guidelines.

The Act on Promotion of Use of Alternative Dispute Resolution (Act No.151 of 2004) is to enable parties to a dispute to choose the most suitable method for resolving a dispute with the aim of appropriate realization of the rights and interests of the nationals. The Act has established a certification system regarding private dispute resolution procedures by the Minister of Justice. The Ministry of Justice has established human rights counseling centers at the Legal Affairs Bureaus and District Legal Affairs Bureaus throughout Japan, covering various human rights issues, including human rights issues in the context of business such as sexual harassment or abuse of authority in the workplace and unfair discrimination against LGBT, persons with disability, and foreign nationals. Additionally, the Ministry of Justice has set up *ad-hoc* human rights counseling centers at some local public offices.

Regarding responses based on individual laws, in the labor field, the Labor Standards Act defines minimum standards for working conditions. Counseling services and dispute

resolution assistance are conducted based on the Act on Promoting the Resolution of Individual Labor-Related Disputes (Act No. 112 of 2001), the Equal Employment Opportunity Law, the Act on Improvement, etc. of Employment Management for Part-Time Workers (Act No. 76 of 1993), and the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of 1991). The Labor Union Act (Act No.174 of 1949) specifically guarantees the basic labor rights (the right to organize, and to bargain and act collectively (right to engage in labor disputes)) stipulated in Article 28 of the Constitution of Japan. In the event that a labor union or a worker experiences unfair labor practices from their employer, they may file a motion requesting remedies to the Labor Relations Commission. The Labor Relations Commission may then issue an order-for-relief when the unfair labor practices are recognized. The Labor Relations Commission is an independent committee comprised of persons representing public interests, persons representing workers, and persons representing employers, and assures fairness and neutrality.

On the basis of the Act for Eliminating Discrimination against Persons with Disabilities (Act No. 65 of 2013), each government organization set up an inquiry counter to respond to persons with disability seeking for advice regarding discrimination by their employers on the ground of their disability. Through such initiatives, the Government aims to maintain a system providing for counseling services and preventing disputes concerning discrimination against persons with disability.

In Japan, regarding the protection of whistleblowers, the Whistleblower Protection Act (Act No. 122 of 2004) was enacted to protect whistleblowers who meet certain requirements, and to promote compliance with the laws and regulations concerning the protection of life, body and property, and other interests of citizen.

The Consumer Safety Act (Act No. 50 of 2009) stipulates the provisions of administrative processes performed by municipal governments, administrations closely related to local residents conducting consumer affairs consultations. These administrative processes include handling requests for consultations involving consumer complaints and mediation for the settlement of consumer complaints in order to ensure consumer safety. The Act also articulates the provisions of collecting necessary information for ensuring consumer safety and for disseminating information to local residents. Moreover, the Government and the National Consumer Affairs Center of Japan provide necessary advice to municipal governments across the country on providing consultation methods and carrying out mediation. The "Consumer Hotline" operated by the Consumer Affairs Agency serves as a guide to consumers who hardly know about the existence of consumer affairs consulting services such as the Consumer Affairs Center by introducing nearby inquiry counters for

consumer affairs consultations. Indeed, the hotline supports their first step in the consumer affairs consultations. Furthermore, the Consumer Alternative Dispute Resolutions Committee, the National Consumer Affairs Center of Japan supports the implementation of alternative dispute resolutions pertaining to consumer disputes.

5 Baseline Study Multi-stakeholder Consultation Meetings on Business and Human Rights

At the consultation meetings with stakeholders held from March to August 2018, the participating stakeholders expressed their expectations for the Government, private sectors, and the entire society. The following summarizes the main opinions and recommendations.

【The Overview of Situations related to Business and Human Rights】

- It is of importance to implement the UNGPs steadily in an effort to advance the promotion and protection of human rights in business activities.
- The Government is urgently expected to clearly demonstrate its intention toward respect for human rights in business activities, including the identification of possible negative impacts on human rights in business activities and the establishment of an environment to deal with such impacts.
- Given a wide range of issues related to business and human rights, the Government, including line ministries and agencies, is expected to promote the assurance of policy coherence.
- Additionally, in taking an initiative in business and human rights, it is beneficial to have a comprehensive approach including promoting a public understanding of human rights and public awareness activities.
- While urban cities or large-scale companies continue to take various initiatives, it is desirable to promote further awareness-raising activities taking place in rural areas as well as targeting SMEs companies specifically.
- It is all-important to take into account the risks faced by workers or groups at risk of being socially left behind. With the aim of enhancing vital business activities, it is important to achieve “diversity and inclusion” where diversity is accepted, including women, youths, older people, LGBT, foreigners, and persons with disabilities, all are capable of maximum performance, and all have a sense of achievement.
- Companies tend to respond positively toward various issues around the concept, viewing them as business opportunities; for example, women’s active participation, or the employment of persons with disabilities. With the Olympic and Paralympic Games Tokyo 2020 in mind, companies could be open to new options.

- **Dissemination of Japan's Initiatives**

- While numerous such initiatives as the Sustainable Sourcing Code prepared for the Olympic and Paralympic Games Tokyo 2020 have been ongoing in various areas, it is equally important to externally disseminate such information from the view of business and human rights.

- **Strengthening Links with the SDGs**

- Given the point that many of the SDGs Implementation Guiding Principles are related to the realization of human rights, it is meaningful to strengthen links further with the SDGs and the NAP formulation process.

- **Utilization of Existing Initiatives**

- Companies tend to require timely information sharing that relates to the potential risks associated with overseas business expansion and request for consulting services. It was suggested to use existing initiatives, such as "Offices to support Japanese businesses (business support officers)" at Japanese embassies and consulates, JETRO's domestic and international office, or ILO Helpdesk for Business, to strengthen support with the focus on business and human rights areas.
- As governmental initiatives related to SMEs, several governmental initiatives might not be necessarily directly relevant to business and human rights, including "the Basic Plan on Human Rights Education and Human Rights Awareness-Raising" established on the basis of the Act on the Promotion of Human Rights Education and Human Rights Awareness-Raising, the policy to promote fair recruitment and human rights awareness-raising, and projects entrusted to the Public Interest Incorporated Foundation Center for Human Rights Education and Training. These initiatives could be utilized also for business and human rights, and policy coherence should be emphasized.

- **Toward the NAP Formulation**

- Emphasis was placed on the need for determining priorities for the NAP with sufficient resources, including inter-ministerial cooperation and adequate consultations with stakeholders on a wide range of issues, in the interest of ensuring transparency and the opportunity of participation in the formulation process.
- Efforts by individual businesses are not sufficient when implementing the UNGPs: their collective efforts as well as cooperation with other stakeholders are needed. It is

desirable to consider real opinions from companies or members of society when identifying priorities in the process.

[Topics Discussed at the Multi-Stakeholder Consultation Meetings]

● Public Procurement

- Regarding public procurement, it is crucial to have extended perspectives covering not only central governments but also local governments. Various approaches are available with attention to human rights aspects or application to the standards of public procurement, including point-addition or point-deduction.

● Equality before the Law (Persons with Disabilities, LGBT, and Women)

- The constitutional principle of equality is set forth as a fundamental premise for this discussion. In specific areas, the relevant legislation and companies' voluntary initiatives are proceeding. Regarding LGBT issues in particular, voluntary initiatives by the Government and companies deepen understanding. It should be noted that the relevant institutional issues in each area are identified.

● Labor (Child Labor and Foreign Workers including Technical Internees)

- With an increase in the number of foreigners in Japan, it is significant to consider the perspectives of protecting the human rights of foreigners, and of setting the mechanisms for applying effective remedies. While domestic legal systems have been developed, including labor-related legislation, their effective implementation is still an issue. Concerning the Technical Intern Training Program, in particular, it has structural issues still. That said, the situation has been improved with the enactment of the new legislation; therefore, its appropriate implementation is recommended. Regarding child labor, it is equally relevant to implement the domestic legislation properly.

● Access to Remedy

- Equally important as the establishment of judicial remedies, is improvement in access to non-judicial remedies through consideration of the establishment of the national human rights institutions and introducing individual communications set by the international human rights treaties and strengthening the function of the Japanese NCP for the OECD Guidelines for Multinational Enterprises. Furthermore, regarding judicial remedy, although legislation and the mechanism have been in place, some available procedures (civil legal aid) have been limited only to Japanese nationals and legal residents. Considering this, there was a proposal for institutional improvements that could allow

illegal residents in the country as well as victims abroad to access judicial remedy effectively.

- A wide range of non-judicial remedies in specific areas are available for the purpose of dealing with complaints pertaining to human rights violation caused in the course of business activities. To enhance its accessibility, it would be beneficial to create a portal site where information on various mechanisms is in one place.
- While company-level grievance mechanisms serving to complement judicial and non-judicial remedies have been increasingly established, to promote its installation and improve its reliability, it is crucial that the Government shows certain direction and in particular, is expected to provide supports to SMEs.

● **Human Rights in International Agreements (including Investment Treaties)**

- From the viewpoint of balancing the preservation of public interest with the pursuit of investor protection, there is a recent tendency for investment treaties/EPAs to contain some provisions related to social agenda such as health, safety, environment or labor standards. However, it does not signify a lowering of standards related to investment protection. Furthermore, TPP agreements have earned a certain reputation for their advanced efforts as the agreements devote independent chapters on environment, labor etc. On the other hand, more concrete provisions on consistency with human rights and public policy should be stipulated in agreements, referring to examples of other states.
- It is unfair that investors of contracting states with signed investment agreements are subjected to certain obligations while investors from states without signed agreements are not.
- Investment treaties/EPAs aim to develop sound economic relationships between states involved. At the same time, regarding the scope of such treaties, for example, some countries include CSR or human rights related provisions in their treaties. In reality, there are various opinions as to whether such provisions should be stipulated in these treaties.

● **Supply Chain**

- Considering the recent increase in consumers' and investors' interests in supply chains, international commitments, including the 2015 Leader's Declaration G7 Summit in Elmau and domestic legislation and guidelines related to disclosure and reporting have been developed. With the aim of fulfilling social responsibilities through partnerships between companies and trade unions, some Japanese companies concluded with trade unions Global Framework Agreements concerning the building of constructive industrial

relations and code of business behaviors. Many progressive companies show their willingness to enhance the efforts to respect human rights. In the light of this tendency, the Government is expected to disseminate its commitment widely and support companies by clarifying the roles of governments and companies.

- Various systems exist, both regulatory and non-regulatory, to respect human rights in supply chains: some proposed a point-addition or point reduction standard for public procurements.

- **SMEs**

- The UNGPs state that they are applicable to all companies regardless of their size and sector. In the context of SMEs, the focus tends to be on the overseas business expansion of SMEs and the relationship between domestic large companies and foreign SMEs in supply chain. That said, some expressed their viewpoint that domestic SMEs, including the ones located in the prefectures, should be kept in mind also. SMEs comprise large proportions of the entire Japanese economy in terms of numbers of companies and employees. Given this, SMEs have a central role in our market economy. Stakeholders are of the view that the undertakings by SMEs to respect human rights have not been well developed due to their limited resources. It is still important to appropriately acquire a situational overview of SMEs. Furthermore, some stakeholders stressed the importance in addressing the issue of business and human rights from a viewpoint of achieving competitive equality between domestic SMEs and foreign companies.