

Feedback on the Draft Guidelines on Respect for Human Rights in Responsible Supply Chains¹

August 18, 2022

The Remedy Project welcomes the Japanese government's commitment to advancing the protection of human rights through the publication of the Draft Guidelines on Respect for Human Rights in Responsible Supply Chains ("**Draft Guidelines**").

Recent surveys conducted by the Ministry of Economy, Trade, and Industry ("**METI**") and [research](#) from the World Benchmarking Alliance and Business & Human Rights Resource Centre indicate that the majority of publicly listed Japanese companies have formulated a human rights policy.² However, Japanese companies appear to face challenges in backing up these commitments with tangible actions such as human rights due diligence, stakeholder engagement, and implementation of effective grievance mechanisms.³

In recognition of these challenges, the Draft Guidelines fulfil the important role of providing practical guidance on the steps that Japanese companies should take to embed and operationalize their commitments to respect human rights. As such, it is crucial that the Draft Guidelines clearly articulate how the principles and standards of the UN Guiding Principles on Business and Human Rights ("**UNGPs**") should be implemented in practice. In this regard, we welcome the incorporation of practical examples into the Draft Guidelines that are relevant for Japanese companies, such as how companies could address potential systemic risks associated with the technical intern trainee programme.⁴ In addition, the inclusion of detailed guidance on responsible withdrawal from conflict-affected areas⁵ and disengagement⁶ is also commendable, especially in light of recent scrutiny of Japanese investments in Myanmar.⁷ The responsiveness of the Draft Guidelines to the realities faced by Japanese businesses is valuable as it offers tailored guidance on how the UNGPs should be translated into practice.

In this response, we wish to highlight for METI's attention, five areas which we believe should merit further attention in the Draft Guidelines (or future guidance)⁸ to support Japanese companies fulfil their responsibility to respect human rights:

1. Effective remedy and grievance mechanisms;
2. Taking and embedding action;
3. Stakeholder engagement;
4. Approaches to information disclosure; and
5. Guidance for small and medium enterprises ("**SMEs**").

¹ The following feedback has been developed based on the English translation. It is noted that the English translation is for reference only.

² For example, 69 per cent of respondents to METI's Questionnaire Survey on the Status of Efforts on Human Rights in the Supply Chains of Japanese Companies confirmed that they have formulated a specific policy on respecting human rights, or clearly stipulated it in their company policies, management principles and strategies, etc. Source: METI, [Release on the Results from the Questionnaire Survey on the Status of Efforts on Human Rights in the Supply Chains of Japanese Companies](#) (2021)

³ For example, while 79 per cent of Japanese companies assessed by the World Benchmarking Alliance disclosed a commitment to human rights, nearly two thirds (64 per cent) of Japanese companies assessed did not make disclosures on how they were identifying, assessing, integrating and action on human rights impacts. Source: Business & Human Rights Resource Centre, World Benchmarking Alliance, [Evidence from Japanese companies assessment on Human Rights Due Diligence](#) (2022)

⁴ Section 4.2.3 of the Draft Guidelines.

⁵ Section 4.2.2 of the Draft Guidelines.

⁶ Section 4.2.1.3 of the Draft Guidelines.

⁷ See for example, Reuters, [Japan's Kirin exits Myanmar business with military-linked partner](#) (2022), and Kyodo News, [Japan energy giant Eneos to exit natural gas project in Myanmar](#) (2022)

⁸ We note that METI intends to develop further materials to accompany the Draft Guidelines.

For each of these areas, we discuss the importance of offering further guidance and suggestions on how the Draft Guidelines could be enhanced.

1. Effective remedy and grievance mechanisms

The 2021 survey of Japanese companies conducted jointly by METI and the Ministry of Foreign Affairs (“MOFA”) found that approximately half of the companies which responded to the survey have yet to establish guidance on remediation of adverse human rights impacts arising from business practices.⁹ Studies of major Japanese multinational companies developed by MOFA in 2021 likewise found that implementation of effective grievance mechanisms was at a nascent stage.¹⁰ Notably, roughly a fifth of companies which responded to the METI/MOFA survey¹¹ said they would like to seek support from the State to establish and improve grievance mechanisms. These studies suggest that ensuring access to effective remedy is a key gap in the efforts of Japanese companies’ commitments to respect human rights. An effective grievance mechanism is important as it provides access to a fair and effective remedy for grievances or harms experienced by rightsholders. At the same time, it provides the operator of the mechanism with continuous data to assess and improve corporate governance structures and operational practices to reduce the risk of future, similar harms occurring. In this way, an effective grievance mechanism brings together human rights due diligence practices and enhances access to remedy. The Draft Guidelines should therefore elaborate on the actions Japanese companies could take to ensure access to effective remedies, given the important and closely connected relationship between human rights due diligence and effective remediation. Specifically, we would recommend that the Draft Guidelines include the following guidance:

- It is commendable that the Draft Guidelines reflect the UNGPs by recognizing that effective remedies may take a range of substantive forms to counteract any adverse human rights impacts that have occurred.¹² However, the Draft Guidelines could place further emphasis on the importance of the procedural elements of the right to access an effective remedy. As recognized in Principle 25 of the UNGPs¹³ and by the OHCHR, where a business provides remediation in cases in which it identifies that it has caused or contributed to adverse impacts, “*such remediation should be effective in terms of both process and outcome*” (emphasis added).¹⁴ While the Draft Guidelines’ definition of remedy does reference the “process” of remedy, it is important that the Draft Guidelines also expressly recognize the effectiveness of remedies concerns process as well as outcome. It is not sufficient to offer remedies, the remedial process itself must also be effective. For example, rightsholders must have reasonable access to sources of information, advice, and expertise necessary to engage in the remediation process on fair, informed and respectful terms.¹⁵ Unless the aggrieved rightsholder is able to meaningfully engage in constructive dialogue with the respondent company, their grievance is unlikely to be adequately addressed and the remedial outcome

⁹ METI, MOFA, Results from the Questionnaire Survey on the Status of Efforts on Human Rights in the Supply Chains of Japanese Companies (2021). Available at: https://www.meti.go.jp/english/press/2021/1130_002.html.

¹⁰ MOFA, Case Studies on Efforts Relating to Business and Human Rights (2021). Available in Japanese at: https://www.mofa.go.jp/mofaj/gaiko/bhr/page23_003537.html

¹¹ METI, MOFA, Results from the Questionnaire Survey on the Status of Efforts on Human Rights in the Supply Chains of Japanese Companies (2021). Available at: https://www.meti.go.jp/english/press/2021/1130_002.html

¹² Section 2.1.3 Remedy and Section 5 Remedy (Details)

¹³ UNGPs Principle 25 and commentary “access to effective remedy has both procedural and substantive aspects”.

¹⁴ OHCHR Working Group on Business and Human Rights, A/71/162 (2017), Paragraph 15.

¹⁵ This is reflected in the UNGPs Principle 31 “effectiveness” criteria, under the criterion of “equitable”.

insufficient. A badly designed and unfair remediation process may even compound the rightsholders' sense of grievance and further infringe upon their human rights.

- In connection with the need to consider both the procedural and substantive elements of an effective remedy, the Draft Guidelines could provide targeted and practical examples of how businesses might ensure that their grievance mechanisms meet the UNGPs Principle 31 effectiveness criteria for non-judicial grievance mechanisms. While the example of a multilanguage smartphone application operated by a third party is helpful to illustrate how businesses might implement a grievance mechanism,¹⁶ it is not sufficient simply to establish a system without ensuring that it is able to deliver both the procedural and substantive elements of an effective remedy. For example, the Draft Guidelines could emphasize that the smartphone application should be developed in consultation with migrant worker groups to verify that the application and its features suit the needs of these groups, and can easily be accessed by them, taking into consideration their different language needs and diverse sociocultural and economic circumstances. Moreover, the operator of the mechanism could also engage an independent third party to provide training to the workers in all languages spoken on site to ensure that workers receive the information necessary to enable them to engage in the remediation processes offered through the application effectively.
- Inclusion of internationally recognized remediation good practices in the Draft Guidelines would also be helpful to support Japanese companies develop effective remediation plans. In particular, the centrality of rightsholders in the remedial process and the importance of ensuring that remedies and grievance mechanisms are responsive to the diverse experiences, needs, and expectation of rightsholders, should be made clear. We refer to the OHCHR Working Group on Business and Human Rights, A/71/162 (2017) report on access to effective remedy. As will be explained in detail in Section 3 below, working with external stakeholders such as civil society organizations as well as workers and their credible representatives in the design and operation of grievance mechanisms should be recognized as a good practice.
- Clearer articulation on how effective grievance mechanisms could benefit businesses would also be helpful to encourage implementation. These benefits could include: the provision of an early and proactive warning system for human rights, proactive management of legal, reputation, financial and commercial risks, improvement to working conditions and workplace productivity, and building better relationships with stakeholders.¹⁷
- An explanation of the relationship between human rights due diligence and remediation could also be provided, as has been done in the OHCHR's interpretive guide on [The Corporate Responsibility to Respect Human Rights](#).¹⁸ As noted above, the close connection between human rights due diligence and remediation should be emphasized. Grievance data obtained through an effective grievance mechanism can be a good indicator of the effectiveness of a business' human rights risk management policies and practices and serve as a platform for stakeholder engagement and support the identification of systemic human rights risks.

¹⁶ Section 5.1 of the Draft Guidelines.

¹⁷ The Remedy Project, [Human Rights Due Diligence and Remediation Mechanisms: Two Sides of the Same Coin – Guidance for Japanese Companies](#) (2022), Page 7. Also available in [Japanese](#).

¹⁸ See Question 32 of the OHCHR, [The Corporate Responsibility to Respect Human Rights interpretive guide](#).

- Further explanation of the relationship between non-State-based grievance mechanisms offered by Japanese companies or multi-stakeholder and industry groups and State-based grievance mechanisms established by the relevant Japanese government bodies should be provided. It is helpful that the Draft Guidelines list the major judicial and non-judicial processes in Japan to deliver remedies. However, the Draft Guidelines should clarify what the State’s role is in facilitating access to remedies (notably Principles 26-28 and commentary of the UNGPs), and how non-State-based grievance mechanisms can supplement and enhance the remedial functions of State-based grievance mechanisms (whether judicial or non-judicial).¹⁹ Importantly, clarity on when grievances must be, or would be more appropriately dealt with through State-based grievance mechanisms, i.e., where criminal conduct is involved, should be provided in the Draft Guidelines.
- Considering the nascent implementation of grievance mechanisms amongst Japanese businesses, the Draft Guidelines could also provide further guidance on when might an enterprise “participate in” a grievance mechanism, rather than establish one itself. For example, SMEs that do not have sufficient resources to develop a grievance mechanism that is able to meet the effective criteria set out in UNGPs Principle 31 could consider participating in a grievance mechanism provided by an external organization such as an industry body, or to leverage external and shared resources to help reduce its costs and/or increase its capacity and effectiveness.²⁰ Another example could include pooling funding to enable a trusted civil society organization to act as an access point and to engage with both rightsholders and businesses in resolving legitimate grievances, provided that the funding structure does not damage the civil society organization’s credibility.²¹ The value in engaging business partners and industry peers in establishing industry-wide and/or supply chain grievance mechanisms could also be reflected in Section 2.2.5 (working with its business partners) and Section 4.2.1.2 (use of leverage).

2. Taking and embedding action

We welcome the detailed guidance in the Draft Guidelines on developing a human rights policy. However, to be effective, a human rights policy must be accompanied by robust and concrete measures to integrate the policy commitments throughout the company. Greater emphasis in the Draft Guidelines on how companies should integrate and act to embed their human rights policies in day-to-day operations could help support practical implementation. In addition to disseminating human rights policies, and reflecting its provisions in codes of conduct and procurement guidelines,²² Japanese companies should be encouraged in Section 3.2 of the Draft Guidelines to:

- Review company training to include human rights criteria as appropriate, and identify target groups that may require additional learning support;²³
- Ensure that teams and personnel responsible for implementing the company’s human rights policy are adequately resourced and are given the necessary mandate to carry out their functions;

¹⁹ UNGPs Principle 25 and commentary

²⁰ Adapted from the OHCHR’s interpretive guide on [the Corporate Responsibility to Respect Human Rights](#), Question 77.

²¹ *Ibid.*

²² Section 3.2 of the Draft Guidelines

²³ Adapted from the UN Global Compact guide on [How to Develop a Human Rights Policy](#) (2015), Page 31.

- Embed human rights into management systems, including responsibilities in job descriptions and performance appraisal;
- Design or revise relevant business processes to incorporate human rights due diligence – this may range from mergers and acquisitions processes, existing risk management systems or audit programmes, supplier pre-selection processes, capacity building activities, among other processes; and
- Integrate human rights into the company’s internal and external communications, including through the use of key performance indicators that are aligned with the UNGPs Reporting Framework.

3. Stakeholder engagement

We highly commend the emphasis on stakeholder engagement in Section 2.2.3 as well as the inclusion of practical examples of how Japanese companies could work with their business partners, labour unions, workers’ representatives, and other stakeholders in fulfilling their responsibilities to respect human rights in various sections of the Draft Guidelines.²⁴ For example, the Draft Guidelines note that results of self-assessments conducted by counterparty factories should be verified through on-site investigations, including interviews with labour unions or worker representatives.²⁵ Encouraging companies to proactively collect information from all their stakeholders, and triangulate and verify data by consulting rightsholders and vulnerable groups is critical to ensure that their policies and practices are tailored to the realities on the ground and accurately pinpoint and address human rights impacts.

To build upon these good practices, we recommend the Draft Guidelines also recognize the importance of stakeholder engagement in the design and operation of grievance mechanisms. For example, rightsholders themselves should be consulted in the design of grievance mechanisms to ensure such mechanisms are responsive to their needs, concerns, and realities. Such engagement is especially important for vulnerable groups, such as migrant workers in the technical intern trainee programme, who might experience challenges in participating in unions.²⁶ External stakeholders such as civil society organizations and trade unions should also have a valuable role to play in socializing the grievance mechanism and helping workers and vulnerable groups access remediation processes. These organizations and other external stakeholders may also support the functions of the grievance mechanisms, e.g., by monitoring the implementation of remediation plans and verifying that agreed upon remedial outcomes are actually received by the aggrieved rightsholders. Without meaningful stakeholder engagement, company-level operational grievance mechanisms often face challenges in understanding and addressing the asymmetries of power that frequently exist between rightsholders and businesses, and prevents rightsholders from engaging in remediation on fair, informed, and respectful terms.

²⁴ See examples in Sections 2.2.5 (engaging in collaborative efforts with business partners), 3.1 (consulting stakeholders in the development of a human rights policy), and 4.1.2.2 (consulting vulnerable stakeholder groups as part of human rights impact assessments).

²⁵ Section 4.3.1 of the Draft Guidelines.

²⁶ See for example Japan Times, [Japan urged to help foreign trainees amid reports of abuse and low pay](#) (2022).

The need to ensure robust non-retaliation and confidentiality policies for whistle-blowers, human rights defenders, rightsholders and vulnerable groups, should also be noted in the Draft Guidelines. These groups are unlikely to meaningfully engage in stakeholder consultation or use grievance mechanisms, unless measures are in place to protect their confidentiality and safety as well as prevent reprisals (such as unfair dismissal, harassment, threats, financial penalties etc.).

4. Approaches to information disclosure

We welcome the Draft Guidelines' acknowledgement of the importance of taking a "knowing and showing" approach, whereby companies are encouraged to be transparent and proactively disclose identified adverse human rights impacts. In particular, the Draft Guidelines sets an expectation that companies should demonstrate a willingness to improve and hold themselves accountable to mitigate, prevent and remediate adverse human rights impacts, through their disclosures.²⁷ It would, however, be helpful for METI to provide more detailed guidance on the contents and scope of information disclosure. We recognize that a degree of flexibility is required to accommodate for the situation of each enterprise. Nonetheless, consistency in disclosure standards would help affected stakeholders and the general public better assess how companies are fulfilling their responsibilities to respect human rights. Consistency in disclosures is also important for ESG data collection, metrics, and performance evaluation, especially in light of overlap with the disclosure requirements in the Corporate Governance Code of the Tokyo Stock Exchange, Inc.²⁸ In this regard, it is recommended that the Draft Guidelines make reference to the [UN Guiding Principles Reporting Framework](#).

5. Guidance for SMEs

We highly commend the express recognition in the Draft Guidelines of the principle that all businesses, irrespective of their size, sector, operational context, ownership, and structure, have a responsibility to respect human rights. The universal applicability of the Draft Guidelines to all Japanese companies is also crucial to ensure a level playing field. That said, SMEs would likely benefit from tailored and practical guidance on how they could implement the Draft Guidelines in practice given that they often have more limited resources. As recognized in Japan's first [National Action Plan on Business and Human Rights](#) ("NAP"), SMEs play an important role in Japan's economy and warrant targeted education and awareness-raising activities.²⁹ In particular:

- The Draft Guidelines and future training materials developed by METI could make reference to the UN Global Compact [A Practical Guide for Continuous Improvement for Small and Medium Enterprises](#) as well as explore the use of maturity or step-up frameworks to clearly set out the expectations for SMEs.
- Where large companies have relationships with SMEs and have contributed or are directly linked to adverse human rights impacts, the Draft Guidelines could also articulate the role and leverage of these large companies in preventing or mitigating the adverse impact. For example, in the proposed European Union Corporate Sustainability Due Diligence Directive,³⁰ companies are required to provide targeted and proportionate support for an SME where compliance with the company's code of conduct or prevention action plan would jeopardize

²⁷ Section 4.4 of the Draft Guidelines.

²⁸ See footnote 61 of the Draft Guidelines.

²⁹ See Chapter 2.B. of Japan's NAP.

³⁰ Article 7 of the proposed [European Union Corporate Sustainability Due Diligence Directive](#)

the viability of the SME. Companies are also required to make necessary investments in their supply chain, such as into management or production processes and infrastructures.

Conclusion

The Draft Guidelines represent an important first step in the Japanese Government's efforts to implement the UNGPs and protect human rights. The Draft Guidelines offer a much-needed framework for Japanese businesses to fulfil their responsibility to respect human rights, and for the Japanese Government to support the private sector in promoting business and human rights principles. The Draft Guidelines also have the potential to create influence and momentum in the Asia-Pacific region towards a more consistent and truthful interpretation of the UNGPs. We commend the efforts of the Japanese Government to ensure that the Draft Guidelines are closely aligned with the principles and standards set out in the UNGPs. We hope that our recommendations in this response have highlighted further areas, especially around access to remedy and grievance mechanisms, which are helpful to support Japan's efforts to implement the UNGPs. We also hope that the publication of the final Guidelines will be accompanied by activities and other initiatives to support their implementation such as capacity building, market-led incentives to encourage compliance, or awards for companies that actively implement the Guidelines.

Looking forward, we also hope that the learnings from the process and outcomes of implementing the Guidelines can be leveraged to develop binding mandatory human rights due diligence laws in the near future. Binding laws and sanctions for non-compliance are essential to establish the minimum obligations on businesses to meet their responsibility to respect human rights. As recognized in Section 1.2 of the Draft Guidelines, businesses in Japan and globally are increasingly called upon to operate in accordance with the UNGPs. The risk of forced labour import bans, European laws on human rights due diligence, consumer boycotts, ESG investing, among other factors, are driving a need for governments to translate the UNGPs into binding, domestic laws, and promote predictability in global business.³¹ Japan has an opportunity to demonstrate its leadership in this global movement and help Japanese companies futureproof their business by enacting its own mandatory human rights due diligence law.

³¹ As noted in Section 1.2 of the Draft Guidelines.