



## **A&S Newsletter: "Business and Human Rights" Series, Vol. 3**

### **Efforts to Respect Human Rights in Japan Publication of the "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains" by the Ministry of Economy, Trade and Industry (April 2023)**

**Note: For easier understanding, sometimes the translation of the related materials does not fully follow the official translation of the Guidelines and Materials provided by the Authority.**

#### **Q1. What is the "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains"?**

- A.** The "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains" (referred to as "Reference Material") is a document that provides specific and practical guidance on the efforts to respect human rights outlined in the "Guidelines on Respecting Human Rights in Responsible Supply Chains" (referred to as the "Guidelines"), which were formulated by the Japanese government in September 2022. Specifically, it discusses key points and examples of implementation flows for the formulation of human rights policies and the initial step of human rights due diligence (referred to as "Human Rights DD"), namely, "the identification and assessment of adverse impacts on human rights", among the formulation of human rights policies, human rights due diligence and the measures for remediation mentioned in the Guidelines.

#### **Q2. Is the "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains" legally binding on companies?**

- A.** As mentioned earlier, the Reference Material serves as a reference for the Guidelines and is not legally binding, since the Guidelines, which form its basis, are not legally binding. Furthermore, as indicated by its nature as a document focusing on key points and examples of implementation flows for the formulation of human rights policies and the initial step of Human Rights DD, it does not imply that the content of the practical Reference Materials is exhaustive or sufficient. Companies are required to explore appropriate measures based on this Reference Material as a reference for their own initiatives.

#### **Q3. What is the overview of the "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains"?**

- A.** The content of this Reference Material is divided into two parts: (1) examples of formulating a human rights policy, and (2) examples of identification and assessment of adverse human rights impacts. The overview of each part is as follows:

**<Examples of Formulating Human Rights Policies>**

- The document provides details on the requirements and points to consider before and after formulating human rights policies, including:
  - i) Understand the current status of your company;
  - ii) Preparation of a draft human rights policy;
  - iii) Management approval; and
  - iv) Publication, dissemination, etc.
- The document presents examples of items to be included in the human rights policy, such as:
  - i) Nature of the human rights policy
  - ii) Coverage of the policy
  - iii) Clearly indicating expectations for respecting human rights by stakeholders
  - iv) Expression of a commitment to respecting internationally recognized human rights
  - v) Responsibility to respect human rights and compliance with laws and regulations
  - vi) Identification of priority issues within the company (understanding the key issues of human rights violations within the company and its supply chains, and making focused efforts to address any issues)
  - vii) Method of implementing human rights efforts (implementing human rights due diligence, formulating policies for remediation, conducting dialogues with stakeholders, etc.)

**< Identification and Assessment of Adverse Human Rights Impacts (Human Rights Violation Risks)>**

- The document provides details on the following aspects and provides further explanations on risk areas and worksheets contained in the Reference Materials to serve as a starting point for identifying adverse impacts:
  - i) Identifying business fields with material risks
  - ii) Identification of the processes where adverse impacts arise (human rights violation risks)
  - iii) Assessment of the company's involvement in adverse impacts and prioritization

**Q4. Is there a set of requirements for the content of human rights policies that companies should establish?**

- A.** There are several key principles that should be considered. For example, human rights policies are expected to be based on international standards, and they should reflect the support and respect for fundamental rights outlined in the Universal Declaration of Human Rights and ILO Declaration on Fundamental Principles and Rights at Work and other international human rights instruments. It is also important to note that the formulation of human rights policies should align with each company's corporate philosophy, and there is no requirement for a standardized approach to the content.

**Q5. What is the starting point for identifying and evaluating adverse human rights impacts (human rights violation risks)?**

- A.** There are reference documents attached to the Reference Material which identify business fields with material risks. These include sector-specific human rights risks, product-specific human rights risks, regional-specific human rights risks, and examples of human rights infringement risks. Additionally, companies can identify potential human rights infringements by referring to reports, grievance mechanisms and other internal documents.

Specifically, for sector-specific identification, the reference document mentions "Human Rights Issues by Sector" contained in the "Guidance Tool for the Financial Sector" (Revised in 2017) of the United Nations Environment Programme Finance Initiative (UNEP FI). This covers the following sectors and provides human rights issues specific to each sector:

- i) agriculture and fisheries
- ii) chemicals and pharmaceuticals
- iii) forestry and logging
- iv) general manufacturing
- v) infrastructure
- vi) mining and metals
- vii) oil and gas
- viii) power generation
- ix) service industry
- x) utilities and waste management

For example, based on information from ILO, 60% of child labour worldwide occurs in the agriculture sector. However, even if a company does not have issues related to child labour, the documents point out that purchasing goods or services from other companies or subcontractors that may have poor practices or be associated with disputes might expose the company to human rights issues or risks in its supply chains.

The document also provides a table of product-specific human rights issues. As mentioned in the sector-specific human rights issues, it highlights the high risk of forced labour and child labour in the agriculture and fisheries sector. By specifying the products, it becomes easier to understand the relationship with your own company. However, it is important to note that this table only provides examples extracted from publicly available materials from ILO, UNICEF, OHCHR, and it does not imply that there are no risks of forced labour or child labour in other products.

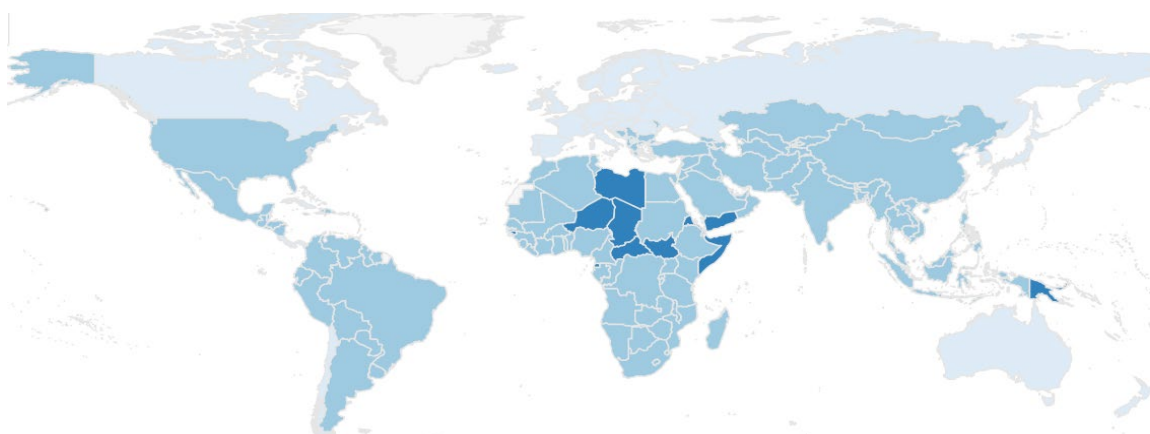
**Examples of products that may have involved forced or child labour, as reported by international organizations**

	Examples of reported products that may have involved child labour	Examples of reported products that may have involved forced labour
<b>Agricultural produce</b>	Cocoa, Coffee, Tea, Sunflowers, Flowers, Palm, Spices (Cloves, Vanilla), Wheat, Rice, Corn, Bananas, Melons, Citrus, Fruits, Blueberries, Grapes, Cassava, Potatoes, Cashews, Hazelnuts, Brazil Nuts, Chestnuts, Beans, Olives, Sugarcane, Tobacco, Poppies, Khat, Cabbages, Cucumbers, Onions, Tomatoes, Garlic, Broccoli, Lettuce	Coffee, Tea, Palm, Bananas, Strawberries, Citrus Fruits, Brazil Nuts, Sugarcane, Tobacco, Tomatoes, Rice, Corn, Pepper
<b>Livestock products/Seafood</b>	Shrimp, Fish, Cattle, Hogs, Poultry, Sheep, Goats	Shrimp, Fish, Shellfish, Cattle, Sheep, Goats
<b>Apparel/Fabric products</b>	Cotton, Sisal, Silk Cocoons, Textiles, Garments, Footwear, Carpets, Thread/Yarn	Cotton, Textiles, Garments, Footwear, Carpets
<b>Minerals</b>	Tin, Tantalum, Tungsten, Cobalt, Gold, Silver, Copper, Mica, Iron, Sapphires, Diamonds, Tanzanite, Trona, Zinc, Coal, Sand, Jade, Granite, Fluorspar, Gypsum	Tin, Gold, Silver, Sapphires, Jade
<b>Miscellaneous goods/Other</b>	Pornography, Leather Goods, Fireworks, Electronics, Soccer Balls, Bricks, Ceramics, Furniture, Incense, Matches, Salt, Charcoal, Surgical Instruments, Rubber	Timber, Electronics, Rubber Gloves, Bricks, Rubber

In terms of regional human rights issues, the Guidelines refer to the following Reference Materials:

- (1) "Ending child labour, forced labour and human trafficking in global supply chains" (ILO, etc.)
- (2) "Children's Rights and Business Atlas" (UNICEF, etc.)
- (3) a list of countries and regions (OHCHR).

Among these, the document includes a visualization of the "Child Rights in the Workplace Index" one of the three indexes provided by the "Children's Rights and Business Atlas." While the entire document cannot be provided here, please refer to the following map for regions where attention is needed regarding child labour. The darker the colour, the higher the risk level.



The "Children's Rights and Business Atlas" "Child Rights Index in the Workplace" from the website (<https://www.childrensrightsatlas.org/country-data/workplace/>). Please note that the access date is May 7, 2023, indicating the most recent visit to the website.

**Q6. What are the adverse human rights impacts (human rights infringement risks) associated with companies, and how are priorities determined?**

- A. The involvement of companies in human rights infringement risks is classified based on the degree of impact, prioritized as follows:
- (1) Companies causing adverse human rights impacts (Cause)
  - (2) Companies contributing to adverse human rights impacts (Contribute)
  - (3) Adverse human rights impacts directly linked to business operations, products, or services (Directly Linked).

The prioritization of human rights infringement risks is conducted when it is challenging to immediately address all risks. The severity of human rights infringement risks is assessed from three perspectives: scale, scope, and irremediability. Risks with higher severity are given priority.

The term "irremediability" may seem unclear. It is more accurate to read it in combination with the Guidelines. There are two aspects to the irremediability: 1) evaluating whether compensation and recovery are possible, and 2) determining the limits of recovering affected individuals to the same state as before the human rights infringement. It is assessed by the urgency of the situation, such as whether immediate action is required for recovery or if it can be addressed promptly.

In prioritization, when severity is equal, priority is given to risks with a higher likelihood of occurrence. In cases where severity and likelihood are equal, the identity of the actor who caused the adverse human rights impact, i.e., whether it is the company itself or its business partners, is considered, and priority is given to addressing risks within the company.

**Q7. How should Human Rights DD be conducted?**

- A. The document provides practical examples of the relationship between companies and human rights infringement risks, as well as prioritization. However, for the subsequent process, it is necessary to refer to the Guidelines. The overview of Human Rights DD outlined in the Guidelines includes: (1) Identification and assessment of adverse human rights impacts, (2) Prevention and mitigation of adverse human rights impacts, (3) Evaluation of the effectiveness of actions, and (4) Communication and information disclosure.

Moving on to (2) and thereafter, in terms of efforts to prevent and mitigate adverse impacts, it is expected that: 1) if the causes of adverse human rights impacts are due to the company's activities, the company should strive to cease or suspend those activities and engage in dialogue with stakeholders to consider appropriate measures. On the other hand, 2) if the activities of other companies associated with the company are the cause of adverse human rights impacts, the company should exercise its influence to the extent possible. Various methods are provided as examples, including suspension of business relationships or "responsible disengagement (Responsible Exit)." However, it is important to note that actions depend on the nature of the cases, as some actions may be impractical or may create additional difficulties for workers who may lose their jobs due to the company's actions.

Furthermore, such efforts require the collection and evaluation of information from both internal and external stakeholders, as well as continuous improvement. Additionally, explaining and disclosing the overall measures taken as part of Human Rights DD is the responsibility of the company and contributes to enhancing corporate value.

**Q8. What remedies can be considered for the adverse impacts on human rights identified through Human Rights DD?**

- A. The appropriateness of remedies should be determined from the perspective of stakeholders who have been adversely impacted on their human rights. Some specific examples of remedies may include apology, restitution, monetary or non-monetary compensation, as well as the establishment and disclosure of processes for preventing recurrence. Requesting suppliers or other relevant parties to take measures to prevent recurrence is also an option to consider.

### **Q9. If these Guidelines and Reference Materials are not legally binding, what are the risks of not complying with them?**

- A.** It is true that the Guidelines themselves do not have legal binding force. However, in some cases, the human rights in question may be protected by laws and regulations. Failing to address the adverse impacts on human rights without referring to the Guidelines can expose companies to litigation risks. Additionally, even if the human rights in question are not legally mandated in the countries where a company's operations or supply chains are located, there is a growing awareness of human rights among various stakeholders, including end consumers. Neglecting the adverse impacts on internationally recognized human rights in business activities could lead to reputation risks, boycotts, and potential divestment, which can have economic implications. Furthermore, as the Guidelines continue to be disseminated, there is a possibility that violations of the Guidelines themselves may become a subject of legal action. Therefore, it is crucial to exercise due diligence and pay sufficient attention to compliance with the Guidelines.

### **Q10. Do you have any Reference Materials on human rights under international rules?**

- A.** In both this Reference Material and the Guidelines, the basic rights listed in the Universal Declaration of Human Rights and ILO Declaration on Fundamental Principles and Rights at Work are mentioned as "internationally recognized human rights" for which companies have a responsibility to respect.

The Universal Declaration of Human Rights includes the "International Bill of Human Rights" (unofficial translation: [https://www.mofa.go.jp/mofaj/gaiko/udhr/1b\\_001.html](https://www.mofa.go.jp/mofaj/gaiko/udhr/1b_001.html)), as well as the major treaties that have codified it, such as the International Covenant on Civil and Political Rights ("ICCPR" - [https://www.mofa.go.jp/mofaj/gaiko/udhr/1b\\_001.html](https://www.mofa.go.jp/mofaj/gaiko/udhr/1b_001.html)) and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"-[https://www.mofa.go.jp/mofaj/gaiko/udhr/1b\\_001.html](https://www.mofa.go.jp/mofaj/gaiko/udhr/1b_001.html)).

The ILO Declaration on Fundamental Principles and Rights at Work includes principles concerning fundamental rights, such as the effective recognition of the right to freedom of association and collective bargaining, the prohibition of all forms of forced labour, the effective abolition of child labour, the elimination of discrimination in employment and occupation, and a safe and healthy working environment ([https://www.ilo.org/tokyo/about-ilo/WCMS\\_246572/lang--ja/index.htm](https://www.ilo.org/tokyo/about-ilo/WCMS_246572/lang--ja/index.htm)).

Furthermore, in this Reference Material and its attachments, examples of human rights risks mentioned in the Guidelines are provided. Please refer to them for the following examples:

- i) Forced labour;
- ii) Child labour;
- iii) Infringement of freedom of association and infringement of the right to collective bargaining;
- iv) Discrimination in employment and occupation;
- v) Infringement of a safe and healthy working environment;
- vi) Infringement of freedom of residence and movement;
- vii) Discrimination on the ground of race, disability, religion, social origin, sex/gender;
- viii) Infringement of the rights of indigenous peoples and local community; and
- ix) Excessive/unreasonable working hours
- x) Unpaid wages.

### **Conclusion:**

This Reference Material provides practical examples of human rights policy formulation and Human Rights DD as outlined in the Guidelines. It is useful for understanding the new process of implementing Human Rights DD within companies.

However, it should be noted that these materials do not cover all possible human rights risks. Human rights risk can change and vary depending on the era and context, so addressing human rights issues through a single point of Human Rights DD may not be sufficient. It is always necessary to continuously assess problems through internal documentation and dialogue with stakeholders. In various countries, there have been cases where financial institutions have denied loans, boycotts have occurred, and human rights organizations have protested against companies due to human rights violation risks. Therefore, it is important to consider human rights violations as tangible and realistic risks in business activities.

Furthermore, although the current situation domestically may be limited to the publication of non-binding Guidelines, it is possible that legal regulations will be enacted in the future. Therefore, it is important to be sensitive to human rights violations and their potential consequences.

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