

MISSION PERMANENTE DU JAPON
AUPRÈS DES ORGANISATIONS INTERNATIONALES
GENÈVE-SUISSE

YS/UN/263

The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights in Geneva and, with reference to the latter's Note Verbale AL JPN 2/2023, dated 26 June 2023, has the honour to transmit herewith the response of the Government of Japan to the Joint Communication from the Special Procedures.

The Permanent Mission of Japan to the International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights in Geneva the assurances of its highest consideration.

Geneva, 21 August 2023



Enclosure mentioned

RESPONSE OF THE GOVERNMENT OF JAPAN TO THE JOINT
COMMUNICATION FROM THE SPECIAL PROCEDURES 26 June 2023
REFERENCE AL JPN 2/2023

15 August 2023

We note that several Special Procedures of the Human Rights Council, including the Working Group on the issue of human rights and transnational corporations and other business enterprises, have expressed interest in the efforts of the Government of Japan in relation to the alleged negative impact on human rights caused by activities of an investment fund by Saudi Aramco, in which Japanese financial institutions also have a stake. In this response, we will outline the Japanese government's efforts and position on business and human rights in our response to Question 1, and then address specific questions in our responses to Questions 2 through 9.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

1. In October 2020, the Government of Japan formulated its National Action Plan on Business and Human Rights (hereinafter referred to as the "NAP"). The NAP was developed with the aim of ensuring the steady implementation of the United Nations Guiding Principles on Business and Human Rights (hereinafter referred to as the "UNGPs"). Based on the UNGPs, the NAP presents various measures that the Government has undertaken, with a focus on the following three pillars: (1) the State duty to protect against human rights abuses, (2) the corporate responsibility to respect human rights, and (3) access to remedy.
2. With regard to the scope of the State duty to protect human rights, Guiding Principle 1 of the UNGPs states that "[s]tates must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." In addition, Guiding Principle 2 of the UNGPs sets forth the concept that "[s]tates should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations," while at the same time stating in the commentary that "[a]t present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or

jurisdiction.” In the NAP, Japan expects business enterprises to respect internationally recognized human rights and the principles concerning fundamental rights as set out in the ILO Declaration on Fundamental Principles and Rights at Work, to introduce the process of human rights due diligence based on the UNGPs and other related international standards, and to engage in dialogue with stakeholders, including those that are part of supply chains. In addition to outlining the aforementioned position, we would like to respond to the questions concerning the measures undertaken by Japan as follows.

2. Please indicate measures taken to ensure that Your Excellency’s Government complies with international environmental laws and human rights standards, especially in relation to climate change.

3. Please advise the steps taken to ensure that Your Excellency’s Government encourages business respect for human rights in line with the UN Guiding Principles on Business and Human Rights, including by requiring businesses to conduct human rights due diligence that addresses how to prevent, mitigate and remediate the adverse climate change-related and other human rights impacts that business may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.

7. Please provide information on steps taken by Your Excellency’s Government to set out clearly the expectation that all business enterprises respect human rights throughout their operations and prevent and mitigate adverse impacts related to climate change.

3. Based on the position indicated in paragraph 2, the Government of Japan, since the formulation of the NAP, has continued to publicize the NAP and raise awareness of human rights due diligence among business enterprises, including in regard to supply chains, through various seminars, websites, and industry groups and other relevant bodies.

4. In September 2022, the Government of Japan released the Guidelines on Respecting Human Rights in Responsible Supply Chains (hereinafter referred to as “the Guidelines”) to support business efforts to respect human rights. Based on the UNGP and other international standards, the Guidelines aim to help deepen

business enterprises' understanding and promote their efforts by explaining the activities that business enterprises are requested to undertake to respect human rights, in a concrete and easy-to-understand manner that is tailored to actual situations of business enterprises engaging in business activities in Japan. The Guidelines require all business enterprises engaging in business activities in Japan to formulate and publicize their human rights policies, conduct human rights due diligence, and provide remedy. The Government of Japan is currently engaged in promoting the Guidelines in order to make many business enterprises aware of them and encourage their broad utilization.

5. In particular, Japanese diplomatic missions abroad, in line with the NAP, have been introducing the NAP and raising awareness of human rights due diligence among Japanese companies operating overseas, in cooperation with the relevant local agencies and related organizations. For example, contact points for Japanese business enterprises (Japanese business support officers) have been established to enhance support for overseas operations of Japanese business enterprises. The diplomatic missions also explain the outline of the NAP and the importance of efforts related to business and human rights, including human rights due diligence, at various seminars and meetings, while paying sufficient attention to the issue of protection of the human rights of workers in supply chains, including women and children and other socially vulnerable groups.
6. Moreover, through contributions to international organizations, the Government of Japan has supported the introduction of human rights due diligence by Japanese business enterprises operating overseas, thereby promoting responsible business conduct.
7. Regarding international environmental law, based on the Paris Agreement, the Montreal Protocol and other international instruments, the Government of Japan has set a carbon-neutral target for 2050 in the Revised Act on Promotion of Global Warming Countermeasures and has been making efforts to control emissions of fluorocarbons under the Revised Fluorocarbons Recovery and Destruction Law. Regarding measures under the NAP, the following guides were published to promote corporate initiatives: the “Introductory Guide on Environmental Due Diligence Along Value Chains – With Reference to OECD Guidance” and the “Introductory Guide on Environmental Due Diligence Along Value Chains – Practicing Environmental Due Diligence Using an Environmental Management System (EMS).”

4. Please advise the steps that Your Excellency's Government has taken to encourages business in your territory and/or jurisdiction to refrain from entering business relationships with businesses that engage in or promote public information campaigns based on inaccurate, misleading and unfounded assertions that harm the ability of States and the public to make informed decisions pertaining to climate change. In this context, please also indicate how Your Excellency's Government encourages business respect for the right of all persons to benefit from science and its applications.

8. The Act against Unjustifiable Premiums and Misleading Representations prohibits businesses operators from making representations that portray their supplied goods or services as significantly superior in nature or more advantageous in trade terms than they actually are.
9. If a business operator portrays goods or services it supplies as environmentally friendly, and if such representation is deemed to give the misleading impression that the goods or services are significantly superior to or more advantageous than they actually are in terms of their contents or in terms of trade, the business operator can be subject to enforcement of the aforementioned Act.
10. In recent years, an increasing number of funds both in Japan and abroad have incorporated ESG (environmental, social and governance) factors in their names and investment strategies. At the same time, concerns are being raised globally that their actual investments may not be commensurate with such ESG claims (the issue of greenwashing). In light of such circumstances, the Financial Services Agency has conducted a survey of 225 publicly offered investment trusts that have been managed by 37 asset managers in Japan since November 2021, and compiled "Seven Expectations for Asset Management Companies managing ESG Investment Trusts (hereinafter referred to as "the Seven Expectations")" in the "Progress Report on Enhancing Asset Management Business 2022" released last May. Based on the Seven Expectations, the Financial Services Agency revised the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators (investment management business) to define specific points for supervisors to check the disclosure on publicly offered investment trusts, and the organizational resources and due diligence of asset managers regarding ESG.

5. Please indicate any steps that Your Excellency's Government has taken to strive for coherence in its responsibility to protect human rights, including in the policies and procedures that govern business activities and relations as they relate to climate change. This could include, for example a smart mix of laws, regulations and policies that encourage or oblige business to reduce emissions and to take other measures to prevent adverse human rights impacts resulting from climate change, and/or climate change dimensions of policies, procedures and procurement practices.

6. Please indicate which the measures taken or planned by Your Excellency's Government to encourage business to prioritize low-carbon and zero-carbon investments.

11. The Government of Japan has taken the following measures, although they are not human rights focused. In May 2023, the Act on Promoting Transition to the Decarbonized Growth Economic Structure (GX Promotion Act) was enacted to achieve both Japan's international commitments such as achieving carbon neutrality by 2050 and to enhance industrial competitiveness and economic growth. The Act introduces a pro-growth carbon-pricing concept and sets prices on carbon emissions to add value to products produced with fewer emissions. This is combined with advance support to investments to create a mechanism to provide incentives for businesses to lead investments in green transformation technologies. In addition, in order to promote investment that contributes to decarbonization, tax measures are provided through the approval of business adaptation plans under the Act on Strengthening Industrial Competitiveness. Also, support is provided through a business restructuring subsidy and a *monozukuri* subsidy for small and medium-sized enterprises (SMEs).

12. As part of the Joint Crediting Mechanism (JCM) led by the Ministry of the Environment, the Finance Programme for JCM Model Projects, which supports the implementation of projects that reduce GHG emissions by utilizing leading decarbonizing technologies in developing and other countries, includes measures to respect human rights in accordance with the NAP and the Guidelines in its selection criteria. The Ministry of the Environment formulates various guidelines in order to promote concrete measures for decarbonizing management in companies. It has already developed Green Bond Guidelines and Green Loan Guidelines that comply with international principles in order to promote investment in the green sector. In

addition, the Ministry provides subsidies for external reviews, which represent an additional cost compared to regular bonds and loans, to further promote financing through green bonds and loans.

13. In order to encourage financing to companies working toward net-zero emissions, the Financial Services Agency implements policies to promote enhancement of corporate disclosure, capital market functions, and financial institutions' support for customers. Specifically, from the perspective of providing necessary information on sustainability for investors in a timely and appropriate manner, in January 2023, the Financial Services Agency revised the Cabinet Office Ordinance on Disclosure of Corporate Affairs to establish a new section in Annual Securities Reports on sustainability information based on four components: "governance," "strategies," "risk management," and "metrics and targets." The revision requires all companies to disclose information on "governance" and "risk management" in the area of sustainability. While it is desirable to disclose "strategies" and "metrics and targets" for sustainability, each company is to disclose them by evaluating the importance of these components through "governance" and "risk management" frameworks. Also, in July 2022, the Financial Services Agency published guidance that points out the importance of engagement between financial institutions and customers on climate change. In June 2023, it published a guide that presents concrete measures to be considered by financial institutions supporting customers toward net-zero. The guide outlines how to understand the transition plan, the eligibility of emission trajectory for pathways, and the importance of developing GHG emissions data. Furthermore, the Financial Services Agency promotes measures to improve the soundness and liquidity of carbon credit trading by supporting efforts to set up and develop a carbon credit market and by clarifying the scope of the carbon credits.

8. Please provide information on steps taken by Your Excellency's Government to encourage businesses to establish and/or participate in operational-level grievance mechanisms, in line with the UN Guiding Principles, to effectively address the adverse climate change-related and other human rights impacts caused by and/or contributed to by business through their operations. In addition, please indicate, in the context of climate change, where financial institutions have contributed to severe impacts (such as the generation of electricity and heat, transportation, and other high emitting sectors) and how Your Excellency's Government has provided for appropriate remediation that accords with the responsibility for the harm.

14. The Human Rights Bodies of the Ministry of Justice created and released a human rights training video* for businesses this year to strengthen understanding of business and human rights and to promote the introduction of human rights due diligence by businesses based on the NAP. Also, the aforementioned bodies dispatch lecturers to provide corporate human rights training and provide human rights awareness-raising materials. In 2022, they conducted 1,046 training sessions in response to requests from businesses and other organizations (number of persons covered: 105,480).

*<https://www.youtube.com/watch?v=SkQqwLNdiK8>

9. Please provide information regarding the measures that your Excellency's Government is taking or considering to ensure that persons affected by the activities of businesses domiciled in your jurisdiction have to redress in your country, through judicial or extrajudicial state mechanisms.

15. The Japanese National Contact Point (hereinafter referred to as "the NCP") was established in 2000 in accordance with the Decision of the Council on the OECD Guidelines for Multinational Enterprises (2000). The Japanese NCP is composed of the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry. The NCP is responsible for undertaking promotional activities of the OECD Guidelines, responding to enquiries on the OECD Guidelines, and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances, including human rights-related issues.