

Section 5

“BUSINESS AND HUMAN RIGHTS” IN THE ERA OF GLOBALIZATION

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1. Introduction

When the second Kishida administration took office in November 2021, there was one particular appointment that attracted attention. This was the newly created post of Special Advisor to the Prime Minister for International Human Rights Issues, and former Defense Minister Gen Nakatani was appointed to this post. The public may have perceived the government’s emphasis on human rights as abrupt, but this development was not a one-time, ad hoc effort by the Kishida administration and in the background to it lies major international geopolitical dynamics.

When the Biden administration took office in the United States in January of the same year, a major shift was made to multilateralism, which was an about-face from the inward-looking stance that the Trump administration took to its international relationships. To counter the escalating confrontation with China, the strategy that was clearly chosen was to solidify the bonds of “like-minded countries” that share values such as freedom, democracy, and the rule of law, and build an encircling net. At the heart of this axis of values are human rights. Human rights have become one of the most crucial factors in defining the international position of the Japanese government, and this trend is having a significant impact on the business world.

As such, this paper reviews the significance and challenges of “business and human rights” in Japan from the perspective of businesses in the age of globalization.

2. Human Rights Issues in Business

What are human rights issues in business? This question is often asked. There is a strong impression that human rights are generally perceived as a vague concept or idea in Japan and often it is treated as an issue in a specific context, such as Buraku discrimination. Human rights, however, are clearly delineated, well-defined, universal rights that all people are born with. That is a universal value system that humanity has developed through repeated trial and error over a long period of time (Human Rights Bureau, Ministry of Justice, 2020). In 1948,

the United Nations General Assembly adopted the Universal Declaration of Human Rights, which became the International Covenants on Human Rights in 1966, and human rights became a common value standard for the international community. This is clearly stipulated also in the Constitution of Japan.

The protection and promotion of human rights have traditionally been regarded as the responsibility of the state. Since the beginning of this century, however, in addition to the state, firms have been expected to play an active role in respecting human rights through their businesses and have been required to mainstream human rights into their business practices. In fact, several international rules and frameworks already exist regarding corporate activities and human rights. It should be noted that these human rights issues specified in these conventions are based on global norms, such as international treaties.

For example, an important international norm closely related to companies is the International Labour Organization’s (ILO) Core Labour Standards. These include eight conventions in four standards; freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation¹⁾. The standards are positioned as fundamental rights that must be complied with at a minimum in order to simultaneously achieve social progress and economic development by promoting decent work in an increasingly globalized world. In principle, labor-related guidelines should be developed with reference to these standards to ensure consistency.

In actual business settings, specific human rights risks are diverse. These include insufficient or unpaid wages, excessive or unreasonable working hours, inadequate occupational health and safety, and various types of harassment, such as power harassment and sexual harassment. Violations of the right to social security, the rights of foreign workers, and discrimination based on race, ethnicity, gender, or sexual orientation are also considered to be human rights issues. Firms are required to respect these business-related human rights risks more than ever before. In an era of advanced globalization, it is essential for businesses to reflect intrinsic changes in their business practices to respond to these requirements.

1) A resolution was adopted at the International Labour Conference in June 2022 on the inclusion of a fifth standard—namely, a safe and healthy working environment—in the ILO’s framework of fundamental principles and rights at work.

3. “Business and Human Rights” in the Age of Globalization

“Business and human rights” is both an old and new issue. The beginning of this development dates back to the 1970s. The expansion of multinational enterprises (MNE’s) and their impact on the world economy, especially in developing countries, were already evident in those days. In response to this, the Organisation for Economic Co-operation and Development (OECD) formulated the OECD Guidelines for Multinational Enterprises in 1976, and the ILO formulated the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) in 1977. These two guidelines have served as basic principles when considering business and human rights in subsequent years.

Since the rise of neoliberalism in the 1980s through the post-Cold War era in the 1990s, economic globalization has flourished. The development of complex cross-border production and distribution systems, or so-called global value chains, also accelerated around this time and spread to all corners of the world. As the influence of these value-chain-driven MNEs on society grows, so does the focus on responsible corporate practices. In particular, the negative impact of globalization on the “social dimensions,” i.e., the relationship between corporate activities and global issues such as widening inequality and environmental destruction, has been discussed, and the nature of Responsible Business Conduct (RBC) has been questioned.

At the 1999 Davos Conference, Kofi Annan, then Secretary-General of the United Nations, called for the establishment of a “United Nations Global Compact” in partnership with the private sector to achieve sustainable growth, and this was enacted the following year. In Japan, a local network for this framework (Global Compact Network Japan, GCNJ) was launched in December 2003, and as of June 2022 when this report was written, it has become a major organization with 489 member businesses and organizations. Participating companies are required to adhere to and practice the 10 principles in four areas; human rights, labor, environment, and anti-corruption.

The most considerable influence on the “business and human rights” movement has been the Guiding Principles on Business and Human Rights (hereinafter referred to as the Guiding Principles)²⁾ that were unanimously endorsed by the United Nations Human Rights Council in 2011. The Guiding Principles were formulated because of the influence of MNEs and their growing

2) The official name is Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

impact on the economies and societies of developing countries. In particular, as they improved their competitiveness through global value chains, firms in developed countries, including in Japan, were increasingly seen as facilitating or complicit in human rights abuses.

Following the adoption of Agenda 2030 at the United Nations General Assembly in 2015, the world began to focus on Sustainable Development Goals (SDGs). In this context, the “excitement” about SDGs in Japan is noteworthy (Goto, 2019). In 2016, the Abe administration swiftly set up the SDGs Promotion Headquarters in the Cabinet, and in the following year, Keidanren revised its Charter of Corporate Behavior with “Achieving the SDGs through the realization of Society 5.0” as its main pillar. Since then, many firms have begun to link their existing businesses to the individual goals of the SDGs and to publicize them on their websites. The SDGs were also strongly promoted in the bid to host the international exposition to be held in Osaka in 2025. Despite the fact that the SDGs have become an everyday topic in various situations, the fact that there is a lack of specific discussions on human rights as a central theme in the business world has caused a deep sense of discomfort. Agenda 2030 also clearly states that the realization of the SDGs is predicated on respect for human rights. Human rights are the common basis for all 17 goals and it is impossible to implement the SDGs while leaving human rights on the sidelines.

4. Global Trends on Business and Human Rights

The Guiding Principles, which describe the human-rights responsibilities of states and corporations, have three main pillars. The first pillar is the obligation of states to respect, protect and fulfill human rights and fundamental freedoms (Protect); the second pillar is the responsibility of businesses to comply with all applicable laws and regulations and to respect human rights (Respect); and the third pillar is the requirement to have adequate and effective remedy mechanisms and to guarantee access to them in the event of a violation of human rights or non-compliance with them (Remedy). It is important to reiterate that they specify the responsibilities of states as well as businesses for the protection or extension of human rights.

The Guiding Principles are not enforceable against governments or businesses, so in order to give them a certain degree of effectiveness, each country is encouraged to develop a national action plan. The Japanese government responded by formulating the National Action Plan on Business and Human rights (NAP) in October 2020. The plan’s period is five years, from 2020 to 2025, with subsequent revisions being scheduled. It became the 24th national action

plan in the world.

While these Guiding Principles are the focus of global efforts, developed countries (especially in the EU) are also formulating related legal systems to promote even stronger respect for human rights in business. A precursor to this, for example, is the Modern Slavery Act that came into force in the UK in 2015. The law requires businesses that are operating in the UK and are meeting certain conditions to publicly disclose their efforts to prevent human rights violations, including those of their business partners. Similar laws are already in force in France, Australia, Germany, and California in the United States. In the EU, there is a move toward legislation that will require businesses operating in the region to conduct human rights and environmental due diligence and to establish a complaint handling and problem-solving mechanism (see [Table 1-5-1](#)). Many of these legal frameworks also cover Japanese businesses operating in the respective country or that are involved in the value chain for the target market.

5. Global Value Chains and Human Rights

As discussed so far, the global trend regarding business and human rights is moving from voluntary compliance with human rights norms by companies to compliance legally mandated by states. Global frameworks such as the Guiding Principles, the OECD's Guidelines for Multinational Enterprises, and the ILO's MNE Declaration serve as guidelines in this regard as well. The Guiding Principles call for companies to implement the following three items in order to realize the ten principles in the four areas mentioned above. The first is to formulate a human rights policy and to express its commitment as a company. The second is that ongoing human rights due diligence must be implemented. The third is to provide remedies in the event of human rights violations. Among these items, human rights due diligence has recently become a topic of discussion in the media and the push toward legislation related to this has been gathering momentum, particularly in Europe.

As mentioned earlier, human rights due diligence is an ongoing process by which companies fulfill their responsibilities to respect human rights in their day-to-day activities. Its focus is preventing and mitigating human rights violations after identifying human rights risks according to the characteristics of each industry and company. Based on this process, remedying the victim(s) is the next requirement. More specific guidelines for implementing procedures can be found, for example, in the OECD Due Diligence Guidance for Responsible Business Conduct. According to this, human rights due diligence includes the

Table 1-5-1 Legal systems related to human rights (selected excerpts)

Country	Applicable Laws	Contents
UK	Modern Slavery Act	Enforced in 2015. Strengthens legal regulations against slave labor and human trafficking. Requires companies with annual sales over a certain size and operating in the UK to publish a statement that there is no slave labor or human trafficking in their supply chain.
France	Obligation of duty of care for parent and ordering companies (Duty of Care Act)	Enforced in 2017. Stipulates the duty of care (due diligence) with respect to human rights. It legally requires companies of a certain size located in France to prepare and implement a duty-of-care plan.
Australia	Modern Slavery Act	Enforced in 2019. A law similar to the UK’s Modern Slavery Act. Requires companies that operate in Australia and exceed certain revenue levels to assess, analyze, and report on the risk of modern slavery in their supply chains. Applies also to Japanese companies.
Netherlands	Child Labor Due Diligence Act	Enacted (not yet enforced) in 2019. Covers all companies (including Japanese companies) that offer or sell products or services on the Dutch market. Makes mandatory the submission of a statement indicating that due diligence has been conducted in the supply chain to prevent child labor.
Germany	Supply Chain Due Diligence Act	Enacted in June 2021 and scheduled to come into effect in January 2023. Obliges companies above a certain size (including Japanese companies) to pay attention to human rights and environmental risks related to all domestic and foreign companies in their supply chain, including indirect business partners.
USA	California Transparency in Supply Chains Act	Enforced in 2012. Companies (including Japanese companies) operating in California and above a certain size are required to disclose their actions to eradicate slavery and human trafficking in their supply chains.
	Uyghur Forced Labor Prevention Act	Enacted in 2021 and enforced in June 2022. This act prohibits, in principle, the import of products produced in the Xinjiang Uyghur Autonomous Region of China (including products in which parts produced there are incorporated) unless the products meet requirements, such as proof that they were not produced by forced labor.
EU	Directive on corporate sustainability due diligence	Announced in February 2022. Makes it mandatory to conduct due diligence in the supply chain. This was preceded by the publication in July 2021 of guidance on conducting due diligence to address forced labor risks in the supply chain.
	EU Conflict Minerals Regulation	Enforced in 2021. Makes it mandatory for EU operators to ensure that their handling of minerals from designated areas does not contribute to conflicts or human rights abuses.

Source: Prepared by the author from JETRO (2021a, b, c, d) and JETRO (2022a, b).

following actions (OECD, 2018).

- 1) Embed responsible business conduct into policies and management systems
- 2) Identify and assess actual and potential adverse impacts associated with the enterprise’s operations, products or services
- 6) Provide for or cooperate in

remediation when appropriate

- 3) Cease, prevent and mitigate adverse impacts
- 4) Track implementation and results
- 5) Communicate how impacts are addressed

In an era of globalized corporate activities, it is not easy to conduct the human rights due diligence described above. The reason is that many business activities are embedded in global value chains that connect across boundaries of firms and countries. In short, a business' respect for and compliance with human rights in its activities are not limited to its own sphere of activity but must extend throughout its entire value chain.

A global value chain refers to a production and distribution network consisting of complex inter-firm relationships. The forms of governance are also diverse. From the point of view of the business that organizes and governs this, the essence of its strategy is to externalize and reorganize peripheral processes and functions other than the core functions (core competence) that enable the business to demonstrate its international comparative advantage. This externalization is deployed on the two basic strategic axes of 1) offshoring and 2) outsourcing. Offshoring in 1) is the process of transferring the relevant processes and functions to outside of Japan. A common case is the transfer of a process to a developing country with lower income levels in response to a decline in its comparative advantage due to higher wage levels in Japan. Outsourcing 2) is the process of transferring the relevant processes and functions outside the firm. A case in point is outsourcing a specific function or process. The part that remains within the firm is the competitive domain (core competence) that constitutes the core function. The four quadrants (strategies) created by the combination of these two axes form the global value chain (Table 1-5-2). Whether it is an electronic or an apparel product, its value chain is basically a combination of these four strategies (Goto, 2019).

The Guiding Principles require that due diligence be performed not only

Table 1-5-2 Two strategic axes of externalization

		1) Offshoring axis	
		None	Yes
2) Outsourcing Axis	None	(1) Core competitive domains (own capabilities)	(2) Own overseas offices (FDI)
	Yes	(3) Domestic outsourcing	(4) Overseas outsourcing

Source: Goto (2019).

for the company’s own domestic offices, including its headquarters, but also for its overseas offices, as well as for its domestic and overseas suppliers with whom it has no capital relationship. Furthermore, the scope of human rights due diligence is not limited to “direct business partners” with whom the firm has a direct contractual relationship, but also includes a responsibility for “indirect business partners” with whom the firm has no business contract. This means, for example, that lead firms that govern the value chain must take responsibility for the employment and human rights issues of the subcontractors with whom their overseas suppliers do business, as well as their own subcontractors. There is also the development of extensive informal economies in Southeast and South Asian countries (Endo and Goto, 2018; Goto, 2021). If a firm’s value chain extends to such sectors, it is also subject to due diligence.

6. Current Status of Human Rights Response by Japanese Companies

Amid the accelerating global movement towards “business and human rights,” the Japanese government has established the Business and Human Rights Policy Office in the Ministry of Economy, Trade, and Industry (METI) to promote its response to human rights risks in global value chains, including the aforementioned Special Advisor to the Prime Minister. Furthermore, the Ministry of Foreign Affairs (MOFA) also established the post of the Senior Coordinator for Human Rights Violations. In February 2022, METI announced the formulation of the Guidelines on Respecting Human Rights in Responsible Supply Chains. In some cases, the private sector has taken the lead, such as by including provisions for respect for human rights in the Corporate Governance Code (corporate governance guidelines) for companies listed on the Tokyo Stock Exchange in June 2021. In addition, the Japan Textile Federation, with the support of the ILO and backed by the METI is developing its Guideline for Responsible Business Conduct for the Textile and Clothing Industry of Japan through dialogues with stakeholders (at the time of drafting this paper).

There have been several studies conducted regarding the current state of business and human rights in Japan. METI conducted a Questionnaire Survey on Human Rights Initiatives in the Supply Chain of Japanese Companies (760 valid responses, 27.3% valid response rate) from September to October 2021. The survey revealed that about 70% of the responding companies have formulated human rights policies and more than 50% are conducting human rights due diligence. Of the companies conducting human rights due diligence, 25% include indirect business partners in their due diligence process. As a general

trend, the results also showed that the larger the sales volume, the more likely it is that the firm is responding to human rights issues.

The Japan External Trade Organization (JETRO) conducted a similar survey from November to December 2021. This Questionnaire on Overseas Business Development of Japanese Companies for FY 2021 (1,745 valid responses, 13.0% valid response rate) showed that 38.1% of the surveyed businesses have a human rights policy in place, but that 60% have not yet formulated one. Concerning the percentage of businesses that have formulated human rights policies, 64.3% of large companies have such policies compared to 32.7% of small and medium-sized companies. Of the companies that have human rights policies, 65.4% also require their own suppliers to comply with human rights. Among them, 81.6% of the companies request compliance from their domestic suppliers, but only 26.0% request compliance from their overseas suppliers. Only 10.6% of the companies require their suppliers' suppliers to comply with their human rights policies. On the other hand, 31.3% of the surveyed companies are required by their domestic and foreign customers to comply with a policy of respect for human rights. Although the Japanese government and related organizations have finally begun to act on human rights, the efforts of the industry as a whole and individual companies are still limited.

7. Future Issues

As the UN Guiding Principles indicate, it might be virtually impossible to completely eliminate human rights risks that may arise in business. As such, it is necessary to ascertain conditions in the entire value chain, including in indirect business partners, on the premise that human rights-related problems may occur, and therefore it is essential to identify the risks in each process and function according to the level of severity. Continuous human rights due diligence can only be effective through active engagement with stakeholders of these value chains. In such cases, it is important to disclose the efforts and results in a transparent manner.

In January 2021, some of the products of a major Japanese apparel company were blocked from being imported into the United States. The US authorities gave the reason that an organization in Xinjiang Uyghur Autonomous Region of China, where forced labor is suspected, may be involved in the production of the raw materials for these products. Although the apparel company appealed, it appears that the US authorities decided that the evidence presented were not convincing enough.

Finally, when Japan addresses human rights and business on a national

level, the issue of foreign technical intern trainees should not be avoided. The system of foreign technical intern trainees is positioned as a scheme for Japan’s “international cooperation” centering on “human resource development” that encourages the transfer of skills, technology, or knowledge to developing countries. There must be cases in which the transfer of skills and technology to developing countries has been effectively advanced through this system, thereby contributing to their economic development. In reality, however, it is a well-known fact that Asian workers dispatched under this system have become simply a labor force to meet the labor needs of firms and industries suffering from labor shortages. As such, this foreign technical intern trainees program has long been subject to international criticism. For example, in its Trafficking in Persons Report, the United States has repeatedly pointed out that the system allows the exploitation of foreign workers and encourages forced labor.

Sustainability and SDGs are not merely “fashionable trends.” If Japan is serious about promoting “sustainable development” and leading the world through it, all of its efforts must be based on a respect for human rights. Now is the time to have a real discussion and to implement concrete measures that embrace the essence of sustainability.

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