

# **Guidelines on Respecting Human Rights in Responsible Supply Chains**

**September 2022**

**The Inter-Ministerial Committee on Policy Promotion for  
the Implementation of Japan's National Action Plan on  
Business and Human Rights**

This document is a provisional English translation of the Guidelines on Respecting Human Rights in Responsible Supply Chains (“the Guidelines”). The Guidelines in Japanese are the original, and the English translation is for information only. If there is any discrepancy between the Japanese original and this English translation, the Japanese will prevail.

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## 1. Introduction

While globalization has driven economic development, the world faces difficult issues such as widening disparities and poverty, the escalation of climate change and other environmental problems, the spread of infectious diseases, and the eruption of conflicts, which are closely related to problems involving human rights abuses. While respecting freedom, democracy, human rights, the rule of law, and other universal and fundamental values more than ever, Japan will facilitate resolution of these global issues along with other countries worldwide to achieve sustainable economies and societies.

Human rights are the inherent rights of all people to ensure their life, liberty, and to pursue happiness, and to live with dignity. States have the duty to protect and fulfill human rights.

In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, which set out the first set of principles of respect for fundamental human rights and internationally proclaimed the goals and standards for protection of human rights. Subsequently, as the adverse impacts of business activities on human rights expanded with the acceleration of globalization, and international discussions on corporate responsibility for human rights abuses by business activities became more active, the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (“UN Guiding Principles”),<sup>1</sup> one of the most important international frameworks for business and human rights, were endorsed by consensus in the United Nations Human Rights Council in 2011.<sup>2</sup> The UN Guiding Principles rest on three pillars: the State’s duty to protect human rights, corporate responsibility to respect human rights, and access to remedy.<sup>3</sup> States and business enterprises are required to supplement each other and fulfill their respective roles.

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<sup>1</sup> The Japanese translation is available here:

[https://www.unic.or.jp/texts\\_audiovisual/resolutions\\_reports/hr\\_council/ga\\_regular\\_session/3404/](https://www.unic.or.jp/texts_audiovisual/resolutions_reports/hr_council/ga_regular_session/3404/). The Corporate Responsibility to Respect Human Rights: An Interpretive Guide prepared by the United Nations Human Rights Office of the High Commissioner (“OHCHR”) and explaining the corporate responsibility to respect human rights stipulated by the UN Guiding Principles ([https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf)) is a useful guide.

<sup>2</sup> The Working Group on the issue of human rights and transnational corporations and other business enterprises issued the Guiding Principles on Business And Human Rights At 10: Taking stock of the first decade (<https://www.ohchr.org/en/documents/thematic-reports/ahrc4739-guiding-principles-business-and-human-rights-10-taking-stock>) which took stock of the first decade of implementation of the UN Guiding Principles by the States and business enterprises.

<sup>3</sup> “The State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse.” (Paragraph 6 of the Introduction to the UN Guiding Principles).

The Japanese government launched a National Action Plan on Business and Human Rights (2020-2025)<sup>4</sup> in 2020 based on the UN Guiding Principles and has been engaging in various efforts.<sup>5</sup> As a State that has developed supply chains and strong economic ties particularly with Asian countries, Japan is expected to show its leadership in disseminating and promoting corporate efforts to respect human rights while taking local situations into consideration.

At the same time, under the UN Guiding Principles, business enterprises that engage in business activities in Japan must pay attention to the adverse human rights impacts by their business enterprise, group companies, and within their supply chains, etc., not only in Japan but also around the world.

Going forward, the Japanese government will proactively continue to fulfill its obligation as a State. Starting with formulating the Guidelines, it will put forward activities to enlighten and increase awareness among business enterprises to enable them to engage in efforts to respect human rights. In addition, it will provide information, advice, etc., so that business enterprises can proactively respect human rights. The Japanese government will also play its expected role, especially in cases where human rights abuses are taking place with the involvement of States. It will also consider further measures to encourage business enterprises' efforts. It will cooperate with other governments and international organizations to further its efforts as well as efforts by Japanese business enterprises and will also actively publicize these efforts to the international community.

### **1.1 Background and purpose of the establishment of the Guidelines**

As mentioned above in Chapter 1, in 2011, the UN Guiding Principles were endorsed by consensus at the United Nations Human Rights Council. In addition, the State's obligation to protect human rights and corporate responsibility to respect human rights was incorporated in the Guidelines for Multinational Enterprises by the Organisation for Economic Cooperation and

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<sup>4</sup> This National Action Plan is available here: <https://www.mofa.go.jp/mofaj/files/100173319.pdf>. In June 2022, the Japanese government reported on the implementation status of the National Action Plan for the first year ([https://www.mofa.go.jp/mofaj/fp/hr\\_ha/page24\\_001838.html](https://www.mofa.go.jp/mofaj/fp/hr_ha/page24_001838.html)) (available only in Japanese).

<sup>5</sup> For example, the Ministry of Economy, Trade and Industry ("METI") and the Japan External Trade Organization ("JETRO") have launched webpages featuring business and human rights ([https://www.meti.go.jp/english/policy/economy/biz\\_human\\_rights/index.html](https://www.meti.go.jp/english/policy/economy/biz_human_rights/index.html) and [https://www.jetro.go.jp/world/scm\\_hrm/](https://www.jetro.go.jp/world/scm_hrm/)) (available only in Japanese). The Ministry of Foreign Affairs ("MOFA") issued "A Compilation of Case Studies on Business and Human Rights - Towards the expansion and establishment of efforts based on the UN Guiding Principles on Business and Human Rights" (<https://www.mofa.go.jp/files/100348374.pdf>). The Ministry of Justice ("MOJ") issued "Report 'Research and Study on Business and Human Rights'" ([https://www.moj.go.jp/JINKEN/jinken04\\_00188.html](https://www.moj.go.jp/JINKEN/jinken04_00188.html)) (available only in Japanese).

Development (“OECD”) (the “OECD Guidelines for Multinational Enterprises”)<sup>6,7</sup> when it was revised in 2011, as well as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the “ILO MNE Declaration”) by the International Labour Organization (“ILO”)<sup>8,9</sup> when it was revised in 2017.

Moreover, the G7 calls for taking action in line with international standards on business and human rights.<sup>10</sup> As shown by the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and the ILO MNE Declaration, all three of which the Japanese government supports, it is an international principle that business enterprises are responsible for respecting human rights, in addition to the State’s obligation to protect human rights. Business enterprises may cause adverse human rights impacts through their activities. They are therefore required to conduct business in line with the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and the ILO MNE Declaration.

As mentioned above in Chapter 1, in October 2020, the Japanese government launched the National Action Plan on Business and Human Rights (2020-2025). In November 2021, as part of a follow up on the National Action Plan, the results from the Questionnaire Survey on the Status of Efforts on Human Rights in the Supply Chains of Japanese Companies conducted jointly by METI and MOFA, were published. The survey presented the strong demands for the Japanese government to establish guidelines. Besides business enterprises, many other stakeholders also

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<sup>6</sup> <https://www.oecd.org/daf/inv/mne/48004323.pdf>

<sup>7</sup> OECD developed the OECD Due Diligence Guidance for Responsible Business Conduct (“OECD Guidance”) based on the OECD Guidelines for Multinational Enterprises (<https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>) which is helpful for considering and implementing human rights due diligence. OECD also developed guidance by industry fields which are available on the website of the MOFA ([https://www.mofa.go.jp/ecm/oecd/page22e\\_000946.html](https://www.mofa.go.jp/ecm/oecd/page22e_000946.html)) and websites of the relevant ministries and agencies.

<sup>8</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)

<sup>9</sup> ILO established the ILO Helpdesk for Business, which business enterprises can consult about international labour standards, including the ILO MNE Declaration(<https://www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm>). In addition, ILO has also published materials from the perspective of supporting business development that is more consistent with the principle of international labour standards (<https://www.ilo.org/empent/areas/business-helpdesk/tools-resources/lang--en/index.htm>).

<sup>10</sup> Most recently, the relevant documents in the field of business and human rights were adopted at the G7 Trade Ministers Meeting in 2021 (<https://www.g7germany.de/g7-en/current-information/g7-meetings-trade-ministers-2014880#:~:text=G7%20Meeting%20of%20the%20G7%20trade%20ministers%20The,trade%20ministers%20will%20meet%20on%2014%2F15%20September%202022>) and the G7 Labour and Employment Ministers Meeting in 2022 (<https://www.g7germany.de/g7-en/current-information/g7-meetings-labour-ministers-2014846#:~:text=The%20Federal%20Minister%20of%20Labour%20and%20Social%20Affairs%2C,affairs%20met%20on%2024%20May%202022%20in%20Wolfsburg>).

voiced their expectation that the Japanese government would take initiatives to promote business efforts that respect human rights.

In light of the above, in March 2022, METI established the Study Group on Guidelines for Respecting Human Rights in Supply Chains and held further discussions to promote corporate efforts to respect human rights based on international standards. As a result, the Guidelines have been formulated and published<sup>11</sup>

Based on the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, the ILO MNE Declaration, and other international standards, the Guidelines have been established 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, which is tailored to the actual situation of business enterprises engaging in business activities in Japan. To develop a deeper understanding of international standards, it is appropriate to refer to the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and the ILO MNE Declaration, which the Guidelines are based on. In addition, the Guidelines will be reviewed in reflection of subsequent developments of international standards.

In order to provide details on efforts to respect human rights in a more concrete and practical manner, mainly to practitioners at business enterprises, METI will create and publish materials to refer to along with the Guidelines.

## **1.2 The Significance of respecting human rights**

As shown in the UN Guiding Principles, business enterprises have a responsibility to respect human rights as entities that engage in business activities. Corporate responsibility to respect human rights means that business enterprises should avoid abusing the human rights of others and should address any adverse human rights impacts<sup>12</sup> with which they are involved. All business enterprises have the corporate responsibility regardless of their size, sector, operational context, ownership, and structure.

Business efforts to respect human rights should, needless to say, aim to prevent, mitigate, and remedy adverse human rights impacts from business activities. In addition, as a result of continuing to meet their responsibility to respect human rights, business enterprises can contribute to achieving

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<sup>11</sup> Annexes to the Guidelines include “Overview of Overseas Legislations” that outlines overseas legislations related to human rights for business enterprises, in addition to the Q&A at the end of the Guidelines (As this Overview is available only in Japanese, it is not included in the English translation of the Guidelines.).

<sup>12</sup> Unless it is stated expressly, “adverse impacts” as used in the Guidelines include both actual and potential adverse impacts.

a sustainable economy and society, maintain and acquire social credibility as well as maintain and improve corporate value, as exemplified below.

First, efforts to respect human rights reduce the management risks that business enterprises face. In concrete terms, for example, the following risks may be reduced: boycotts against products and services due to human rights abuse, downgrading as an investment location, targeting for exclusion from candidate investment locations and withdrawal of investments and others. In addition, the possibility that business partners will discontinue trade due to human rights abuse is a significant management risk not only for large-sized business enterprises but also for small and medium-sized business enterprises.

Currently, domestic laws are being introduced mainly in Europe to oblige business enterprises to engage in efforts to respect human rights,<sup>13</sup> and, in the U.S. and other countries, laws and regulations concerning human rights abuses, including prohibitions on imports of goods produced with forced labour,<sup>14</sup> have been strengthened. Not only business enterprises to which these laws and regulations apply directly but also business enterprises to which these laws and regulations do not apply are increasingly required to strengthen efforts to respect human rights through requests from the business enterprises to which these laws and regulations apply. Promoting efforts to respect human rights further strengthens responses to these laws and regulations and enhances predictability in global business.

In addition, as a result of business enterprises meeting their responsibility to respect human rights, they may benefit from positive impacts in terms of business management. For example, appropriately implementing and publicizing efforts aimed at respecting human rights leads to improvement of the corporate brand image, more positive ratings as an investment location, improved relationships with business partners, development of new business partners, and the acquisition and retention of excellent personnel, etc. This increases competitiveness domestically and abroad and enhances corporate value.

In this way, efforts towards made respecting human rights have major significance for business enterprises not only from the perspective of meeting their responsibility, but also from the perspective of reducing management risks and increasing corporate value as a result.

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<sup>13</sup> For example, countries such as France, Germany, and the Netherlands have enacted laws that oblige certain business enterprises to conduct human rights due diligence. In addition, EU adopted a proposal for a Directive on corporate sustainability due diligence in February 2022, which is expected to require EU members to oblige certain business enterprises to conduct due diligence, including human rights due diligence. These are outlined in the “Overview of Overseas Legislations” (available only in Japanese).

<sup>14</sup> An example includes Section 307 of the Tariff Act of 1930 and the Uyghur Forced Labor Prevention Act. The “Overview of Overseas Legislations” outlines these laws (available only in Japanese).

Many Japanese business enterprises have already engaged in business management bearing ESG<sup>15</sup> in mind, and initiatives to achieve the SDGs.<sup>16</sup> Not limited to initiatives taken by the business enterprises or group companies, they have been building a trustworthy relationship with business partners, including in particular, suppliers in Asian countries through developing worker skills, improving industrial safety and health, and making constructive labour-management relations.<sup>17, 18</sup> Such initiatives for decent work<sup>19</sup> and constructive labour-management relations contribute to the prevention, mitigation, and remedy of adverse impacts that international standards require. These have been developed in Asian regions and other regions where Japanese business enterprises have deep connections through supply chains and have contributed to social and economic progress in these areas. Implementing and enhancing efforts to respect human rights along with relevant business enterprises, including suppliers, based on the trustworthy relationship Japanese business enterprises have built, will also lead to building resilient and inclusive supply chains that are internationally competitive

### **1.3 Target business enterprises of the Guidelines and target scope of efforts for respecting human rights**

The Guidelines are not legally binding. However, regardless of the business enterprise size, sector and other factors, all business enterprises (including sole proprietors; the same applies

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<sup>15</sup> ESG stands for Environment, Social, and Governance. For example, the term ESG investing refers to investment in consideration not only of conventional financial information, but also of ESG factors. An investor initiative in partnership with the UNEP Finance Initiative (“UNEP FI”) and the UN Global Compact, the Principle for Responsible Investment (<https://www.unpri.org/download?ac=10948>) proposed “responsible investment” (a strategy and practice to incorporate ESG factors in investment decisions and active ownership) and listed modern slavery, child labour and other issues as examples of “Social” among ESG factors.

<sup>16</sup> SDGs refers to the Sustainable Development Goals, which are the international goals to achieve a sustainable and better world by 2030 as stated in the 2030 Agenda for Sustainable Development (<https://www.mofa.go.jp/mofaj/gaiko/oda/sdgs/pdf/000101401.pdf>). This was adopted unanimously by UN summit members in September 2015 as a successor to the Millennium Development Goals (“MDGs”) established in 2001. The 2030 Agenda for Sustainable Development makes reference to respect for human rights in the paragraph 19 and the UN Guiding Principles in the paragraph 67.

<sup>17</sup> For example, some business enterprises have established a global framework arrangement (international labour-management arrangement on multinational business enterprise actions) with their labour unions and international industry labour unions and broadly announced to society their commitment to act in line with the ILO fundamental Conventions in the form of arrangement and are engaged in achieving these commitments.

<sup>18</sup> For example, there is a case where a business enterprise provided broad vocational training and education not only to their employees, but also to the employees of their business partners and people suffering from economic hardship and unemployment, and it contributed to the creation of better job opportunities. These efforts also resulted in securing excellent personnel.

<sup>19</sup> According to the ILO definition, decent work refers to productive work for women and men in conditions of freedom, equity, security, and human dignity. Regarding decent work, the ILO’s website can be a reference (<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>).

hereinafter) engaging in business activities in Japan should strive in efforts to respect human rights in their business enterprise, group companies, suppliers, etc. inside and outside Japan (business enterprises in supply chains and other business partners, which are not limited to direct business partners are hereinafter referred to as “suppliers, etc.”) to the fullest extent possible,<sup>20</sup> in line with the Guidelines, which are based on international standards.

The term “supply chain” as used in the Guidelines refers to “upstream” in relation to the procurement and securing, etc. of raw materials and resources for a business enterprise’s products and services, facilities, and software, and also “downstream” in relation to the sale, consumption, and disposal etc. of its products and services.

In addition, the term “other business partners” refers to business enterprises other than those within the supply chain that are related to the business enterprise’s operations, products, and services. More specifically, for example, these are investment and lending locations, partners of joint enterprises, business operators providing equipment maintenance and inspection, and business operators providing security services, etc.

As mentioned above, the term “suppliers, etc.” covers a wide range; however, the degree of leverage a business enterprise has on its “suppliers, etc.” depends on various factors. Business enterprises are required to fulfill their responsibility to respect human rights in consideration of this point.

## **2. Overview of business efforts to respect human rights**

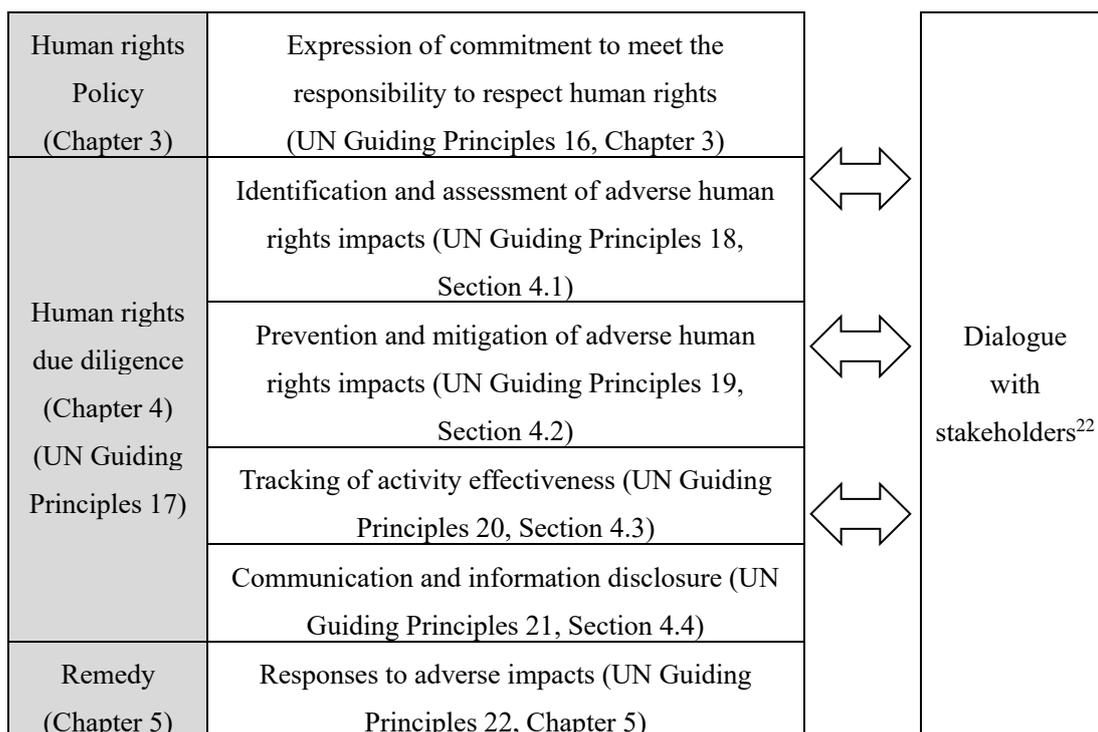
### **2.1. Outline of business efforts**

In order to meet corporate responsibility to respect human rights, business enterprises are required to formulate their human rights policy, conduct human rights due diligence, and provide remedy<sup>21</sup> when business enterprises cause or contribute to adverse human rights impacts. An outline of the overview is shown below.

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<sup>20</sup> As stated in Subsection 2.2.4 below, if it is difficult for business enterprises to immediately address all “adverse impacts” as required by the UN Guiding Principles, the business enterprises should give priority to what is considered to have a high severity level in their adverse impacts first.

<sup>21</sup> As stated in Chapter 5, if adverse human rights impacts are only directly linked to its operations, products or services, the business enterprise may play a role in the remedy but is not responsible for providing a remedy. However, as stated in Subsubsection 4.2.1.2, it should strive to prevent or mitigate the adverse impacts by engaging with its third enterprise that causes or contributes to the adverse impacts.



**2.1.1 Human rights policy (see Chapter 3)**

Human rights policy is a policy in which a business enterprise clearly presents its commitment to meet the responsibility to respect human rights towards stakeholders inside and outside the business enterprise.

**2.1.2 Human rights due diligence (see Chapter 4)**

Human rights due diligence refers to a series of acts undertaken by business enterprises to identify, prevent, and mitigate adverse impacts (Subsubsection 2.1.2.2 below) on human rights (Subsubsection 2.1.2.1 below) in their business enterprise, group companies, and suppliers, etc., to track the effectiveness of their responses, and to account for and disclose information on how they address the adverse human rights impacts.

Due to its nature, however, human rights due diligence does not guarantee the result that there are no human rights abuses but is an ongoing process to prevent and mitigate adverse human rights impacts while holding dialogue with stakeholders (Subsubsection 2.1.2.3 below).

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<sup>22</sup> The “stakeholder engagement” requested by international standards refers to an ongoing process of interaction and dialogue between a business enterprise and its stakeholders. In the Guidelines, it is referred to as “dialogue with stakeholders.”

### 2.1.2.1 Scope of “human rights”

In the Guidelines, the term “human rights” to be respected by business enterprises refers to internationally recognized human rights.<sup>23</sup> The internationally recognized human rights include, at a minimum, those expressed in the International Bill of Human Rights,<sup>24</sup> and the principles concerning fundamental rights<sup>25</sup> as stated in the “ILO Declaration on Fundamental Principles and Rights at Work.”

In concrete terms, business enterprises need to consider the impact on, for example, the freedom from labour<sup>26</sup> or child labour,<sup>27</sup> freedom of association, the right to collective bargaining, freedom from discrimination in employment and occupation, freedom of movement and residence, freedom from discrimination on the ground of race, disability, religion, social origin, sex, or gender. In general, business enterprises need to pay particular attention and may prioritize responses to what is considered to have a high severity level in their adverse human rights impacts, such as forced labour and child labour, regarding suppliers and other entities that operate in countries and regions with weak human rights protection.

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<sup>23</sup> It is evident that the human rights guaranteed by the Constitution of Japan should be respected in Japan.

<sup>24</sup> The International Bill of Human Rights refers to the “Universal Declaration of Human Rights (UDHR)” ([https://www.mofa.go.jp/policy/human/univers\\_dec.html](https://www.mofa.go.jp/policy/human/univers_dec.html)), the “International Covenant on Civil and Political Rights,” ([https://www.mofa.go.jp/policy/human/cove\\_civil/cove\\_civil.html](https://www.mofa.go.jp/policy/human/cove_civil/cove_civil.html)), and the “International Covenant on Economic, Social and Cultural Rights” ([https://www.mofa.go.jp/policy/human/cove\\_econo/cove\\_econo.html](https://www.mofa.go.jp/policy/human/cove_econo/cove_econo.html)), which are key documents that codified the UDHR. The scope of internationally recognized human rights could be extended, depending on the development of international discussions and other factors. For example, in July 2022, the UN General Assembly adopted a resolution on the “human right to a clean, healthy, and sustainable environment.” Some States have argued that “a right to a clean, healthy, and sustainable environment” has not yet been established as a human right, and various debates are ongoing on the scope of human rights.

<sup>25</sup> It refers to the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation; and a safe and healthy working environment. A safe and healthy working environment was included in the ILO Declaration on Fundamental Principles and Rights at Work by a resolution of the ILO International Labour Conference in June 2022. For more details, see the ILO’s website (<https://www.ilo.org/declaration/lang--en/index.htm>).

<sup>26</sup> ILO defines “forced labour” as “any work or service that is exacted from a person under the threat of a penalty, and for which that person has not offered himself or herself voluntarily” ([https://www.ilo.org/empent/areas/business-helpdesk/WCMS\\_DOC\\_ENT\\_HLP\\_FL\\_EN/lang--en/index.htm](https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FL_EN/lang--en/index.htm)). In addition, ILO published the eleven indicators of forced labour ([https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_203832/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm)).

<sup>27</sup> Child labour refers to work by children under the minimum age to work. The specific minimum age to work is stipulated in national legislation; however, ILO’s “Minimum Age Convention” (No. 138) stipulates that the minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years, excluding specific exemptions. In addition, ILO’s “Worst Forms of Child Labour Convention” (No. 182) prohibits the “worst forms of child labour” by persons under the age of 18 (including work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children). For more details, the ILO’s website of can be a reference (<https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm>).

In addition, regardless of whether or not they are internationally recognized human rights, business enterprises should not infringe on the rights and freedoms guaranteed by the laws and regulations of each country and should comply with such laws and regulations.

On the other hand, compliance with national laws and regulations does not necessarily imply that the corporate responsibility to respect human rights has been satisfied. Compliance with the laws and regulations in each country and the corporate responsibility to respect human rights are not necessarily the same. In particular, if the laws and regulations or enforcement of a country do not appropriately protect internationally recognized human rights, business enterprises will need to seek ways to respect internationally recognized human rights to the greatest extent possible.<sup>28</sup>

### 2.1.2.2 Scope of “adverse impacts”

In the Guidelines and as explained in the table below, there are three levels of “adverse impacts.” In terms of human rights due diligence, business enterprises need to cover not only adverse impacts they cause or contribute to either directly or indirectly,<sup>29</sup> but also those that are directly linked to their operations, products, and services.<sup>30</sup>

In addition, not only adverse actual impacts, but also potential adverse impacts are subject to human rights due diligence. If adverse human rights impacts actually occur, recovery from the damage is not easy, and is impossible in some cases. Therefore, it is important to prevent adverse impacts in advance and, if adverse impacts occur, to prevent its recurrence.

Type of adverse impacts	Example
When business enterprises “cause” <sup>31</sup> adverse impacts through their own activities	Exposure of factory workers to hazardous working conditions without adequate safety equipment Being the sole or main source of pollution in a community’s drinking water supply due to chemical effluents from production processes
When business enterprises “contribute” <sup>32</sup> to adverse impacts through their own activities—either directly or through some	A business enterprise demanded delivery from its supplier on what it knew to be an unfeasible lead time (the time necessary from order placement until delivery). As a result, the supplier employees were forced to work extreme overtime hours.

<sup>28</sup> See the UN Guiding Principles 23.

<sup>29</sup> In this case, questions of complicity may arise. Depending on the applicable laws and regulations, business enterprise may be legally responsible for being complicit in the act of another party.

<sup>30</sup> The “adverse human rights impacts” to be addressed by business enterprises in the Guidelines are those articulated in international standards such as the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and the ILO MNE Declaration that business enterprises should address.

<sup>31</sup> The term “cause” refers to a case where business enterprise’s activities on their own are sufficient to result in the adverse impacts.

<sup>32</sup> The term “contribute” refers to cases [i] where a business enterprise’s activities, in combination with the activities of another entity, cause adverse impacts, or [ii] where the activities of the business enterprise cause, facilitate or incentivize another entity to cause adverse impacts.

Type of adverse impacts	Example
outside entities (government, business enterprises, or other)	A business enterprise recognizes that installing costly equipment that treats run-off from the plant of a company in which the business enterprise invests is necessary to prevent the drinking water of a local community from being polluted by the run-off. However, the business enterprise votes against installing the costly equipment and the drinking water of the local community is polluted by the runoff from the investee's plant.
While business enterprises neither cause nor contribute to adverse impacts, the adverse human rights impacts are caused by an entity with which it has a business relationship and is "directly linked" <sup>33</sup> to its own operations, products, or services	A retailer entrusts embroidery of its clothing products to a supplier. The supplier, as a trustee, in violation of its contractual obligations, re-entrusts the embroidery to another supplier that use child labour to make the embroidery. Providing financial loans to a business enterprise for its activities. In breach of concurred standards, the business enterprise standards, forcibly evicts community residents.

### 2.1.2.3 "Stakeholders"

The term "stakeholders" refers to persons or groups who have interests that could be impacted by a business enterprise's activities.

Examples of stakeholders are business partners, employees of the business enterprise, group companies, and business partners, labour unions, worker representatives, consumers, as well as NGOs, such as civil society organizations and other entities, industry organizations, human rights defenders,<sup>34</sup> nearby residents, indigenous people, investors and shareholders, national governments, local governments, and other organizations.

Business enterprises need to identify stakeholders who are or may be affected in relation to their specific business activities.

Example: If local residents live in or use the land for their livelihood and a business enterprise engaging in land development operations overseas intends to acquire the land, the local residents are considered stakeholders. Also, local residents who do not use the land directly but may be adversely affected by the development operations are considered stakeholders.

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<sup>33</sup> The linkage of the term "directly linked" is defined by the relationship between adverse impacts and the business enterprise's operations, products, or services through the third business enterprise. Whether "directly linked" or not is not defined by direct contractual relationships, such as direct sourcing.

<sup>34</sup> The term "human rights defenders" refers to people who, individually or with others, act to promote or protect human rights in a peaceful manner. An example of a human right defender is a local attorney who legitimately raises the issue when residents' land is illegally taken by business enterprises. According to the report developed by the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, "The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders" ([https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf)), globally, human rights defenders suffer attacks and threats in certain cases, on the grounds that they express concerns about adverse human rights impacts. This trend appears to have become stronger recently. Business enterprises should pay attention not to expose human rights defenders to undue risks by initiating unfounded legal proceedings or reporting human rights defenders to authorities as a means of intimidating them.

### **2.1.3 Remedy (see Chapter 5)**

The term “remedy” refers to mitigating and repairing adverse human rights impacts and the process for doing so. As stated in Chapter 5 below, business enterprises should provide remedy when they “cause” or “contribute” to adverse human rights impacts. In addition, even if the operations, products, and services of a business enterprise are merely “directly linked” to adverse human rights impacts, the business enterprise should strive to use its leverage<sup>35</sup> with other business enterprises that have caused or have been contributing to the adverse impacts.

## **2.2 Approach to efforts to respect human rights**

### **2.2.1 Management’s commitment is extremely important.**

Efforts to respect human rights should be implemented by overall business enterprise activities, including recruitment, procurement, manufacturing, sales, and others. To fully meet its responsibility to respect human rights, the entire business enterprise needs to be involved in these efforts. Therefore, it is essential that management, including top executives, commit to engaging in efforts to respect human rights and continue to address the activities proactively and voluntarily.

### **2.2.2 Potential adverse impacts exist within any business enterprise.**

Potential adverse human rights impacts exist within any business enterprise at all times, and it is difficult to eliminate all impacts even if it engages in efforts to respect human rights. For this reason, on the assumption of the existence of potential adverse impacts, it is important for each business enterprise to consider how to identify, prevent, and mitigate the potential adverse impacts and communicate their efforts.

In order to identify adverse impacts accurately, Subsection 2.2.3 Dialogues with stakeholders and Section 5.1 Grievance mechanism below are helpful.

### **2.2.3 Dialogues with stakeholders are important for efforts to respect human rights.**

The process of holding dialogues with stakeholders helps business enterprises understand the actual status and causes of adverse impacts and facilitates ways to address adverse impacts and to

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<sup>35</sup> When using their leverage, business enterprises need to pay attention not to conflict with Competition Law (in Japan, including the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors). The same applies hereinafter.

build a trustworthy relationship with stakeholders. Considering this, it is crucial to hold dialogues throughout all efforts to respect human rights, including human rights due diligence.<sup>36</sup>

The Guidelines indicate specific methods and examples concerning dialogues with stakeholders in each section. As stated in Subsubsection 2.1.2.3 above, stakeholders include business partners, labour unions, workers' representatives, and other various actors.

#### **2.2.4 Having an approach to addressing adverse human rights impacts sequentially based on the order of priority is important.**

Based on the UN Guiding Principles and other international standards, business enterprises need to implement efforts to respect human rights as their final goal [i] for their business enterprise, group companies, and suppliers, etc., [ii] concerning internationally recognized human rights, [iii] not only for adverse impacts that the business enterprises “cause” or “contribute” to, but also adverse impacts that are “directly linked” to their operations, products, and services, etc.

However, for many business enterprises, it is difficult to implement all efforts immediately considering human and economic resource restrictions and other factors.

Business enterprises should therefore give priority to addressing adverse human rights impacts with higher levels of severity first, while recognizing the final goal of efforts to respect human rights. If there are multiple high-priority adverse impacts after considering severity and probability,<sup>37</sup> priority may be given to addressing the adverse impacts that the business enterprises “cause” or “contribute” to within themselves and the business partners with which they have direct contractual relationships.<sup>38</sup> In such a case, however, it is necessary to extend the actions to adverse impacts by indirect business partners and such impacts only “directly linked” to their operations, etc.<sup>39</sup>

There is no single correct answer for efforts to respect human rights. Each business enterprise needs to consider appropriate efforts in light of its situation and other factors. This approach is

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<sup>36</sup> Based on Section 11 of the ILO MNE Declaration, business enterprises should fully take into account the established general policy objectives of the countries in which they operate. Their activities should be consistent with their development priorities and social aims. To this effect, consultations should be held between multinational enterprises, the government and the national employers' and workers' organizations concerned. These dialogues enable business enterprises to build relationships of trust in host countries and to play an active role in contributing to social and economic progress.

<sup>37</sup> As stated in Subsection 4.1.3 below, if there are multiple adverse impacts with the same high severity level, it is reasonable to address adverse impacts with high probability first.

<sup>38</sup> Business partners that are considered to be substantially in a direct contractual relationship are also included.

<sup>39</sup> It is an example of the idea of priority order in cases where there are multiple adverse impacts with high priority. This does not necessarily mean to rule out other ideas.

important not only for setting the order of priority, but also for overall efforts to respect human rights.

### **2.2.5 It is important that each business enterprise cooperates in respecting human rights.**

As stated in Section 1.3 above, all business enterprises have the responsibility to respect human rights regardless of their size and sector and other factors. When each business enterprise engages in efforts to respect human rights, it is assumed that business enterprises can request their suppliers, etc. to engage in specific activities.

In this case, it is important for business enterprises not to delegate all efforts to respect human rights to their business partners in a direct contractual relationship, but to engage in activities to respect human rights together.

Example: A business enterprise invites its suppliers to workshops for its business enterprise and group companies in order to share good practices for respecting human rights.  
Example: A business enterprise holds a meeting with business partners to exchange opinions on issues related to human rights for which efforts should be regularly strengthened, establishes a common understanding among them, and uses the understanding for efforts to respect human rights at each company level.  
Example: Based on its experience with implementing efforts to respect human rights in line with international standards, a business enterprise introduces activity methods and good practices for efforts to be used as a reference to business partners that have not fully engaged in the efforts.

If a business enterprise requires business partners to engage in efforts to respect human rights when placing an order on products and services in a form where the business enterprise unilaterally imposes an excessive burden on the business partners by using its contractual status, it may be in violation of the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors and the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.<sup>40</sup> Business enterprises that request business partners to engage in efforts to respect human rights need to make efforts to gain understanding and consent from their business partners by exchanging sufficient information and opinions, while taking into account individual and specific circumstances.

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<sup>40</sup> From the perspective of building preferable transaction relationships between parent companies and their subcontractors in Japan, various guidelines for promoting appropriate subcontracting transactions, etc. posted by the Small and Medium Enterprise Agency on its website (<https://www.chusho.meti.go.jp/keiei/torihiki/guideline.htm>) may be helpful (available only in Japanese).

### 3. Human rights policy

Business enterprises should express their commitment to meet their responsibility to respect human rights inside and outside the business enterprise through a human rights policy<sup>41</sup> that fulfills the five requirements shown in the following table. Corporate commitments that obtain the approval of management are very important since they provide a clear and comprehensive policy to determine corporate actions.

[i]	It is approved at the most senior level of the business enterprise.
[ii]	It is informed by relevant internal and/or external expertise. <sup>42</sup>
[iii]	It stipulates the business enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products, or services.
[iv]	It is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties. <sup>43</sup>
[v]	It is reflected in the operational policies and procedures <sup>44</sup> necessary to embed it throughout the business enterprise.

#### 3.1 Points for consideration when establishing a human rights policy

Business type, size and other factors vary among each business enterprise and the type of human rights on which adverse impacts may occur and the severity of the assumed adverse impacts also vary among each business enterprise. When establishing a human rights policy, it is necessary to start with identifying the human rights on which the business enterprise may have impacts.

It is expected that established human rights policies will reflect more actual conditions if, when considering the above, knowledge is collected from each internal department (e.g. marketing, human resources, legal affairs/compliance, procurement, manufacturing, business planning, and research and development) and dialogues and discussions are held with stakeholders who are familiar with the business enterprise's industry, circumstances of raw materials to be procured, and countries from which raw materials are procured, etc. (e.g. labour unions/worker representatives, NGOs, employers organizations and industry organizations).

Example: Before establishing a human rights policy, identify the stakeholders that may suffer adverse impacts and how the stakeholders exist in relation to the operations of the business enterprise. In addition, collect information such as on internal problem cases, hold dialogues

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<sup>41</sup> It does not necessarily have to be a stand-alone document with the name human rights policy; but may be a document that substantially fulfills the requirements of a human rights policy. Still, it is desirable for the document to be externally clear equivalent to a human rights policy.

<sup>42</sup> "Expertise" includes, for example, the advice of experts and confirmation of reliable materials.

<sup>43</sup> "Other relevant parties" includes, for example, organizations that are directly linked to the business of the enterprise, investors, and stakeholders that may be affected in the business involved in critical adverse human rights risks.

<sup>44</sup> "Operational policies and procedures" include, for example, a code of conduct and procurement guidelines.

with labour unions, hold discussions with experts knowledgeable in the field of business and human rights, and list and organize issues related to human rights that are considered to be important in the business enterprise's group operations. Then, obtain the advice of the experts concerning the parts that are identified to have high risks, and reflect this knowledge in the policy.

The human rights policy expresses the basic idea of a business enterprise concerning overall efforts to respect human rights and is closely related to the corporate management philosophy. Each business enterprise establishes a unique<sup>45</sup> human rights policy based on its management policy, thereby ensuring consistency between the human rights policy and management philosophy, which leads to institutionalizing the human rights policy internally.

### **3.2 Points for consideration after establishing a human rights policy**

Establishing and publishing a human rights policy is not the end of the process. Business enterprises should embed their human rights policy throughout the business enterprise and implement the human rights policy concretely in their efforts. For this reason, it is important to disseminate<sup>46</sup> the human rights policy internally and to reflect the details of the human rights policy in a code of conduct and procurement guidelines. In addition, it is useful to revise the human rights policy as needed considering the results of human rights due diligence and other factors.

## **4. Human rights due diligence**

### **4.1 Identification and assessment of adverse impacts**

The first step of human rights due diligence is to identify and assess any actual or potential adverse human rights impacts in which business enterprises may be involved. For this purpose, it is helpful to hold dialogues with stakeholders, including employees, labour union/workers' representatives,<sup>47</sup> civil society organizations, human rights defenders, and local residents.

#### **4.1.1 Specific processes**

Specific processes of identification and assessment of adverse impacts are as follows. On the premise of these processes, it is necessary for business enterprises to gather information on their suppliers, etc. in order to ensure the traceability of their products and services.

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<sup>45</sup> For example, it is not appropriate for a business enterprise to merely make a formal adjustment to the human rights policy of another business enterprise in the same industry and establish the adjusted policy as its human rights policy.

<sup>46</sup> For example, it is considered to be appropriate to take actions for "dissemination" to the business enterprise's employees (e.g., conducting training) besides "publication". Procedures for "dissemination" are not always necessary in all cases besides "publication."

<sup>47</sup> According to the ILO MNE Declaration Section 10(e), "For the purpose of achieving the aim of the MNE Declaration, this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process."

**(a) Identification of business fields with material risks<sup>48</sup>**

Identify the business fields where the probability of adverse human rights impacts is high and material risks exist. When identifying such business fields, the risk factors in the table below<sup>49</sup> may be considered.

Risk factors	Description	Reference <sup>50</sup>
Sector risks	Risks that are globally prevalent within a sector as a result of the characteristics of the sector, its activities, its products, and production processes	[Sector risks or product and service risks] “Human Rights Guidance Tool for the Financial Sector” (UNEP FI) <sup>51</sup> “OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector” (OECD) <sup>52</sup> “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas THIRD EDITION” (OECD) <sup>53</sup>
Product and service risks	Risks related to materials used in development or use of specific products and services, and risks related to the development or production process	“Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains” (OECD) <sup>54</sup> “OECD-FAO Guidance for Responsible Agricultural Supply Chains” (OECD/FAO) <sup>55</sup>
Geographic risks	Conditions in a particular country which may make sector risks more likely. (Such as governance [e.g., strength of inspectorates, rule of law, level of corruption), socio-economic context [e.g., poverty and education rates, vulnerability, and discrimination of specific populations])	“Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises” (OECD) <sup>56</sup> “OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector” (OECD) <sup>57</sup> [Geographic risks]

<sup>48</sup> Business enterprises with limited business fields, particularly small business enterprises may omit the process of identification explained in (a).

<sup>49</sup> Made with reference to Q20 and others of the OECD Guidance

<sup>50</sup> This table lists major documents of international organizations, which can provide useful information when identifying business fields with high risks of adverse human rights impacts. Because these documents were developed in different contexts and with different purposes and do not necessarily focus on Japanese society and business enterprises, it is necessary to conduct a review in line with the conditions unique to Japan and each business enterprise rather than totally depend on these documents. In addition to the documents of international organizations, various documents have been disclosed and can be used as needed.

<sup>51</sup> <https://www.unepfi.org/humanrightstoolkit/index.php>

<sup>52</sup> <https://mneguidelines.oecd.org/oecd-due-diligence-guidance-garment-footwear.pdf>

<sup>53</sup> <http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>

<sup>54</sup> <https://mneguidelines.oecd.org/Practical-actions-for-worst-forms-of-child-labour-mining-sector.pdf>

<sup>55</sup> <https://mneguidelines.oecd.org/oecd-fao-guidance.pdf>

<sup>56</sup> <http://mneguidelines.oecd.org/due-diligence-for-responsible-corporate-lending-and-securities-underwriting.pdf>

<sup>57</sup> <https://www.oecd-ilibrary.org/docserver/9789264252462-en.pdf?expires=1661170178&id=id&accname=guest&checksum=B8D5FBC717DB9956CBE829BD0FA509DE>

Risk factors	Description	Reference <sup>50</sup>
Enterprise-level risks	Risks associated with a specific business enterprise, such as weak governance and a poor history of conduct in relation to respecting human rights	<p>“Ending child labour, forced labour and human trafficking in global supply chains” (ILO, etc.)<sup>58</sup></p> <p>“Children’s Rights and Business Atlas” (UNICEF, etc.)<sup>59</sup></p> <p>“Countries” (OHCHR)<sup>60</sup></p>

**(b) Identification of the processes where adverse impacts arise**

Specifically identify how adverse human rights impacts can occur (who suffers adverse impacts on what human rights) at each process of the business enterprise's operations. If business fields with material risks have been identified in (a) above, start identification from these business fields.

**(c) Assessment of the business enterprise’s involvement in adverse impacts**

To decide on an appropriate response, assess the business enterprise’s involvement in adverse human rights impacts. In particular, assess whether or not the business enterprise has caused or contributed to (or may cause or contribute to) adverse impacts and whether or not adverse impacts are directly linked (or may be directly linked) to their operations, products, or services.

**(d) Prioritization**

If it is difficult to immediately address all adverse human rights impacts identified and assessed, consider prioritization of responses. The details are described in Subsection 4.1.3 below.

**4.1.2 Points to consider for the process to identify and assess adverse impacts**

**4.1.2.1 Ongoing impact assessment**

Because human rights situations are constantly changing, assessment of human rights impacts should be iterative and increasingly in depth. In addition to these periodic assessments, an impact

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<sup>58</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_716930.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_716930.pdf)

<sup>59</sup> <https://www.childrensrighsatlas.org/country-data/workplace/>

<sup>60</sup> <https://www.ohchr.org/en/countries>

assessment should be implemented in the following cases (non-periodic impact assessment), for example:<sup>61</sup>

- (a) prior to a new activity or business relationship;
- (b) prior to major decisions or changes in the operation (e.g., market entry, product launch, policy change, or wider changes to the business);
- (c) in response to or in anticipation of changes in the operating environment (e.g., growing security concerns due to rising social tensions);

In an impact assessment, the information obtained through grievance mechanisms can be useful, as described in Section 5.1 below.

In addition, business enterprises should consider whether they are involved in adverse impacts from various viewpoints. For example, business enterprises need to pay attention to whether prices of products and services procured from their suppliers are unjustifiably low.

By continuously implementing impact assessments in this way, the priority of adverse impacts to be addressed by each business enterprise will be reviewed naturally. It is desirable to consider the results of impact assessments not only in the prevention or mitigation of adverse impacts, but also in general decision making for business activities.

Example: Conduct regular questionnaire surveys, interviews, etc. of employees of a business enterprise's factory to assess potential adverse human rights impacts (e.g., working in a dangerous work environment). In this process, make sure that employees can submit their responses without being viewed by their employer.

Example: Holding briefing sessions for suppliers on CSR procurement policy, asking suppliers to answer an annual self-assessment questionnaire, and conducting a survey on risks concerning human rights and the environment in supply chains based on the results of the questionnaire. In order to ensure the suppliers' appropriate understanding of the self-assessment questionnaire and their substantial (not formal) answers, have opportunities for dialogues with suppliers when conducting the self-assessment questionnaire.

Example: When providing loans for operations involving land expropriation of local residents, identify and assess potential adverse impacts of the operation on local residents, including through on-the-spot inspection of adverse impacts on human rights and the environment.

Example: Upon request from a supplier to increase a supplying price that is currently unjustifiably cheaper than market prices in order to eliminate child labour, investigate the sourcing area of the supplier, and if it is made apparent that sourcing areas of the supplier hold concerns about child labour, accept the increase in price.

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<sup>61</sup> Non-periodic impact assessment should be implemented in the case of so-called M&A (mergers and acquisitions). However, unlike due diligence for understanding the various risks involved in a single transaction in the M&A context, human rights due diligence should be implemented continually through periodic and non-periodic impact assessments. It is unnecessary to adopt the same assessment method for periodic and non-periodic impact assessments.

#### 4.1.2.2 Vulnerable stakeholders

When assessing adverse human rights impacts, business enterprises should pay special attention to potential adverse impacts on vulnerable individuals, namely, individuals from groups or populations that may be at heightened risk of becoming socially vulnerable or marginalized.<sup>62</sup> This is because such individuals are likely to be affected by more severe adverse impacts.

Though assessment needs to be made for specific and individual cases, it is likely that foreigners, women,<sup>63</sup> children,<sup>64</sup> persons with disabilities, indigenous people,<sup>65</sup> ethnic or racial, religious, and linguistic minorities are often in vulnerable situations. It should also note that one person may have intersectional attributes (e.g., foreign woman), which can further increase their vulnerability.<sup>66</sup>

These perspectives are important not only in the identification and assessment of adverse impacts, but also in the overall efforts to respect human rights.

Example: Implementing a survey (interview, etc.) to foreigners and women, including technical intern trainees, on general human rights issues involving vulnerable employees (e.g., wage discrimination for the single reason of being a foreigner or woman), changes in the working environment under the impact of COVID19 and other issues. Use easy-to-understand language for the survey subjects.

Example: When providing a loan to an operation that can cause adverse impacts on the human rights of indigenous people (e.g., land development requiring relocation of indigenous people), confirm the measures of the planned loan destination to prevent or mitigate adverse impacts, and implement an on-site inspection by a specialized department of a business enterprise.

#### 4.1.2.3 Collection of relevant information

Business enterprises need to collect relevant information for the identification and assessment of adverse impacts.<sup>67</sup> The methods may include dialogues with stakeholders (e.g., consultation with

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<sup>62</sup> See the UN Guiding Principles 18

<sup>63</sup> It should also be noted that there may be different risks between women and men. In addition, for understanding women's vulnerability, etc., "the Women's Empowerment Principles" is a useful reference. These are a set of seven principles jointly launched in March 2010 by the UN Global Compact, a framework for voluntary initiative between the United Nations and business enterprises, and the UN Development Fund for Women (now "UN Women") (<https://www.weps.org/about>). It is important for business enterprises to implement human rights due diligence based on the perspective of gender equality.

<sup>64</sup> For an understanding children's vulnerability, etc., "the Children's Rights and Business Principles" is a useful reference. The principles were developed by UNICEF, the UN Global Compact and Save the Children (<https://www.unicef.org/documents/childrens-rights-and-business-principles>).

<sup>65</sup> "UN Declaration on the Rights of Indigenous Peoples" adopted in 2007 notes "No relocation shall take place without the free, prior, and informed consent (FPIC) of the indigenous peoples concerned."

<sup>66</sup> For example, "Gender dimensions of the Guiding Principles on Business and Human Rights: report of the Working Group on the issue of human rights and transnational corporations and other Business Enterprises" (<https://digitallibrary.un.org/record/3822962>) is informative on the gender perspective.

<sup>67</sup> When collecting and providing relevant information, it is necessary to be careful not to violate applicable laws for the protection of personal information and contractual obligations of confidentiality.

labour unions, worker representatives, NGOs and others), use of a grievance mechanism, surveys of local business partners (e.g. on-site inspection of the local working environment, interviews of workers or employers), document inspection (e.g., sending of questionnaires to local business partners, inspection of contracts and other internal documents and public information).<sup>68</sup>

What method is appropriate is judged based on the type, etc. of the information to be collected. For example, in order to accurately understand adverse human rights impacts, business enterprises should seek to have direct dialogues with their stakeholders who are subject to potential adverse impacts.<sup>69</sup>

Example: Through dialogues with NGOs, check information on the actions of material supplier candidates, such as seizure of land of indigenous people in relation to the materials.  
Example: Based on the database of cases of human rights abuses, a business enterprise identifies sectors and regions in which adverse human rights impacts (e.g., forced labour, child labour) are, in general, likely to occur, and checks the situations of its suppliers, etc.

#### **4.1.2.4 Considerations for business in areas affected by conflicts and other situations**

In areas of armed conflict and areas where widespread violence or serious harm by criminal groups affect the populace,<sup>70</sup> it is necessary to pay attention to the following points:

- (a) Employees and other stakeholders are likely to suffer severe adverse impacts on their human rights. For example, the risk of sexual and gender-based violence is especially prevalent during conflict and other situations.
- (b) Parties concerned in conflicts and other situations, who are influential in the area and are likely to abuse human rights, are involved in various activities in the area, making it more difficult to determine whether the parties' activities are closely related to the activities of the business enterprise. As a result, the likelihood that usual business activities can unintentionally contribute to conflicts and other situations will increase.
- (c) As stated in Subsection 4.2.2 below, special considerations are also necessary when a business enterprise exits from areas affected by conflicts and other situations.

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<sup>68</sup> Information provided by public or international organizations is particularly useful.

<sup>69</sup> In situations where such dialogue is not possible, appropriate alternatives such as dialogues with credible and independent experts should be considered.

<sup>70</sup> Business enterprises should treat the risk of causing or contributing to gross human rights abuses as an issue that could give rise to legal liability, given the expanding scope of potential corporate legal liability arising from extraterritorial civil claims, wherever they operate. Business enterprises should pay attention to this especially in areas affected by conflicts and other situations.

In areas with specific circumstances as mentioned above, human rights due diligence according to high risk (“heightened human rights due diligence”<sup>71</sup>) should be conducted.

Example: A business enterprise was engaged in a joint venture with a local business enterprise in an area affected by conflicts and other situations but heightened human rights due diligence found that the local business enterprise was closely connected to an anti-government organization widely using force on the general public and abusing human rights, and that the profits of the joint venture were providing significant funds for human rights abuses by the organization. Consequently, the business enterprise exits from the joint venture after due consideration and examination of the impacts of the exit on the stakeholders.

Example: A business enterprise was jointly providing information services with a local business enterprise in an area affected by conflicts and other situations, when a party concerned in conflicts forced the local business enterprise to provide information obtained through the operation. In response, the business enterprise implements heightened human rights due diligence and re-assesses the adverse human rights impacts on its business.

### **4.1.3 Prioritization criteria for addressing adverse impacts**

#### **4.1.3.1 Approach to prioritization**

As stated in Subsection 4.1.1 above, if it is difficult to immediately address all identified adverse impacts, then it is necessary to prioritize the response.<sup>72</sup>

Priority in response is decided based on the severity of the adverse human rights impacts. Business enterprises should address impacts with high severity first.<sup>73</sup> If there are multiple potential adverse impacts with the same level of severity, it is reasonable to start from those with higher probability.<sup>74</sup>

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<sup>71</sup> Heightened human rights due diligence signifies ensuring that business enterprises' activities not only do not have adverse human rights impacts, but also do not contribute to violence in areas affected by conflicts and other situations, for example, by strengthening the understanding of the context where business enterprises operate and by identifying potential triggers that are driving conflicts and other situations. As for heightened human rights due diligence, it is critical for business enterprises to understand whether business partners are somehow linked to past or current conflicts and other situations. Some useful materials related to heightened human rights due diligence include a report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: “Business, human rights and conflict-affected regions: towards heightened action” (<https://www.ohchr.org/en/documents/thematic-reports/report-business-human-right-and-conflict-affected-regions-towards>) and “Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide” (<https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>) by the United Nations Development Programme (“UNDP”).

<sup>72</sup> Even in this case, it is requested to address adverse impacts of lower priority as the end goal in the medium to long term.

<sup>73</sup> See the UN Guiding Principles 24

<sup>74</sup> Low probability does not lower the assessed severity of the impact. Adverse impacts with high severity should be addressed with high priority. However, it may be allowed to exclude adverse impacts with little probability (namely, adverse impacts with only abstract possibility) from considering adverse impacts to be prevented or mitigated.

Because priority may change as the situation changes, it is important to carry out ongoing impact assessment as specified in Subsubsection 4.1.2.1 above.

#### 4.1.3.2 Criteria of severity

The severity of the adverse human rights impacts is judged by their scale, scope, and irreparable character (see the table below).<sup>75</sup> In other words, severity is judged based on the level of the adverse impacts on human rights and not on the level of the adverse impacts on business management (management risk).

Criterion	Description	Examples of considerations
[I] Scale	Gravity of the adverse human rights impact	<ul style="list-style-type: none"> <li>• Character and background of the abuse</li> <li>• Mode of the abuse</li> <li>• Situation of the victims</li> </ul>
[ii] Scope	Scope of the adverse impact	<ul style="list-style-type: none"> <li>• Number of people affected by the adverse impact</li> <li>• Size of the group or community affected by the adverse impact</li> </ul>
[iii] Irreparability <sup>76</sup>	Difficulty of restoring to a situation equivalent to the situation before the impact	<ul style="list-style-type: none"> <li>• Degree of potential possibility to remedy the adverse impact (for example, remedy by compensation or recovering from the damage)</li> <li>• Degree of promptness of actions required to restore a situation equivalent to the situation before the adverse impact occurred</li> </ul>

## 4.2 Prevention or mitigation of adverse impacts

In order to meet their responsibility to respect human rights, business enterprises need to avoid “causing” or “contributing” to adverse human rights impacts through their business activities and to prevent or mitigate such adverse impacts. Even if business enterprises do not “cause” or “contribute” to adverse human rights, they need to make efforts to prevent or mitigate adverse human rights impacts “directly linked” to their operations, products, or services through their business relationships.

Business enterprises need to appropriately work to prevent or mitigate adverse human rights impacts identified and assessed under the ultimate responsibility of the management, after clarifying the responsible departments and persons.

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<sup>75</sup> In judging the severity, “Training Facilitation Guide: Human Rights Due Diligence” (<https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>) by UNDP is informative.

<sup>76</sup> The term “irreparability” is translated as *zeseifunousei* in the Japanese version of the OECD Guidance.

## 4.2.1 Types of measures to be considered

### 4.2.1.1 Where the business enterprise causes or contributes to adverse human rights impacts

If the business enterprise “causes” or “contributes” to adverse human rights impacts, it should take measures to prevent or mitigate the adverse human rights impacts that it “caused” or “contributed” to in the following ways, for example:

- (a) Ensure that the actions that “cause” or “contribute” to adverse impacts are suspended or terminated (e.g., changing product design so as not to use harmful substances) and prevent actions that may “cause” or “contribute” to adverse impacts in the future.
- (b) In the case of actions that may be difficult to suspend or terminate immediately due to operational, contractual, or legal issues, create a roadmap for how to suspend or terminate the actions causing or contributing to adverse impacts and suspend or terminate the actions in stages.

When considering appropriate measures to be implemented, the business enterprise is expected to hold dialogues with its stakeholders.

Example: Despite explicit prohibition by law, a business enterprise retained passports of technical intern trainees and concluded contracts to manage their savings. Because this practice was discovered, the business enterprise checked for such practices in its other departments as well as in its suppliers, informing them of the illegality of such practices and demanded their termination.

Example: Specific procedures of procurement (e.g., order planning based on consultation with suppliers in accordance with their production facilities and capacity; ordering with the quantity and delivery time of the prior agreement and not changing quantity or delivery time without the consent of the supplier) are stipulated in the procurement policy and training is implemented periodically for employees of procurement-related departments.

Example: A business enterprise cancels the sale of its products to a new prospective purchaser because it found that there was a likelihood that the new prospective purchaser may use its products for actions that constitute human rights abuses.

In cases where a business enterprise is “contributing” to adverse impacts caused by another business enterprise, it may be difficult to completely remediate the adverse impacts by measures taken by the business enterprise alone. However, after suspending its own actions contributing to the adverse impacts, the business enterprise should use its leverage to mitigate any remaining impacts to the greatest extent possible, such as by outreaching to the parties involved.

Example: Waste water from a business partner’s plant polluted a lake, causing health damage to local residents. The pollution was caused by a harmful substance produced because the business partner combined a chemical substance that the business enterprise had sold to the business partner with another chemical. In response, the business enterprise explained to the business partner cautions surrounding the business partner’s use of the chemical substance, requested the business partner to abide by the cautions, and outreached to the business partner to prevent generation of the harmful substances.

#### **4.2.1.2 When the business enterprise’s operations are directly linked to adverse human rights impacts**

When the business enterprise does not “cause” or “contribute” to adverse impacts, but there are adverse human rights impacts “directly linked” to its operations, products or services, the business enterprise may not be able to address the adverse impacts directly. However, the business enterprise should strive to prevent or mitigate the adverse impacts by using its leverage on the entities that “cause” or “contribute” to the adverse impacts, or if it has no leverage, securing and strengthening leverage or providing support, such as in the following ways depending on the situation.

##### **[Examples of using or strengthening leverage]**

Example: Check the employment records of the supplier where child labour was discovered, analyze the factors that led to the employment of children by the supplier, and based on the results, request that the supplier to establish an appropriate management system to prevent the employment of children, such as thorough checking of identity documents. In addition, cooperate with NGOs that support the improvement of education opportunities for children who had to work due to poverty.

Example: An on-site inspection of an overseas supplier found normalization of excessive overtime working hours that violated the local labour law. After confirming that the business enterprise allocates adequate time to the supplier for its production and delivery, the business enterprise expresses serious concerns to the supplier, and requires immediate improvement of the legal violations.

Example: Before entering a new business relationship, employ an external research company to determine whether the prospective partner complies with the basic policy of procurement of the business enterprise, and conclude a contract that includes provisions to guarantee efforts for human rights by the prospective partner.

Example: Multiple business enterprises procuring materials from a supplier with a large share in the industry set and share common human rights requirements for the supplier to increase their leverage. If a concern related to the requirements is found, the business enterprises jointly use their increased leverage to urge the supplier to implement effective measures to prevent or mitigate the adverse impacts, with due consideration to competition law.

##### **[Examples of support]**

Example: Ask suppliers for self-assessment based on the content of the supplier code of conduct and evaluate the submitted answers. Based on the result, consult with the suppliers on how to improve the lower rated items.

Example: When suppliers execute initiatives to prevent or mitigate potential adverse human rights impacts, support them by promising continued procurement under certain conditions.

#### **4.2.1.3 Disengagement**

Disengagement involves ending the relationship of the business enterprise with the adverse human rights impacts but does not remediate the adverse impacts themselves. In fact, it could further aggravate the adverse human rights impacts by making it more difficult to monitor the adverse impacts, or by worsening the financial status of the business partner, which may lead to unemployment of its employees.

For this reason, where adverse human rights impact exists or may exist, the business enterprise should first seek to prevent or mitigate the adverse impact while maintaining the relationship with

the supplier, etc., rather than immediately disengaging from the business relationship. Disengagement should be considered as a last resort and implemented only when it is found appropriate.<sup>77</sup>

On the other hand, there are cases where disengagement is not appropriate or, even when it is appropriate, impossible, or practically difficult to implement.<sup>78</sup> Whether disengaging or continuing the relationship, the severity of the adverse human rights impacts must be considered, and businesses are expected to take a responsible approach to disengagement as explained in the table below.

disengaging / Not disengaging	Examples of responsible approaches
Disengaging from the business relationship	<ul style="list-style-type: none"> <li>• Articulate phased measures for disengagement upfront with the business partner</li> <li>• Provide detailed information about adverse human rights impacts supporting the decision to disengage so that the business partner can respond appropriately .</li> <li>• Where feasible, provide sufficient notice of the disengagement to the business partner.</li> </ul>
Continuing the business relationship	<ul style="list-style-type: none"> <li>• Continue to monitor the situation of the business partners</li> <li>• Periodically review the appropriateness of continuing the business relationship</li> <li>• Explain how the decision to continue the business relationship is aligned with the human rights policy of the business enterprise; what measures are being taken to attempt to apply leverage for mitigating the adverse impacts, and; how to continue to monitor the situation of the business partner.</li> </ul>

Example: The business enterprise discovers inappropriate situations where a supplier compels its technical intern trainees to sign a contract stipulating that the trainees are required to pay a penalty if they fail to complete their training contract, or the supplier confiscates their passports. The business enterprise demands the supplier to check the facts and report an improvement in the situation but is unable to find satisfactory improvements. In response, the business enterprise decides to terminate procurement from the supplier, while cooperating with and providing information to supervising organizations supporting a change of the intern training sites and transfer.

Example: An on-site inspection of an overseas supplier in another country finds that excessively long working hours violating the local labour law have become standard practice. After confirming that it allocates adequate time to the supplier for its production and delivery, the business enterprise expresses serious concern to the supplier, and requests immediate improvement of the legal violations. If the supplier repeats similar violations in spite of repeated

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<sup>77</sup> Cases where disengagement may be considered include: repeated failure attempts at preventing or mitigating the adverse impacts; when the adverse impacts are irreparable; where there is no reasonable prospect of improvement.

<sup>78</sup> For example, there may be cases where the term of the contract is dictated by contract or practical considerations, or where a business partner is crucial.

requests, the business enterprise will disengage from the business relationship when it is found appropriate after careful examination.<sup>79</sup>

Example: If a loan customer in another country is found to be causing adverse human rights impacts, such as forced labour and child labour, the business enterprise demands the customer to stop and prevent recurrence of the actions causing the adverse impacts. If measures are not taken after a certain period of time, the business enterprise decides, after due consideration of the potential adverse impacts to the stakeholders of stopping the loan, not to issue any new loans after the expiration of the current loan contract.

*“Business activities in regions where human rights abuses are taking place with the involvement of a State, etc.”*

When human rights abuses take place with the involvement of a State etc., there may be concerns that business activities based in the region may provide funds through tax contributions etc. to the human rights abuses conducted by a State, etc. However, it is difficult to determine the existence and extent of the relationship between tax contributions, etc. and the human rights abuses. Consequently, the sole fact that business activities are conducted in such a region does not necessarily mean that they are related to human rights abuses, and that immediate suspension or termination of the business activities in the region is required. Nevertheless, it is necessary to carefully examine the relationship,<sup>80</sup> and depending on the results of such examination, the business enterprise may well reach a decision to suspend or terminate the business activities.

*“Where human rights abuses with the involvement of a State, etc. are suspected during the production or other process of the business enterprise's products, etc.”*

Suspicion may arise that human rights abuses are taking place in the production or supply process of the business enterprise's products or services with the involvement of a State, etc. If the business enterprise cannot confirm the actual situation of the human rights abuses because it cannot obtain cooperation from the relevant parties as a result of the involvement of a State, etc., or, even if the business enterprise can confirm the actual situation of the human rights abuses but cannot prevent or mitigate adverse human rights impacts by its own efforts

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<sup>79</sup> Business enterprises could stipulate in their contracts with their business partners termination clauses for violation of contractual obligations regarding efforts to respect human rights in addition to termination clauses for violation of local labour laws and other laws and regulations. Examples of provisions are as follows: a business enterprise could impose on its business partners the obligation to comply with its procurement guidelines. And if the business enterprise confirms that the business partner is in breach of this obligation, it could demand implementation of the improvement measures. If the business partner does not comply with the procurement guidelines despite such demands, the business enterprise could terminate the contract. It should be noted, however, that regardless of the contractual requirements for termination, disengagement (contract termination) is to be considered as a last resort.

<sup>80</sup> Heightened human rights due diligence should be implemented in the same way as in areas affected by conflicts and other situations.

due to the intervention of a State, etc., it is necessary to consider disengagement. When the business enterprise determines that it is necessary to disengage from the business relationship, but the disengagement incurs, for example, penalties for breach of contract, steps may be taken to terminate the contract.

Example: In a region where international organizations, etc. present suspicion of abuse of the human rights of ethnic minorities with the involvement of the government, a business enterprise demands its business partners who are using local factories to submit a document certifying that the factories are not using forced labour of ethnic minorities. Because no valid evidence is presented, on-site inspections are not accepted and there is no prospect for improvement, the business enterprise suspends transactions with the partner as a last resort

The Japanese government will provide information, advice, etc., so that business enterprises can proactively respect human rights. In addition, in either of the situations aforementioned, there are cases where disengagement is impossible or practically difficult despite the decision that disengagement is appropriate.<sup>78</sup>

#### **4.2.2 “Responsible exit” from areas affected by conflicts and other situations**

In general, there may be cases where business enterprises suddenly have to exit from areas affected by conflicts and other situations due to the rapid worsening of conditions and other factors. In such a case, alternative business enterprises may fail to appear through new entry or acquisition, making it impossible for consumers to obtain products or services necessary to live. It may become more difficult for employees laid-off by the exiting business enterprise to find a new job.<sup>81</sup>

For this reason, when considering suspension or termination of business activities in such areas affected by conflicts and other situations, the business enterprise should implement heightened human rights due diligence and make a more careful and responsible judgment than usual. Of course, to secure its employees’ safety, the business enterprise may need to temporarily suspend its operation and evacuate employees or exit promptly from the area in some cases. However, it is necessary to give the maximum possible consideration to potential adverse human rights impacts on the stakeholders affected by the exit in making the decision whether to withdraw or not. It is also desirable that the decision can be appropriately explained to the stakeholders.

For this reason, it is important to consider an exit plan beforehand if conflicts and other situations may occur. This facilitates identifying and assessing adverse human rights impacts and considering mitigation measures. If exit becomes necessary, the business enterprise can exit in a responsible way that minimizes adverse impacts on the stakeholders to the greatest extent possible. Mitigation

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<sup>81</sup> In addition to these concerns, circumstances surrounding local residents may become more vulnerable due to unemployed workers who join an armed force because of the difficulty to make a living, and damage to medical and social infrastructure, for example. These matters are important as a background that worsens the adverse human rights impacts in areas affected by conflicts and other situations.

measures may include: having dialogues with employees on safety concerns and taking countermeasures based on the results, and helping employees continuously earn an income during the crisis.

There is a limit to the ability of business enterprises to predict the threat of conflict and other situations. Nevertheless, even if the prediction is not possible, when the first signs of conflicts and other situations are confirmed, such as increased activities of an anti-government organization or violence to the general public, business enterprises are expected to promptly analyze risks and start preparations, including exit planning, while at the same time examining potential adverse impacts of the exit on their stakeholders.

Example: A business enterprise that is engaging in business to support power supply to local residents in an area affected by conflicts and other situations tries to find ways to continue operations after the occurrence of a conflict. Because of the difficulty, if the business enterprise decides to withdraw from the area after the term of the contract which obliges it to continue the business expires, the business enterprise promptly notifies the decision to exit to its stakeholders and operates the business until its exit, so that it does not affect the power supply.

Example: A business enterprise is operating a joint venture with a local business enterprise. It learns that the local business enterprise is closely connected with an anti-government organization that started to abuse human rights by acts of violence against the general public extensively, and that the profits of the joint venture are providing a significant source of funding for the abuse of human rights by the anti-government organization. After due consideration of the impacts caused by the exit on stakeholders, the business enterprise decides to terminate the joint venture.

When considering “responsible exit” such as in the cases described here, it is useful to ask the Japanese government, international organizations, JETRO and other relevant organizations for information and consultation.

#### **4.2.3 Addressing systemic issues**

Systemic issues refer to problems that are prevalent within a context and are driven by root causes outside of the business enterprise’s control, but that nonetheless increase the risk of adverse impacts within the business enterprise’s operations or supply chain. Examples of systemic issues include poor access to schools and high rates of poverty, which can increase the risk of child labour and discrimination of foreigners, women, and minority groups.

Although business enterprises are not responsible for solving systemic issues, because efforts of business enterprises to address such issues can be effective for preventing or mitigating adverse human rights impacts in some cases, they are expected to make efforts to address such issues. Specifically, in addition to the efforts by individual enterprises, joint initiatives of multiple industries and participation in projects by international organizations, NGOs, and other entities, can also be helpful.

While paying attention not to use or encourage the situation causing systemic issues and making efforts individually or in an industry group, business enterprises should examine whether they can continue the operations responsibly in a situation with systemic issues.

The Japanese government will continue to make efforts to solve systemic issues at the societal level in cooperation with other governments, international organizations, and other parties.

Example: Enterprises accepting technical intern trainees cooperate with a supervising organization to confirm with technical intern trainees and local sending organizations whether there are heinous intermediary organizations, or the trainees have paid inappropriate fees. Enterprises accepting technical intern trainees from the Socialist Republic of Viet Nam, in particular, encourage sending organizations to use the platform pertaining to sending of technical intern trainees and others as decided between the Japanese and Vietnamese governments, when the platform starts operation.

Example: Recognizing that the local socioeconomic situation is a factor of child labour, business enterprises join an organization aimed at establishing a responsible supply chain of the products manufactured using child labour globally and, as part of their initiatives, work to increase the income of local people and help children go to school.

### **4.3 Tracking effectiveness of the efforts**

Business enterprises need to track whether they have effectively identified, assessed, prevented, and mitigated adverse human rights impacts, and make continued improvement based on the results.

#### **4.3.1 Tracking methods**

Before assessment, it is necessary to collect information widely. For example, in addition to various internal data (including information obtained through its grievance mechanism), a business enterprise can collect information from its stakeholders inside and outside of the business enterprise, including stakeholders who are or can be adversely affected.

Specific methods are chosen based on the business environment and scale of the business enterprise, type, and severity of the target adverse impacts, etc. Specific examples include: interviews of its employees, suppliers, etc.; use of questionnaires; visits to frontlines, including factories of the business enterprise and suppliers; audits; and surveys by a third party.

By using a range of information, business enterprises can track effectiveness more objectively and accurately.

Example: Implement an initiative to prevent and mitigate identified potential adverse impacts on the business enterprise's employees (e.g., improvement of occupational health and safety, elimination of discrimination in the workplace) and assess the situation before and after the initiative in order to measure its effectiveness.

Example: While receiving the results of self-assessment of human rights efforts by business partner's factories, implement on-site inspection (interviews of employees, labour union or worker representatives, the management, and others. and checking of the state of occupational health and safety) by a third party organization and assess the report of the organization. In

addition, grasp the state of efforts by suppliers based on their answers and confirm the improvement plans of the suppliers whose efforts are found inadequate sufficient.

Because efforts for respect of human rights may be difficult to assess in appropriate quantification in many cases, tracking of their effectiveness should be done based on appropriate qualitative and quantitative indicators. Examples of such indicators include: percentage of impacted stakeholders engaged who report that adverse impacts have been adequately addressed and the rate of recurring issues related to the identified adverse impacts.

#### **4.3.2 Integration of effectiveness tracking in an internal process**

Business enterprises should integrate the procedures of effectiveness tracking in their internal process. This will contribute to institutionalizing efforts to respect human rights in the business enterprises.

For example, the perspective of human rights may be incorporated in the procedures, such as audits and site visits, which have been conducted from the viewpoints of environment and health and safety.

Example: Add the effects of the initiatives of the business enterprise to improve adverse human rights impacts (e.g., unjust discrimination on the ground of race, sex, or gender in the workplace) to the targets of the periodic internal audits by the internal audit section.  
Example: Implement periodic inspection of suppliers, etc. by a responsible department on items related to human rights in addition to the environment and occupational health and safety. By analyzing and comparing the results with past results, the responsible department examines whether adverse impacts are addressed effectively, while important items are referred and reported to the management meetings and the board of directors.

#### **4.3.3 Use of the tracking results**

By using tracking results, business enterprises can examine whether or not the countermeasures taken were effective in preventing or mitigating the adverse human rights impacts or whether there are more effective countermeasures.

If the assessment results show that the countermeasures are ineffective or insufficient, the enterprise can understand why the expected effect was not obtained by analyzing range of information obtained in the tracking process. This is useful for improvement of efforts for respect of human rights.

#### **4.4 Communication and information disclosure**

Business enterprises should be able to explain that they meet their responsibility to respect human rights. When facing an allegation of human rights abuse, especially expressed by stakeholders that could be adversely affected, it is essential for the business enterprise to be able to explain the measures it has taken.

Even when an actual abuse of human rights is identified, the information disclosure on the efforts for human rights will not reduce the enterprise value. On the contrary, it can increase the business enterprise value because it shows its willingness to improve and its transparency, and it should receive recognition from its stakeholders. Business enterprises are expected to communicate and disclose information proactively.

Contents and scope of information disclosure are left to the discretion of the business enterprise according to its situation.<sup>82</sup> It is crucial to conduct a continuous improvement process in human rights due diligence, and to disclose what process has been conducted.

#### **4.4.1 Content of the information explained or disclosed**

##### **4.4.1.1 Basic information**

It is most important that business enterprises convey basic information on human rights due diligence when they address their adverse human rights impacts. Examples of such information is shown below.

Measures taken to establish the human rights policy across the business enterprise; identified area of material risk; identified (or prioritized) severe adverse impacts or risks; criteria of prioritization; information on actions to prevent or mitigate risks, and; information on tracking effectiveness

##### **4.4.1.2 Approach to addressing adverse impacts**

If there is a risk of significant adverse human rights impacts, the business enterprise should explain how it will address the adverse impacts, and the explanation should provide sufficient information to evaluate the appropriateness of the action of the business enterprise to address the specific human rights impacts in which it is involved. When providing such information, however, the business enterprise needs to pay attention to the confidentiality of the personal information of the affected stakeholders and confidential information of its suppliers, etc.

#### **4.4.2 Approaches to communication and information disclosure**

Business enterprises need to provide information in a way accessible for intended receivers of the information.

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<sup>82</sup> “Corporate Governance Code” (<https://www.jpx.co.jp/english/news/1020/b5b4pj0000046kxj-att/b5b4pj0000046l07.pdf>) of Tokyo Stock Exchange, Inc. stipulates that “sustainability issues, including social and environmental matters” for which companies should take appropriate measures as provided in Principle 2.3 include respect of human rights (Supplementary Principle 2.3.1) in its revision in June 2021. Furthermore, “the General Principle 3” and its “Notes” of the code provide that listed companies should appropriately make information disclosure in compliance with the relevant laws and regulations but should also strive to actively provide information beyond that required by law, including non-financial information, such as ESG factors.

- (a) For disclosure to the general public, information may be posted on the website of the business enterprise, or disclosed in an integrated report, sustainability report, CSR report, or human rights report, for example. This kind of information provision can be periodic or non-periodic, but it is desirable to be at least once a year.
- (b) Particularly for disclosure of information to stakeholders who will be or are affected by an adverse impact, online dialogues and other in-person meetings may be used.

## 5. Remedy

When it has become clear that a business enterprise caused or contributed to adverse human rights impacts, the business enterprise should implement a remedy or cooperate in the implementation of a remedy.

If adverse human rights impacts are only directly linked to its operations, products or services, the business enterprise may take a role in implementing a remedy but is not required to provide for remediation. However, as stated in Subsubsection 4.2.1.2, it needs attention that the business enterprise should strive to prevent or mitigate the adverse impacts by working on the business enterprise that causes or contributes to the adverse impacts.

The appropriate type or combination of remedies varies depending on the nature and the scope of the adverse impact. An appropriate remedy from the viewpoint of the stakeholders suffering the adverse human rights impact should be provided. Specific examples may include apologies, restitution, rehabilitation, and financial or non-financial compensation, as well as establishment or statement of a recurrence prevention process, and request for recurrence prevention to the suppliers, etc.

Example: It is found that rent and utility costs are deducted without agreement with the technical intern trainees and that extra pay for night-shift is not paid properly in the business enterprise. The business enterprise provides a thorough explanation about the deduction and reaches an agreement with the technical intern trainees based on their free will, while immediately paying the money unpaid.

Example: A business enterprise received a grievance about discrimination on the ground of sex or gender in the business enterprise asked its labour union to provide information on concerns about discrimination in the business enterprise, while at the same time holding labour-management consultation to consider and implement measures to prevent discrimination in the future.

Example: When investigating the working environment of employees in the business enterprise, have its labour union accompany the investigation to identify adverse impacts with employees' viewpoint more in mind, and consider remedies based on the results.

Example: A business enterprise's overseas supplier of the business enterprise does not allow establishment of a labour union. An arbitral body issued an award ruling that establishment of the labour union should be allowed, but the supplier did not comply with the arbitral award. The supplier's employees consulted with the business enterprise and the business enterprise urged the supplier to comply with the arbitral award.

Remedy mechanisms are roughly divided into remedies provided by non-State entities, including business enterprises, and remedies provided by a State, as stated Section 5.1 and Section 5.2 below. Given the characteristics of the respective mechanisms, business enterprises and stakeholders choose and use an appropriate mechanism according to the individual specific cases.

### 5.1 Grievance mechanism

In order to make it possible for grievances to be addressed early and remediated directly, business enterprises should enable a remedy that is an important element of the responsibility to respect human rights by establishing a grievance mechanism that is a series of processes to address grievances and disputes pertaining to the business enterprises and their stakeholders, or through participation in a grievance mechanism established by an industry organization and others.

Through these grievance mechanisms, individuals and groups can raise concerns or bring complaints about adverse impacts caused by business enterprises, file a grievance, and seek a remedy. Business enterprises can use the information and suggestions obtained through the grievance mechanisms to identify and address adverse human rights impacts.

Example: A business enterprise has a hotline that can be used also by employees of domestic and overseas suppliers. In light of a large number of consultations about a specific human right abuse in the workplace of a specific overseas supplier, the business enterprise raises the concern with the supplier’s management and asks it to set up a grievance committee.

Grievance mechanisms can achieve their purpose only when the intended users recognize, trust, and use it. To this end, grievance mechanisms should meet the following requirements<sup>83</sup>

Legitimate	Fair operation enabling trust from the stakeholder groups for whose use they are intended
Accessible	Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access, which may include language, literacy, and fears of reprisal <sup>84</sup>
Predictable	Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of processes and outcomes available and means of monitoring implementation
Equitable	Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed and respectful terms
Transparent	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake
Rights-compatible	Ensuring that both outcomes and remedies accord with internationally recognized human rights

<sup>83</sup> Based on the UN Guiding Principles 31

<sup>84</sup> Users should not suffer any disadvantage for using a grievance mechanism.

A source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and human rights abuse
Based on engagement and dialogue	Consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

Example: Setting up a grievance mechanism that can be used not only by a business enterprise's own employees but also by the employees of direct or indirect suppliers.  
Example: Developing jointly with other business enterprises a smartphone application (multilanguage) for foreign workers to consult with a third party on abuses of their human rights.

## 5.2 State-based remedy mechanism

As stated in 5.1 above, business enterprises should establish their own grievance mechanisms or participate in a grievance mechanism, but the government has also established grievance mechanisms.

Specifically, there are trials in courts as a judicial process, while non-judicial processes include: the individual labour dispute resolution systems of the Ministry of Health, Labour and Welfare (“MHLW”); the Japanese National Contact Point<sup>85</sup> composed of the MOFA, MHLW and METI based on the OECD Guidelines for Multinational Enterprises; human rights counseling, investigation and remedy procedures provided by the Legal Affairs Bureaus of the MOJ; and the Native Languages Consultation at the Organization for Technical Intern Training.<sup>86</sup>

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<sup>85</sup> [https://www.mofa.go.jp/ecm/oecd/page22e\\_000946.html](https://www.mofa.go.jp/ecm/oecd/page22e_000946.html)

<sup>86</sup> When a legitimate charge is made to the contact point, the business enterprise should sincerely consider response through the contact point as a means for solution.

No.	Question	Answer
1.	<p>The Guidelines (Section 1.3) state that “regardless of the business enterprise size, sector, etc., all business enterprises (...) engaging in business activities in Japan...should strive in efforts to respect human rights...,” but does that mean we need to make efforts to respect human rights in line with international standards for business and human rights, even though we do not operate internationally? If so, why?</p>	<p>The Guidelines apply to all business enterprises engaging in business in Japan, even companies that do not operate internationally.</p> <p>As laid out in the UN Guiding Principles and other international standards endorsed by the Japanese government and other national governments, business enterprises have a responsibility to respect human rights, and those human rights cover stakeholders within the business enterprises or their domestic operations, without being limited to international operations. As such, even if a business enterprise does not operate internationally and all of its direct business partners are domestic companies, the business enterprise should strive to respect human rights in line with international standards to the fullest extent possible.</p> <p>Also, even if a business enterprise is not directly engaged with companies in other countries, it may have any number of indirect international connections through its supply chains. For this reason, business partners are increasingly asking for efforts to respect human rights. To respond to those requests appropriately, business enterprises should make efforts to meet international standards such as the UN Guiding Principles.</p>
2.	<p>The Guidelines (Section 1.3) indicate that business enterprises should respect human rights in their group companies. In conducting human rights due diligence in a foreign country where a group company is located, should the group company in that country take the lead in conducting human rights due diligence, or should the head office in Japan do so?</p>	<p>This should be considered from the perspective of what is the most effective way to respond to adverse impacts on human rights.</p> <p>For example, while local group companies might have geographic advantages, in many cases, it would be difficult for them to deal with these matters effectively on their own because of human resource constraints and other factors. It would be thus desirable for the head office in Japan, while taking into consideration the circumstances of the various group companies, to provide support as necessary for them to undertake human rights due diligence, and for the head office and group companies to share information and cooperate closely to most effectively address adverse impacts on human rights.</p>
3.	<p>The targets for efforts to respect human rights include “suppliers, etc.” (business</p>	<p>A business enterprise needs to prevent and mitigate not only the adverse impacts on their direct business relationships but also (i) adverse impacts caused by the business enterprise itself, (ii) adverse impacts contributed to by the business enterprise itself,</p>

	<p>enterprises in supply chains other business partners) (Section 1.3), but should we target preventing and mitigating adverse impacts for Tier 2 suppliers and beyond with whom we have no direct business relationship? To what extent should we cover suppliers?</p>	<p>and (iii) adverse impacts directly linked to the business enterprise’s operations, products, or services (on point (iii), they need to make efforts to prevent and mitigate them). As such, all adverse impacts covered by (i), (ii) and (iii) should also be targeted for Tier 2 suppliers and beyond.</p> <p>However, for many business enterprises, it is difficult to immediately engage in handling the adverse impacts for all direct and indirect business partners. Business enterprises should therefore give priority to addressing adverse human rights impacts with the higher severity level first. If there are multiple adverse human rights impacts with high severity, then in that case, the priority may be given first to addressing the adverse human rights impacts that they cause or contribute to in the business enterprises and with business partners with which the business enterprise is in a direct contractual relationship. In this case, it is necessary to extend the actions to adverse human rights impacts occurring at indirect business partners and such impacts only directly linked to their company’s business and others. Also, adverse impacts that should be targeted for prevention and mitigation are not limited to those identified through human rights due diligence by a business enterprise. For example, adverse impacts identified through concerns raised by stakeholders through grievance mechanisms should also be addressed as a matter of course.</p>
4.	<p>Why is it important that “each business enterprise cooperates in respecting human rights” (Subsection 2.2.5)? Does corporate responsibility to respect human rights mean that companies with more human and economic resources bear a more significant economic burden in implementing them?</p>	<p>The corporate responsibility to respect human rights requires business enterprises to address both their own adverse impacts, those of their group companies, their suppliers, and so forth. Business enterprises can fulfill their responsibility to respect human rights not only by completing their response internally, but also by conducting joint efforts among business enterprises. It is expected that the specific content and methods of cooperation will be agreed on to determine what is desirable from the perspective of effectively addressing adverse impacts on human rights through dialogue and consultation among the parties concerned. For example, business enterprises may share their experiences and resources, or those with greater human and financial resources may bear the cost of other companies’ efforts to respect human rights.</p> <p>It should be noted that individual business enterprises are expected to implement efforts to fulfill their responsibility to respect human rights. It should also be noted, as stated in Subsection 2.2.5 of the Guidelines, that if a business enterprise, in placing an order for products or services, takes advantage of its contractual position to unilaterally demand that its business partners make efforts to respect human rights in a way that imposes an excessive burden on them, it may violate the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors and the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.</p>

5.	<p>The Guidelines (Section 3.1) state, “When establishing a human rights policy, it is necessary to identify the human rights on which the business enterprise may have impacts.” But is it necessary to conduct human rights due diligence to establish a human rights policy?</p>	<p>Establishing a human rights policy does not require conducting human rights due diligence. On the other hand, since a human rights policy shows the management’s commitment to fulfilling its responsibility to respect human rights and serves as the basis for business efforts to respect human rights, it is necessary to ensure that the policy does not deviate from the enterprise’s actual situations. More specifically, it would be desirable to gather information on the suppliers, other parties, and stakeholders in the enterprise’s business operations to understand the human rights that the business enterprise could potentially impact on.</p>
6.	<p>The Guidelines (Subsection 4.1.1) state that it is necessary to gather information on suppliers, etc., to ensure the traceability of products and services of the enterprise, but how should we handle cases where we cannot get information on all suppliers due to limited traceability?</p>	<p>While it is desirable to gather information on all the suppliers, etc., involved in the business enterprise’s products and services, generally, the more such suppliers, etc., there are, the less easy it is to ensure full traceability. If traceability is poor, business enterprises may not be able to identify adverse human rights impacts or to prevent and mitigate those that require such. Indeed, poor traceability may increase the risk of adverse human rights impacts and create risks for business enterprises. In such cases, it is even more important to make an effort to understand the adverse human rights impacts of suppliers, etc., with poor traceability through dialogues with wide-ranging stakeholders, the establishment and operation of appropriate grievance mechanisms, or in cooperation with stakeholder industry associations and so forth.</p> <p>In cases where traceability is poor, it is desirable to be able to explain externally the reasons why the suppliers’ traceability is limited.</p>
7.	<p>The Guidelines (Subsubsection 4.1.2.3) mention on-site inspection as an example of the “surveys of local business partners” to “collect relevant information” necessary for identification and assessment of adverse impacts. Is it always necessary to conduct an on-site inspection?</p>	<p>As stated in Subsubsection 4.1.2.3 of the Guidelines, it is always necessary to conduct on-site inspections, although the appropriate method could vary depending on the type of information to be collected and other factors. However, for example, to check on the working environment at a factory, it is often challenging to do so without visiting the site. In that case, an on-site inspection would be considered one of the most effective methods.</p> <p>Even when it is desirable to conduct an on-site inspection, there may be cases where it is practically difficult to conduct it. In such cases, a written survey or online dialogues with local stakeholders may also be considered. Even in cases where it is practically feasible to conduct an on-site inspection, it may impose a heavy burden, so, for example, it may be necessary to conduct an inspection on adverse impacts with high severity that should be prioritized for response. In addition, the burden associated with visiting the site may be reduced by requesting local experts to conduct the audits and provide support during the</p>

		enterprise’s on-site inspection. Even in such cases, however, it is advisable to avoid as far as possible delegating it entirely to local experts.
8.	While efforts to respect human rights are said to lead to limiting management risk, how should we consider the relationship between the prevention and mitigation of adverse impacts (Section 4.2) and management risk?	A business enterprise needs to prevent and mitigate (i) adverse impacts caused by the business enterprise itself, (ii) adverse impacts contributed to by the business enterprise itself, and (iii) adverse impacts directly linked to the business enterprise’s operations, products, and services (on point (iii), it needs to make efforts to prevent and mitigate them). This is not related to the size of the management risk. This is because although efforts to respect human rights may end up reducing management risks, their real purpose is to prevent, mitigate and provide remedy for adverse human rights impacts.
9.	For adverse impacts only directly linked to a business enterprise’s operations, products, or services, the Guidelines state that a business enterprise should “make efforts” to prevent and mitigate the adverse impacts, unlike adverse impacts that it causes or contributes to (Section 4.2). Does it mean that companies do not bear a responsibility to respect human rights in “directly linked” cases?	Even in “directly linked” cases, business enterprises have a responsibility to respect human rights. However, unlike cases in which a business enterprise causes or contributes to adverse impacts, in “directly linked” cases, adverse human rights impacts may occur outside the scope of the leverage a business enterprise has, so the business enterprise should “make efforts” to prevent or mitigate adverse impacts. More specifically, business enterprises should make efforts to prevent and mitigate adverse impacts by using their leverage. Or, if they lack leverage, they should secure or strengthen leverage or provide support.
10.	The Guidelines (Subsubsection 4.2.1.3) indicate that disengagement should be considered a last resort. But if, for example, we have identified severe adverse human rights impact within a supplier, in order to prevent an increased management risk (reputational risk and	Efforts to respect human rights are not aimed at reducing management risk, but only at preventing and mitigating adverse impacts on human rights. As such, the idea of disengagement to limit any increase in management risk is not in line with the basic approach to respecting human rights. However, there are some cases where disengagement contributes to respect for human rights, such as where serious management risk may also increase adverse human rights impacts. Although immediate disengagement would end the relationship of the business enterprise with the adverse human rights impacts, the adverse impacts themselves would still remain. Careful attention should be given that disengagement could further

	other risks), should we disengage from the supplier?	worsen the adverse human rights impacts by making it more difficult to monitor the adverse impacts, and by worsening the financial status of the counterpart enterprise, which may lead to unemployment of its employees.
11.	The Guidelines (Section 4.4) state that “When facing an allegation of human rights abuse, especially expressed by stakeholders that can be adversely affected, it is essential for the enterprise to be able to explain the measures it has taken.” If concerns are raised that the business enterprise is abusing human rights, is it necessary to take measures?	If stakeholders allege human rights abuses, a business enterprise should be especially careful to consider the prevention and mitigation of adverse impacts. But if the results of a careful examination, when viewed objectively, show that there is no reasonable basis for the allegation of human rights abuses, then the business enterprise is freed from any need to respond. However, even in such cases, it is important to be able to explain the information it used and its decision-making process for determining that there were no reasonable grounds.
12.	Different ways to communicate and disclose information were mentioned in the Guidelines (Subsection 4.4.2). Which means are preferable?	It is important to use means that are likely to easily reach out to the audience receiving the information, especially stakeholders who have been adversely impacted. Still, the Guidelines do not expect business enterprises to use any one prescribed means for communication and information disclosure. The means that are the most accessible for the audience receiving the information will be those that are not only physically easy to access, but also are easy to understand. Further, factors such as the timing, format, language, and location that make the information effectively available and accurately understandable for the intended audience should also be considered.
13.	In cases where the business enterprise’s operations, products, or services are directly linked to an adverse impact, the Guidelines (Chapter 5) indicate that the business enterprise is not responsible for providing a remedy. How do we distinguish and determine cases such as	Whether “contributed” or “directly linked” applies is determined by considering a number of factors as a whole, such as (1) the degree to which another business enterprise caused the adverse impact, or the degree to which another business enterprise promoted or motivated the cause of the adverse impact (extent of contribution to adverse impact), (2) the degree to which the adverse impact or probability of the adverse impact was known or should have been known (extent of predictability), and (3) the degree to which the adverse impact has been mitigated or the risk of it arising has been lessened.  However, there are many cases where it is difficult to distinguish between “contributed” and “directly linked.” In those cases, “directly linked” may transition to “contributed”. Given that the intent behind the responsibility to respect human rights is to

	those from cases where we have contributed to an adverse impact?	<p>prevent or mitigate adverse impacts on human rights, it is desirable to treat these cases as “contributed” and prevent or mitigate adverse impacts, as well as offer remedy.</p> <p>It should be noted that the relationship between business enterprises and adverse human rights impacts may vary, and that “directly linked” may transition to “contributed.”</p>
14.	The Guidelines (Section 5.1) mention that “individuals and groups” can raise concerns about adverse impacts through a grievance mechanism. What should the scope of users of the grievance mechanism be?	Users of the grievance mechanism should not be limited to the business enterprise’s own employees but should include stakeholders that could be adversely impacted by the business enterprise. This includes business partners’ employees and labour unions, and residents adversely impacted by business activities. According to the UN Guiding Principles, a grievance mechanism should be in place for receiving allegations regarding adverse impacts on internationally recognized human rights.
15.	The Guidelines (Section 5.2) indicate that there is also a state-based remedy mechanism. If the mechanism is available, it means that business enterprises do not have to prepare a grievance mechanism?	A state-based remedy mechanism is one means to ensure access to a remedy for stakeholders that have experienced an adverse impact on human rights, but that does not mean that a state-based remedy mechanism is effective in all cases. For that reason, even when a state-based remedy mechanism does exist, business enterprises need to make it so that there is a grievance mechanism that adversely impacted stakeholders can use. It is important that adversely impacted stakeholders have a range of options regarding accessible remedy mechanisms.