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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Independent Expert on the effects of foreign
debt and other related international financial obligations of
States on the full enjoyment of all human rights, particularly
economic, social and cultural rights**

Addendum

Mission to Japan (16 – 19 July 2013)**Summary*

The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, visited Japan from 16 to 19 July 2013 to assess, inter alia, the contribution of its Official Development Assistance to the realization of economic, social and cultural rights and the right to development, as well as the attainment of the Millennium Development Goals. He also considered the extent to which human rights standards are reflected in Japanese international development cooperation and transactions backed by Japanese export credits.

Japan has a commendable international development cooperation programme which focuses on enhancing the capacity of its partner countries to be self-reliant and ensuring that individuals and communities are free from fear and want. However, the programme could be strengthened by integrating a human rights-based approach. This would require an explicit commitment to incorporating human rights into the formulation, implementation and monitoring of its development assistance policies and programmes, as well as a focus on addressing the root causes of poverty, insecurity and underdevelopment.

* Late submission.

Annex

[English only]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, on his mission to Japan (16-19 July 2013)

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I. Introduction

1. The Independent Expert conducted an official visit to Japan from 16 to 19 July 2013 to assess the impact of its international development cooperation on the realization of human rights, as well as the extent to which human rights are reflected in its development cooperation policy. He also examined concerns related to the human rights and social impacts of investment projects backed by Japanese export credits and how these have been addressed by the country's export credit agencies.

2. The Independent Expert met with a broad range of stakeholders including representatives of the Ministries of Foreign Affairs; Finance; Economy, Trade and Industry; as well as the Japan International Cooperation Agency (JICA), the Nippon Export and Investment Insurance (NEXI) and the Japan Bank for International Cooperation (JBIC). At the invitation of the Government, he observed a policy dialogue meeting between the Ministry of Foreign Affairs and Japanese non-governmental organizations (NGOs). He also met with civil society organizations, United Nations agencies and local experts on issues within his mandate.

3. He wishes to express his gratitude to all of his interlocutors for sharing their perspectives. In particular, he is grateful to the Government of Japan for its invitation and willingness to engage in constructive dialogue.

II. Analytical context: the obligation of international assistance and cooperation

4. Japan has ratified key international human rights treaties¹ such as the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Japan enshrining a fundamental principle of human rights law – international assistance and cooperation² – which provides the context for the assessment of Japan's international development cooperation policy.

5. In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social, and Cultural Rights affirmed that "international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States" which is "particularly incumbent upon those States which are in a position to assist others in this regard" (para. 14). In similar vein, the Committee on the Rights of the Child has recommended that assistance provided by States should be human-rights based.

6. The obligations of international assistance and cooperation require States to conduct their activities with due regard for the human rights of the peoples of other States.³ In this regard, States must "scrupulously avoid involvement in projects which, for example, ...

¹ It is a party to all the core international human rights treaties, except the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

² See International Covenant on Economic, Social and Cultural Rights, arts. 2 (1) and 23; Convention on the Rights of the Child, art. 4. The principle is also reflected in arts. 1(3) and 56 of the Charter of the United Nations and art. 3(3) of the Declaration on the Right to Development.

³ See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, principles 3, 8 and 28-35, and the commentary to the principles in *Human Rights Quarterly*, Vol. 34 (2012) 1084–1169. See also OECD Development Assistance Committee, "Action-oriented policy paper on human rights and development" (2007), principle 8.

promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation” and must “act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights”.⁴ This implies that economic social and cultural rights should be afforded due attention in all international agreements, whether bilateral or multilateral.

7. In implementing their development cooperation policies and programmes, including the provision of official development assistance (ODA), States must ensure that such policies and programmes are consistent with human rights standards and principles, including the principles of non-discrimination, participation, transparency and accountability.

8. In particular, any development assistance they provide should help partner countries to comply with their own human rights obligations.⁵ Finally, States have an obligation to ensure that third parties involved in the delivery and implementation of their development assistance (e.g. private contractors and technical advisers) do not interfere with the enjoyment and realization of human rights in partner countries.⁶

III. Japan’s international development cooperation programme

A. Development cooperation policy

9. Japan’s international development cooperation policy is guided by its Official Development Assistance (ODA) Charter of August 2003, which is underpinned by five basic principles – supporting self-help efforts of developing countries, focussing on human security, assurance of fairness, utilization of Japan’s experience and expertise, and partnership and collaboration with the international community. The over-arching objective of Japanese development cooperation is to “contribute to the peace and development of the international community, and thereby to help ensure Japan’s own security and prosperity”.

10. The Charter identifies four priority issues: poverty reduction, sustainable growth, addressing global issues and peace-building.⁷ In order to reduce the vulnerabilities faced by people, communities and countries, Japan addresses the priority issues identified in the Charter bearing in mind the notion of “human security” which is a defining feature of Japan’s official development assistance programme.

⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 2, para. 6.

⁵ Statement of the Committee on Economic, Social and Cultural Rights (E/C.12/2001/10), paras. 16-17.

⁶ General comment No. 15, para. 33

⁷ According to the Ministry of Foreign Affairs, the key priorities of development cooperation are identified annually. During 2013, for example, they included to: (a) realize a prosperous and stable international community with freedom; (b) support the growth of the emerging and developing economies together with the growth of the Japanese economy; and (c) promote human security and strengthen trust in Japan. Specific efforts to realize these priorities would include providing assistance to countries which shared universal values and strategic interests with Japan, developing in partner countries infrastructure systems designed by Japan, addressing environmental and climate change issues, and contributing to achieving the Millennium Development Goals (MDGs) and to the post-2015 development agenda. See, Japan, Ministry of Foreign Affairs, *FY 2013 priority policy for international cooperation*, available from http://www.mofa.go.jp/policy/oda/oda_policy/pdfs/priority_policy_13.pdf.

11. The notion of “human security” entails focusing on individuals and building societies in which everyone can live with dignity by protecting and empowering individuals and communities that face actual or potential threats. In practice, this means: (a) protecting individuals from ‘fears’, such as conflict, terrorism, crime, human rights violations, displacement, disease epidemics, environmental destruction, economic crises and natural disasters, and ‘wants’, such as poverty, hunger and lack of educational and health services; and (b) establishing mechanisms that empower people so that they can address these threats.⁸

12. The concept of “human security” resonates with the three pillars of the United Nations, namely, peace and security, development and respect for human rights, the Independent Expert considers that it requires further elaboration if it is to contribute to the effectiveness and sustainability of Japanese development assistance. In addition, the concept has an accountability deficit in that it is not underpinned by any legally binding or enforceable standards.

13. The ODA Charter is augmented by the Medium-Term Policy and Country Assistance Programmes formulated and implemented in accordance with the Charter. There are also sector-specific development policies and initiatives. In 2011, these included gender, education, healthcare, water and sanitation, environment, trade and investment and disaster risk reduction.

14. The bulk of Japan’s ODA is provided in the form of bilateral aid, reflecting its importance as a foreign policy instrument. Japan utilizes three main channels for its bilateral development assistance: (a) loans (with a concessional conditions for interest and repayment); (b) grants (typically for projects, emergencies and food aid); and (c) technical cooperation (involving training courses and despatch of Japanese experts and technical advisors). In 2012, its gross bilateral ODA disbursements amounted to US\$14.46 billion. Of this amount, US\$7.70 billion (or 53.3 per cent) was provided in the form of loans, US\$3.92 billion (27.1 per cent) as grant aid and US\$2.84 billion (19.7 per cent) in the form of technical cooperation.

15. The relatively high use of loans reflects Japan’s belief that the requirement to repay encourages recipients to be fiscally responsible and to allocate resources more efficiently. This links with its emphasis on promoting its partner countries’ self-reliance.

16. In 2011-2012, the grant element of Japan’s ODA in 2010-2011 was, at 88.8 per cent, lower than the Organization for Economic Cooperation and Development (OECD) average (95.2 per cent).⁹ For development loans, the grant element was 75.5 per cent, but reached 98.4 per cent for ODA to Least Developing Countries (LDCs). In 2012, 71.0 per cent of all Japanese ODA was untied, 11.6 per cent tied and for 17.4 per cent of its ODA the tying status was not reported.¹⁰ While Japan meets the 2001 OECD-DAC recommendations to untie aid, its loan assistance is overwhelmingly directed to infrastructure projects in partner countries where there are Japanese business interests.¹¹ The use of ODA to build international friendships and alliances and to promote Japanese interests and business overseas may, as the OECD has cautioned, sometimes “risk to override its primary development objective”.¹²

⁸ See Medium-Term Policy, para. 2(1)(ii). See also A/RES/66/290.

⁹ OECD-DAC 2012 statistics, Table 20 – Financial terms of ODA commitments, available from: <http://www.oecd.org/dac/stats/statisticsonresourceflowstodevelopingcountries.htm>.

¹⁰ Ibid, Table 23 – Tying Status of Individual DAC Members, 2012, percentages.

¹¹ Japan International Cooperation Agency, *Annual Report 2012*, pp. 193-196.

¹² OECD, *Development Assistance Committee (DAC) Peer Review of Japan*, 2010, p. 30.

17. About one third of Japan's ODA is provided to multilateral organizations. The largest recipients are the World Bank (US\$1.55 billion) and regional development banks (US\$969 million), followed by United Nations agencies (US\$679 million).

18. In recent years, Japan's ODA has been declining.¹³ It fell from US\$11.06 billion in 2010 to US\$10.83 billion in 2011 and US\$10.60 billion in 2012. Its net ODA disbursements in 2012 represented 0.17 per cent of its Gross National Income (GNI). This is well below the OECD average of 0.32 per cent of GNI and significantly below the United Nations target of 0.7 per cent.

19. The Independent Expert acknowledges the economic and fiscal challenges Japan has been facing as a consequence of the global economic crisis and recent natural disasters which the country has suffered (such as the Great East Japan Earthquake in March 2011). He commends the Government for continuing to accord priority to ODA despite these setbacks. He urges the Government to set out a road map for progress towards the United Nations target of 0.7 per cent ODA/GNI as its economic and fiscal situation improves.¹⁴

B. Institutional framework

20. The main implementing agency of Japan's ODA is the Japanese International Cooperation Agency (JICA) – the world largest bilateral aid agency. JICA works in over 150 countries and has some 100 offices around the world. It provides bilateral aid in the form of technical cooperation, loan aid and grant aid.¹⁵ In October 2008 ODA Loans (administered formerly by JBIC) and grant aid formerly under the supervision of the Ministry of Foreign Affairs were integrated into the portfolio of JICA. In the fiscal year 2011 technical cooperation implemented by JICA amounted to ¥188.9 billion; grant aid to ¥107.6 billion and loan aid disbursements of ¥609.7 billion were provided to 51 countries. JICA also administers Japanese Overseas Cooperation Volunteers programmes. It also dispatches disaster relief teams in response to requests from governments of affected countries.

21. Other government departments, including the Ministries of Finance; Education, Culture, Sports, Science and Technology; and Economy, Trade and Industry also provide development assistance. For example, contributions to the World Bank and multilateral development banks are provided through the Ministry of Finance, while support to United Nations agencies and programmes falls under the Ministry of Foreign Affairs. The Ministry of Education mainly provides scholarship support to students from developing countries to study in Japan, while most funds channelled through the Ministry of Economy, Trade and Industry are used to dispatch experts to developing countries to improve the environment for trade and investment and to disseminate successful Japanese technologies.¹⁶

C. The role of civil society

22. The Government of Japan has a robust policy of engagement with local civil society organizations in relation to its international development cooperation programme. Since

¹³ This is not unique to Japan.

¹⁴ In 2002, at the United Nations Monterrey Conference on Financing for Development, Japan committed to make concrete efforts towards the target of 0.7% ODA/GNI ratio, though without a set timeline for reaching it.

¹⁵ See <http://www.jica.go.jp/english/> for more information.

¹⁶ For more details, see Ministry of Foreign Affairs, Japan's Official Development Assistance, White Paper 2012, pp. 182-9, available at: http://www.mofa.go.jp/policy/oda/white/2012/pdfs/0401_2.pdf

1996, the Ministry of Foreign Affairs has hosted regular meetings with NGOs which are aimed at promoting a stronger partnership and dialogue on ODA policies and funding assistance for NGOs.¹⁷ The Independent Expert thanks the Government for extending an invitation to him to observe one such meeting during his visit.

23. Beginning in 2002, meetings involving staff of Japanese embassies, other development assistance organizations and Japanese NGOs that work in developing countries have been held with a view to exchanging ideas concerning the efficient and effective implementation of Japanese ODA.¹⁸ In addition, JICA holds meetings with civil society organizations in Japan and in partner countries in order to promote their participation in Japan's development cooperation programme.¹⁹

24. These initiatives are commendable. Nevertheless, dialogue and support for local civil society organizations in partner countries should be strengthened so as to empower them to more effectively undertake their critical role in fostering accountability of their governments for development assistance received.

25. The Government of Japan recognizes that partnerships with NGOs in partner countries contribute not only to the socio-economic development of these countries, but also to strengthening civil society in those countries. To this end, it provides Grant Assistance for Grass-Roots Human Security Projects.²⁰ Nevertheless, from the information available on the website of the Ministry of Foreign Affairs, it does not appear that local or international human rights organizations have received much support.²¹ While there were several projects with a focus on women, children or disabled persons, it is unclear whether these projects focus specifically on the protection of the rights of these or other marginalised groups. It is critical that support is provided to projects of local civil society actors representing vulnerable and disadvantage groups to enable them to engage in dialogue with policy makers and enhance their capacity to assert their rights through existing judicial and other procedures at national or international level.

D. Private sector involvement

26. A key priority of Japan's international cooperation policies is the promotion of private sector-led growth. According to the ODA White Paper 2011, "Japanese private companies' activities in developing countries make significant contribution beyond ODA projects, by creating opportunities for local employment, augmenting tax revenue, expanding trade and investment, contributing to the acquisition of foreign currency and transferring Japan's superior technology".²² In April 2008, Japan announced a policy to strengthen partnership between ODA and private investment, as well as to promote private

¹⁷ Japan, Ministry of Foreign Affairs, *Japan's Official Development Assistance White Paper 2011* (March 2012), p. 140.

¹⁸ *Japan's Official Development Assistance White Paper 2011*, pp. 140-141.

¹⁹ *Ibid*, p. 141.

²⁰ *Ibid*, p. 143. In 2011, Government financial support to NGOs was US\$369 million. Nonetheless, the percentage of Japanese ODA provided to NGOs remains low in comparison to other OECD-DAC countries. During 2010-2011, only 1.9 per cent of its ODA was provided to NGOs (compared with an average of around 12.1 per cent for other OECD-DAC members). Around half of Japan's support for NGOs is provided or channelled through civil society organisations in Japan, while around 20 per cent of its ODA budget goes to international NGOs and NGOs located in developing countries receive around 35 per cent. See OECD-DAC, "Aid for CSOs," October 2013, pp. 6-7, available from <http://www.oecd.org/dac/peer-reviews/Aid%20for%20CSOs%20Final%20for%20WEB.pdf>.

²¹ See <http://www.mofa.go.jp/mofaj/gaiko/oda/data/zyoukyou.html>.

²² *Japan's Official Development Assistance White Paper 2011*, p.141.

sector business activities in developing countries. The Independent Expert also notes that the Tokyo International Conference on African Development held in June 2013 also emphasized the role of foreign direct investment contributing to development. This is laudable. However, it is equally important that attention is paid to enhancing the capacities of local businesses in the partner countries to be internationally competitive.

27. The Independent Expert is of the view that efforts designed to boost Japanese foreign investments (including economic partnership agreements) should be consistent with relevant international human rights standards, including the Guiding Principles on foreign debt and human rights (A/HRC/20/23), the Guiding Principles on Human Rights and Business (A/HRC/17/31, Annex) and relevant international labour standards.

28. Consideration should be also given to ensuring more comprehensive regulation of Japanese foreign business activities to address issues such as tax evasion and other forms of capital flight which undermine the capacity of countries to mobilize sufficient domestic resources for their development. Such an approach would be consistent with the principle of “self-help” which is a key element of Japan’s ODA policy and also contribute to international efforts to tackle illicit financial flows.

E. Debt relief

29. Although initially reluctant to support the idea of debt cancellation for highly indebted countries, Japan has provided significant bilateral debt relief and contributed to multilateral debt relief efforts.²³ Since 2003, it has cancelled ODA and non-ODA related debts amounting to US\$18.37 billion.²⁴

30. The Independent Expert commends the Government of Japan for its debt relief efforts, including those at the multilateral level. He would however like to draw the attention of the Government of Japan to the fact that existing multilateral debt-relief initiatives show a mixed record, and have not been able to fully address the underlying causes of the debt crisis. Thus, in his report to the Human Rights Council (A/HRC/23/37), the Independent Expert, called upon the international community to consider solutions that can help deliver an equitable and durable solution to the debt crisis. He urges the Government to use its influence in multilateral institutions, such as the World Bank, International Monetary Fund and Asian Development Bank, to ensure that the provision of loans or debt relief is not conditional on the implementation of unduly onerous policies that may undermine the sustainability and ownership of recipient countries’ development efforts. In this regard, he encourages the Government to promote the use of the Guiding Principles on foreign debt and human rights, which were endorsed by the Human Rights Council in June 2012,²⁵ by the international financial institutions to inform the design and implementation of their policies and programmes on lending and debt relief.

31. Additionally, in order to safeguard the gains from multilateral debt initiatives and to prevent inequitable burden sharing among creditors, it is important that all States enact

²³ The Government was concerned that debt cancellation would reduce the credibility of developing countries and limit their ability to borrow from international financial markets. In addition, article 8 of the Japanese Finance Act prohibited cancelling a part or all of any country’s debt unless new legislation is arranged, requiring therefore parliamentary approval for any debt cancellation. See Junichi Hasegawa, “International debt management: Japan’s policy towards Africa,” in Howard P. Lehman (ed.), *Japan and Africa. Globalization and foreign aid in the 21st century* (New York, Routledge, 2010), pp. 71-92.

²⁴ Information provided to the Independent Expert by the Ministry of Foreign Affairs.

²⁵ See A/HRC/20/23, annex.

legislation to curb the predatory activities of vulture funds.²⁶ While there is currently no evidence of vulture fund litigation against States before the Japanese court, the Independent Expert urges the Government to take pre-emptive measures against such a possibility by enacting legislation that would limit the ability of vulture funds to use its courts to recover extortionate amounts from poor countries and, in the process, eroding the gains from international debt relief efforts to which Japanese taxpayers have contributed.

IV. Export credits and human rights

A. Export credit agencies

32. As is the case with most OECD member countries, Japan seeks to promote overseas investments and exports, as well as to maintain the international competitiveness of its industries through export credits.²⁷ It has two official export credit agencies: Japan Bank for International Cooperation (JBIC) and Nippon Export and Investment Insurance (NEXI), both of which are wholly-owned by the State.

33. JBIC, a policy-based financial institution established in terms of the Japan Bank for International Cooperation Act, No. 39 of 2011 and wholly owned by the Japanese government and, mainly provides various types of loans²⁸ for projects aiming at the overseas development and securing of resources (such as oil, liquefied natural gas, iron and copper) which are important for Japan, and maintaining and improving the international competitiveness of Japanese industries.²⁹ It also aims to support projects undertaken outside Japan that have a favourable impact on the preservation of the global environment or are aimed at preventing global warming. It is supervised by the Minister of Finance.

34. NEXI mainly provides various types of insurance to cover political and commercial risks involved in business or overseas transactions, such as export, import, investment and financing, which private insurance cannot cover.³⁰ In 2011, NEXI underwrote ¥7.1 trillion in export credit insurance.

B. Human rights issues

35. While export credit agencies serve an important function in international trade and investment, they also raise important concerns including the exacerbation of poor countries' debt problems and negative impacts on human rights and the environment.³¹ In addition, export credit agencies tend to be secretive and often lack transparency and accountability in their funding decisions and operations.

36. JBIC and NEXI have been involved in projects, such as the Coral Bay Nickel Processing Plant Project, the Taganito Processing Plant Project and San Roque Multi-

²⁶ See the thematic report of the Independent Expert submitted in 2010 to the Human Rights Council (A/HRC/14/21).

²⁷ Export credits are government backed loans which support companies doing business abroad, particularly high-risk projects. Collectively, they are one of the world's largest sources of public financing for private-sector projects.

²⁸ Such as overseas investment loans (60 per cent of its commitments), guarantees to supplement or encourage financing for private financial institutions (14 per cent); export loans (13 per cent); and import loans (11 per cent). Their total value was ¥1,595 billion in 2011.

²⁹ For more information, see <http://www.jbic.go.jp/en/>.

³⁰ The competent authority for NEXI is the Minister of Economy, Trade and Industry. For more information, see <http://nexi.go.jp/en/>.

³¹ See A/66/271.

Purpose Dam Project³² in the Philippines; the Baku-Tbilisi-Ceyhan Oil Pipeline (BTC pipeline);³³ and the Papua New Guinea Liquefied Natural Gas Project,³⁴ all of which have generated a great deal of controversy. For example, it has been alleged that the BTC pipeline posed a number of environmental and human rights risks, and violated the World Bank's safeguard policies.³⁵ In similar vein, several environmental and human rights concerns have been raised in relation to the Coral Bay Nickel Project, including lack of prior and informed consent from indigenous peoples, impact to coral reefs and leakage of hazardous wastes from the tailing dams.³⁶

C. Measures to address human rights and other concerns

37. The Independent Expert notes that NEXI and JBIC both have “guidelines for environmental and social considerations.”³⁷ These guidelines, which largely correspond to the safeguard policies of the World Bank and are based on the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits (“the Common Approaches”), are designed to prevent or mitigate the negative environmental and social impacts of development projects supported by these agencies. According to the guidelines, partner countries, borrowers or other project proponents bear ultimate responsibility for environmental and social considerations of projects, but both agencies encourage their partners to take remedial measures to address the social and environmental impacts of the projects that they support.

38. It is notable, however, that neither set of guidelines offers an effective accountability mechanism. Although the guidelines provide for a procedure allowing affected persons to raise their concerns with an independent panel, the panel can only make non-binding recommendations.³⁸ Moreover, under the NEXI Guidelines, the examiner works under the direct control of the Chairman and Chief Executive Officer of NEXI.³⁹ It is also notable that

³² See Rivers Watch East and Southeast Asia, International Rivers Network and Friends of the Earth Japan, Development Disasters, *Japanese-Funded Dam Projects in Asia*, available from www.internationalrivers.org/files/attached-files/030309.irnjbic.pdf. NEXI was not involved in the San Roque Multi-Purpose Dam Project.

³³ Apart from the International Finance Corporation and the European Bank for Reconstruction and Development, several export credit agencies were involved in the project, including ECGD (United Kingdom), Hermes (Germany), Coface (France), SACE (Italy) and US Ex-Im (USA).

³⁴ See Jubilee Australia, *Pipe Dreams: The PNG LNG Project and the Future Hopes of a Nation*, (2012). Other export credit agencies involved in the project Export Import Bank of China, Export Finance and Insurance Corporation Australia, SACE S.p.A and the Export-Import Bank of the United States. See <http://www.eca-watch.org/publications/newsletter-items/ngos-warn-banks-not-to-further-finance-png-lng-project>.

³⁵ See, e.g., <http://www.thecornerhouse.org.uk/resource/bp-violating-human-rights-rules-says-uk-government>.

³⁶ See reports by Friends of the Earth Japan, available from <http://www.foejapan.org/en/aid/jbic02/rt/index.html>.

³⁷ NEXI, *Guidelines on Environmental and Social Considerations in Trade Insurance*, July 2009, available from <http://www.nexi.go.jp/en/environment/social/>; JBIC, *Guidelines for confirmation of environmental and social considerations*, April 2012. See also JICA, *Guidelines of environmental and social considerations*, April 2010, available from http://www.jica.go.jp/english/our_work/social_environmental/guideline/index.html. The term “environmental and social considerations” refers not only to the natural environment, but also to social issues such as involuntary resettlement and respect for the human rights of indigenous people. See JBIC Guidelines, p. 1.

³⁸ See http://www.jica.go.jp/english/our_work/social_environmental/guideline/pdf/objection100326.pdf; http://nexi.go.jp/en/environment/objection/pdf/08b_1.pdf; and <http://www.jbic.go.jp/en/efforts/environment/disagree/procedure>.

³⁹ NEXI, *Annual Report FY 2011* (July 2012), p. 16.

the objections procedures have rarely been used,⁴⁰ suggesting that they are not well known by the affected groups or communities.

39. These omissions should be addressed as a matter of priority. While the Independent Expert is of the view that the existing guidelines offer some degree of protection, he is of the view that they could be significantly enhanced through explicit references to Japan's international human rights obligations as well as international labour standards.

40. As a member of the OECD, Japan subscribes to the Common Approaches. However, the Common Approaches are not legally binding and fail to explicitly require ECAs and their clients to commit clearly and unambiguously to respect human rights and establish adequate human rights due diligence processes. Moreover, the Common Approaches have failed to prevent ECAs from supporting a range of egregious projects.

41. It is important to note that while the States where an export credit agency-supported project is implemented have the primary responsibility to ensure that the project activities comply with their international human rights obligations, the agencies' home States are also responsible for the regulation and supervision of the activities carried out by their national export credit agencies that had a negative impact on the enjoyment of human rights of the population of the host State. As noted by the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, States should take steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies, including, where appropriate, by requiring human rights due diligence (A/HRC/17/31, annex, principle 4).

42. As State-owned entities, NEXI and JBIC are bound by Japan's international human rights obligations. Ensuring compliance with human rights standards is therefore not a voluntary undertaking in support of a partner country, but a legal obligation derived from the human rights obligations binding on Japan and its public institutions, including its State-owned agencies.

43. The Independent Expert urges the Government of Japan to take steps to strengthen the JBIC and NEXI guidelines by, *inter alia*, including requirements for comprehensive human rights impact assessments (in addition to the environmental and social impact assessments already required) and ensuring the free, active and meaningful participation – rather than mere consultation – of the affected communities.

44. Another aspect requiring attention is the lack of transparency concerning the contracts between these agencies and their clients. Non-disclosure of these contracts has been justified by reference to commercial confidentiality. In the Independent Expert's estimation, however, since these agencies are public entities, there is a duty to account to the Japanese public and to the citizens of the countries where the projects they support are located. Transparency would increase the accountability of these agencies to both the Japanese public and the citizens of the host countries and ultimately assist Japan in complying with its extra-territorial human rights obligations, as well as the obligations of international assistance and cooperation.

⁴⁰ For example, only two objections have been lodged under JBIC's objections procedure. See Annual Reports of the Examiners for Environmental Guidelines, available from <http://www.jbic.go.jp/en/efforts/environment/disagree/procedure>.

V. Japan's ODA: Its impact on the realization of human rights and the Millennium Development Goals

A. Development assistance policy and human rights

45. Japan's ODA Charter explicitly refers to the importance of working with countries that respect, protect and fulfil human rights. It underlines that "Japan will give priority to assisting developing countries that make active efforts to pursue peace, democratization, and the protection of human rights, as well as structural reform in the economic and social spheres". It also places emphasis on the protection of individuals, their empowerment, attention to the condition of the socially vulnerable and closing the gap between the rich and the poor. Furthermore, it stresses the importance of gender equality and improving the status of women and their active participation in development.

46. Japan's Initiative on Gender and Development adopted in March 2005 outlines its current approach to gender mainstreaming.⁴¹ The document stresses that "Japan will seek to promote gender mainstreaming broadly in its ODA and throughout the process of needs assessment, policy formulation, project formulation, implementation, monitoring and evaluation."⁴² The policy pronounces that that a gender equality perspective will be fully taken into account when country assistance programmes or sector or issue specific policies are formulated and that gender issues will be shared with recipient countries in policy dialogues. It underlines the need for gender analysis and promoting women's as well as men's participation in decision making at the stages of planning, implementing and evaluating ODA policies and projects affecting their lives. The Initiative also envisages assistance for policies and institutions that promote gender equality at international and national level. This includes support in the "formulation of national policy on the advancement of women, institutional strengthening of national machinery; establishing legal and institutional framework from a gender perspective; upgrading gender statistics; gender awareness raising of government officials through gender training."⁴³

47. Poverty reduction is another priority issue identified in the Charter and the Medium-Term Policy on Official Development Assistance. The Charter stresses that Japan will give in its assistance "high priorities to education, health care and welfare, water and sanitation and agriculture".⁴⁴ The Medium-Term Policy identifies direct assistance to the poor as one avenue for poverty reduction. This includes "strengthening the capabilities of the poor and [of] communities so as to enable the poor to participate in the formulation of aid policies, [in] project planning and [in the] implementation process".⁴⁵ The Policy mentions that "it is important to establish institutions and policies that protect the rights of the poor based on the principle of equality under the law, and to enable the poor to participate in political activities and to exercise their capabilities. Assistance will therefore be provided to contribute to the protection of human rights, the rule of law, and the promotion of democratization."⁴⁶

⁴¹ Initiative on Gender and Development (GAD), available at: <http://www.mofa.go.jp/policy/oda/category/wid/gad.html>

⁴² Ibid.

⁴³ Ibid.

⁴⁴ ODA Charter, para. 3(1).

⁴⁵ Medium-Term Policy on Official Development Assistance, 4 February 2005, para. 3(1)(ii)(b).

⁴⁶ Ibid, p.8.

B. Impact on the realization of human rights

48. It has been asserted that Japan lacks a comprehensive and coherent strategy to contribute to the promotion, protection and fulfilment of human rights in its official development cooperation. According to one observer, Japan's human rights diplomacy differs from those of other developed countries, such as the United States and the European Union, based on a "non-intrusive and accommodative approach, which is largely compatible with ASEAN's diplomatic style" and that "at least in relative terms, Japan makes little effort to promote human rights in Southeast Asia".⁴⁷ In similar vein, Human Rights Watch points to the cautious approach to human rights diplomacy adopted by Japanese officials, arguing that this approach is motivated by a desire to avoid jeopardizing "friendly relations with other countries, harming Japan's economic interests or risking criticism of Japan's war record."⁴⁸

49. It is difficult, in the absence of comprehensive information from the countries receiving Japanese ODA, to assess the extent to which Japanese official development assistance impacts on the realization of human rights in such countries. It can be argued, however, that Japanese development assistance does contribute to the realization of economic, social and cultural rights in its partner countries. Projects implemented to reduce poverty through establishment of social security schemes, promoting education, strengthening health care or providing access to clean drinking water, contribute to the realization of the rights to social security, education, health or safe drinking water and sanitation, respectively. In 2009, Japan's human rights-related bilateral ODA disbursements were: health and welfare (US\$354.45 million), gender equality (US\$1,870.75 million) and measures relating to persons with disabilities (US\$1,687.46 million).

50. It can also be argued that Japan's particular efforts in disaster risk reduction, protect human rights, since the ultimate aim of disaster risk reduction is not only to protect social and economic infrastructure from earthquakes, floods or other natural disasters, but to prevent loss of life or other harm to individuals. Such assistance may therefore contribute to the protection of the right to life and physical integrity in the event of a natural disaster.

51. Nevertheless, a review of Japan's development cooperation at project level does not lead to clear conclusions concerning the human rights impacts of the country's development assistance.⁴⁹ While it can be argued that the overall aim of Japan's development cooperation is to support in one or the other way partner countries in their efforts to realize economic, social and cultural rights, human rights do not feature as prominently in the bilateral development cooperation, neither at policy nor at project level. Very few projects can be identified that have the explicit aim to strengthen human rights, rule of law, transitional justice, train public officials on human rights issues or empower rights holders to claim their rights through justice mechanisms at local, national or international level. Thus, for instance, while it should be noted that Japan has contributed substantial funds to the Extraordinary Chamber in the Courts of Cambodia and supported that country's efforts in rebuilding its own legal system, efforts appear to be mainly focused on drafting basic civil and economic laws in Cambodia and several other partner countries and human rights appear in this context not to be a major focus of Japan's assistance in the legal field.

⁴⁷ Hiro Katsumata, "Why does Japan downplay human rights in Southeast Asia", *International Relations of the Asia-Pacific*, vol. 6 (2006), p. 250.

⁴⁸ "The sun rises on human rights," comment by Kenneth Roth and Kanae Doi, Human Rights Watch, published in *New York Times*, 12 April 2013, available from <http://www.hrw.org/news/2013/04/12/sun-rises-human-rights>.

⁴⁹ See www.mofa.go.jp/mofaj/gaiko/oda/data/zyoukyou.html.

52. While “equality”, “human rights”, “participation of the poor in political activities” and “protection of the rights of the poor” form part of Japan’s official poverty reduction strategy, these principles do not appear to receive much attention at project level. Furthermore, the emphasis given to poverty reduction, education, health care and welfare in policy documents, is less discernible when considering which sectors receive the largest share of Japan’s ODA. Nearly half of all ODA funds are devoted to economic infrastructure including transport, communications and energy or for projects related to industry, mining and construction. While these funds are also spent on small-scale infrastructure projects, most of the assistance relates to large-scale infrastructure projects. In 2011, education and health care, to which Japan devotes “high priority” according to its Medium-Term Policy, received a combined total of 8.4 per cent of all ODA funds.⁵⁰ And even in the education sector, approximately 70-90 per cent is reported to be spent on teachers’ salaries⁵¹, while assistance devoted to basic education is limited to 0.5 per cent of all bilateral aid.⁵²

53. Japan attaches a great deal of importance to the promotion of human rights through “dialogue and cooperation” based on mutual understanding and respect.⁵³ In this regard, it has held regular bilateral dialogue and consultations on human rights with the governments of more than 10 countries. In situations of concern, Japan “deals cautiously” with implementing development assistance and conveys its “deep concern” to the recipient country regarding the status of democratization and human rights.⁵⁴

54. In line with its Initiative on Gender and Development announced in 2005, Japan endeavours to ensure that a gender perspective is integrated into all aspects of its development assistance. According to an OECD-DAC assessment of support for gender equality and women’s empowerment, in 2011, Japan allocated US\$160 million of its ODA to activities that have the main objective of supporting gender equality and women’s empowerment, while an additional US\$1,851 million was allocated for activities in which gender equality was an important, but secondary, objective.⁵⁵ Although Japan’s gender equality focused aid increased significantly from around 6 per cent of all sector-allocable aid in 2002, to 19 per cent in 2011, but it still remained below the OECD-DAC average of 32 per cent.⁵⁶ Japan’s efforts in the area of gender mainstreaming include cooperation with international aid organizations, NGOs, research institutions and raising awareness on gender related issues among Japan’s development practitioners, including training of staff in ODA related ministries and agencies.

55. Japan also promotes human rights through financial support for the human rights activities undertaken by several UN entities, such as the Office of the High Commissioner for Human Rights (OHCHR), UNICEF and UN Women. In 2010, for example, it contributed about US\$5 million to UN Women (in 2012, it contributed significantly less –

⁵⁰ OECD-DAC 2011 statistics, Table 19 - Aid by Major Purposes.

⁵¹ Estimate by the Japan NGO Network on Education (JNNE).

⁵² OECD-DAC 2011 statistics.

⁵³ According to the Ministry of Foreign Affairs, the Government of Japan provides assistance in accordance with its ODA Charter, with due regard to the principles of the Charter of the United Nations (including respect for sovereignty, equality and non-intervention in domestic affairs) and after “comprehensively determining the recipient country’s needs, socio-economic conditions and its bilateral relations with the recipient country”. See *Japan’s Official Development Assistance Policy White Paper 2011*, p. 135.

⁵⁴ *Japan’s Official Development Assistance Policy White Paper 2011*, p. 136.

⁵⁵ See OECD, Aid in Support of Gender Equality and Women’s Empowerment - Donor Charts, March 2013, p. 17, available from <http://www.oecd.org/dac/stats/Aid%20in%20support%20ENG%20for%20web%20March%202013.pdf>.

⁵⁶ *Ibid.* pp. 4 and 17.

US\$949,000).⁵⁷ However, its voluntary contributions (US\$577,226) to OHCHR have fallen. The Independent Expert urges the Government of Japan to scale up its financial support to UN agencies so as to enhance their effectiveness and efficiency.

56. Finally, while to a large extent development cooperation aims to assist in realizing economic, social and cultural rights, development projects may also have negative human rights impacts. In particular, large-scale infrastructure projects, such as dams, mining, oil and gas exploitation, industry, energy plants, highways or airports, can have a negative impact on communities and individuals living in the project area or region.

C. Attainment of the Millennium Development Goals

57. Japan has been a leading actor in promoting the Millennium Development Goals (MDGs) at the international level. In recent years, it has made particular efforts to support the attainment of goals related to education and health care. At the High-level plenary Meeting of the United Nations on the MDGs in September 2010, Japan pledged US\$5 billion in assistance to the health sector and US\$3.5 billion to the education sector to contribute to efforts for the realization of the Goals.⁵⁸ In June 2011, it hosted an MDG Follow-Up meeting jointly with the United Nations.

58. Japan is also active in the discussions concerning the post-2015 development framework. The Independent Expert welcomes Japan's aim to promote in the context of the post-development framework universal access to basic healthcare services, to close the gap in access to health services between wealthy and poor people, to shift health care from a disease oriented to a people-centred approach, and to promote in this context universal health coverage in order to satisfy broader health and medical needs.⁵⁹

59. In the context of the discussions on the post-2015 framework, it has proposed a new development framework guided by the principle of human security. Although this principle recognizes the interlinkages between peace, development and human rights, its precise meaning remains unclear. This poses a problem in terms of operationalizing the principle. Furthermore, the Independent Expert considers that a "human security" approach, may in itself, not be sufficient to guarantee accountability for delivery on commitments in the new development framework.

60. It should be noted that the lack of an accountability mechanism for ensuring delivery on the declaratory, non-binding political commitments made by the international community in relation to the MDGs has been cited as a key reason for the inadequate progress on the Goals. Thus, it has been suggested that a post-2015 development agenda should be underpinned by human rights as a universal normative and legally binding framework embodying the minimum requirements of a life in dignity. The Independent Expert agrees. In his report to the General Assembly (A68/542), he underscored that a major shortcoming of the existing development goals is that they largely failed to integrate existing human rights obligations. He also noted that the accountability framework for the Goals – which consists of voluntary monitoring and reporting at the national level and United Nations reports on regional and global progress – is largely detached from national

⁵⁷ UN Women, *Annual Report 2012-2013*, p. 26.

⁵⁸ See, Japan, Ministry of Foreign Affairs, *Japan's Global Health Policy 2011-15*, September 2010, available from http://www.mofa.go.jp/policy/oda/mdg/pdfs/hea_pol_ful_en.pdf; and *Japan's Education Cooperation Policy, 2011-15*, September 2010, available from http://www.mofa.go.jp/policy/oda/mdg/pdfs/edu_pol_ful_en.pdf.

⁵⁹ See Shinzo Abe, "Japan's strategy for global health diplomacy: why it matters," *The Lancet*, vol. 282 (September 2013), pp. 915-916.

and international human rights accountability mechanisms. Consequently, States can report on their progress without reference to their human rights obligations and without taking into consideration the outcomes of the scrutiny of their human rights performance as undertaken by the treaty monitoring bodies.

61. Consequently, the Independent Expert encourages the Government of Japan to give due consideration, in the discussions concerning the post-2015 development framework, to the need for accountability mechanisms anchored to the international human rights framework which promote the active and meaningful participation of those most affected by poverty and deprivation and increase the responsiveness of the State or those in authority.

62. It is notable that accountability is a key feature of the human rights-based approach to development. From the human rights view point, accountability refers to the relationship between duty-bearers to the rights holders affected by their decisions, actions and omissions. It requires that the Government and other duty bearers take responsibility for their decisions, actions and omissions, answer for them by explaining or justifying them to the public or those affected; and be subject to some kind of enforceable sanction if their conduct has resulted in human rights violations.⁶⁰ Accountability also enables rights holders to access fair and transparent mechanisms to enforce their claims against duty bearers, and to obtain appropriate redress when their rights have been infringed. In this way, accountability enhances policy making and delivery of services.

D. The need for a human rights-based approach

63. The Independent Expert considers that human rights could occupy a more prominent place in Japan's international development cooperation policy. In particular, the Government should make a more explicit commitment to incorporating human rights principles into the design, implementation and monitoring of its ODA policies by adopting a policy statement on human rights and development cooperation, as other leading providers of ODA such as Australia (AusAID), Canada (CIDA), Finland (Ministry of Foreign Affairs), Germany (BMZ/GIZ), Sweden (Sida), the United Kingdom (DFID) and the USA (USAID) have done.⁶¹ Such policy statement should be complemented by operational and implementation guidelines, related manuals and practical tools, as well as human rights training for Japanese officials working in the area of development cooperation.

64. A human rights-based approach guiding development cooperation policies and programmes promotes equality and non-discrimination, participation and empowerment, as well as transparency and accountability. It views the people as agents of their own development and brings about a shift in perspective: those in "need" and "target groups" are seen as bearers of rights and State partners as bearers of duties. A human rights-approach to development includes both, support to state institutions as duty-bearers to enable them to meet their obligations, but as well assistance and empowerment of rights-holders and civil society to claim their rights.

65. In the context of Japan's international development cooperation, a rights-based approach would require that human rights principles of equality and non-discrimination, participation, empowerment, transparency and accountability are reflected at all stages of

⁶⁰ See OHCHR and CESR, *Who will be accountable? Human Rights and the Post-2015 Development Agenda* (Geneva 2013), p. 10.

⁶¹ For a recent comparative analysis see, World Bank/OECD, *Integrating Human Rights into Development Cooperation*, 2nd edition (Washington D.C., World Bank, 2013), pp. 3-22.

formulation, implementation, monitoring and evaluation of all development cooperation policies. A rights-based approach would also prioritize support to those social groups that are most affected by discrimination: women, children, persons with disabilities, indigenous peoples and minorities. It is oriented at eliminating the structural causes of poverty, social exclusion and violent conflicts, and compatible with Japan's human security agenda. Meaningful participation can ensure that interests of affected individuals are reflected in decision making and that clashes of interest can be solved in a peaceful manner. Strengthening justice mechanisms, including non-judicial mechanism, and ensuring that all people have access to them, also helps to resolve disputes peacefully. By ensuring non-discrimination, equity, participation and effective access to remedies and by focusing on the root causes of poverty and underdevelopment, a rights-based approach would improve the sustainability and effectiveness of Japanese development cooperation.

66. Finally, by adopting a human rights-based approach, Japan would be aligning its development cooperation policies and programmes to its international human rights obligations and other relevant international policy statements on human rights and development, such as the 2007 DAC Action-Oriented Policy Paper on Human Rights.

VI. Conclusions and recommendations

67. Japan has a commendable international development cooperation programme. Despite the fiscal challenges it has faced in recent years as a consequence of the global economic crisis and the natural disasters it has suffered, it continues to accord importance to development cooperation. However, its development cooperation policy could be further enhanced through, inter alia, an explicit commitment to integrating a human rights-based approach into the formulation, implementation and monitoring of the programme.

68. In view of the above, the Independent Expert recommends that the Government of Japan should:

(a) Put human rights at the core of its development cooperation programme by adopting a human rights-based approach. This would require, inter alia, making a more explicit commitment to incorporating human rights principles into the design, implementation, monitoring and evaluation of its ODA policies and programmes, as well as the development of operational and implementation guidelines, related manuals and practical tools and human rights training for Japanese officials working in the area of development cooperation.

(b) Enhance its financial support to civil society organizations involved in the promotion and protection of human rights, particularly economic, social and economic rights, in the countries receiving Japanese development assistance.

(c) Take measures to ensure that efforts aimed at promoting Japanese investments abroad are consistent with relevant international human rights standards, including the Guiding Principles on foreign debt and human rights, the Guiding Principles on Human Rights and Business and relevant international labour standards.

(d) Take measures to ensure more comprehensive regulation of Japanese foreign business activities in order to address issues such as tax evasion and other forms of capital flight which undermine the capacity of countries to mobilize sufficient domestic resources for their development.

(e) Continue to support multilateral and bilateral debt relief initiatives and consider measures that can deliver an equitable and durable solution to the debt crisis.

(f) Consider enacting legislation to limit the ability of vulture funds to use Japanese courts to recover extortionate amounts from poor countries.

(g) Use its influence in international financial institutions, such as the World Bank, International Monetary Fund and Asian Development Bank, to ensure that the provision of loans or debt relief is not conditional on the implementation of onerous policies that may undermine the sustainability and ownership of recipient countries' development efforts. This would be consistent with the principle of ownership underscored in its ODA policies and the Accra Agenda for Action.

(h) Strengthen the accountability mechanisms and safeguard policies of JICA, NEXI and JBIC by, inter alia, requiring comprehensive human rights impact assessments (in addition to environmental and social impact assessments) as well as the free, active and meaningful participation of affected individuals and communities. In particular, the safeguard policies should be clearly aligned to the Guiding Principles on Business and Human Rights.

(i) Adopt a clear road map for achieving the United Nations target of 0.7 per cent ODA/GNI as its economic situation improves.

(j) Work towards ensuring that the post-2015 development framework of the United Nations includes a robust framework to ensure accountability for the delivery of commitments.
