

HUMAN RIGHTS WATCH

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June 23, 2015

President Akihiko Tanaka
Japan International Cooperation Agency
Nibancho Center Building 5-25
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Re: JICA's human rights policies and practices

Dear Mr. Tanaka,

I write to you on behalf of Human Rights Watch. We appreciate you and your staff taking the time to meet with me and many of our staff over the past year to discuss JICA human rights policies and practices. We have sent numerous letters requesting information to JICA over the past year and we appreciate the efforts your staff put into responding. We also greatly appreciate the time your staff took to meet with the Asia division and others at Human Rights Watch at your offices in Tokyo in November 2014, during which we had extensive conversations about Afghanistan, Pakistan, India, Sri Lanka, Nepal, Bangladesh, Burma, Thailand, Cambodia, Vietnam, Indonesia, the Philippines, and Uzbekistan as well as broader discussions with other JICA officials.

As you know, Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in over 90 countries, including Japan. Our work includes research on land rights, the exploitation of children, the mistreatment of women, and the obligations of governments to protect the rights of refugees, ethnic minorities, people with disabilities, and other vulnerable populations. Among many other things, we press for accountability for those responsible for serious human rights violations, urge corporations to uphold human rights, and work to ban weapons that cause disproportionate harm to civilians.

Through our Tokyo office and our staff located in other countries where Japan has embassies, we communicate regularly with the Japanese government, particularly the Ministry of Foreign Affairs, on human rights issues. For instance, we have worked closely with the government on North Korean abductees and the overall abysmal human rights situation in North Korea. We have had extensive dealings with your embassies in many countries, such as Indonesia, the Philippines, Vietnam, Burma, and Cambodia.

We are appreciative of the enormous amount of assistance the Japanese government has provided to developing countries through JICA, which has addressed both short-term needs such as through emergency food assistance and long-term goals, such as agricultural technology assistance to strengthen

food security in many developing countries.¹ JICA also sponsors structural changes, such as its initiative to share Japan's experience and knowledge about earthquake disaster relief after the recent earthquake in Nepal by hosting the "Build Back Better Reconstruction Seminar for Nepal" in May 2015.² Human Rights Watch also welcomes JICA's attention to gender and development, in particular specific training projects on gender mainstreaming for government and community leaders, technical assistance for victims of human trafficking, funding of women's centers, women entrepreneurs and many other related projects.

As a donor, Japan in 1991 issued its charter on Official Development Assistance (ODA), which includes human rights as one of its principles. The principle of ODA implementation within Japan's ODA Charter states: "Full attention should be paid to efforts for promoting democratization and the introduction of a market-oriented economy, and the situation regarding the protection of basic human rights and freedom in the recipient country."³

Crucial to all of these efforts is the extent to which they can bring about long-term improvements on the ground consistent with the protection of human rights. JICA has for instance issued guidelines on Environmental and Social Considerations (ESC), to protect human rights. These guidelines were updated in 2010 to improve the transparency and accountability of JICA's projects and improve local residents' living standards.⁴ Yet we have not seen any significant impact on the ground. Some development consultants who work with JICA suggest that in practice ESC guidelines are used primarily to provide information in order to initiate projects without serious consideration of the relevant human rights issues. We have received no substantial information from JICA suggesting that this is incorrect.

The new Development Cooperation Charter, adopted by the cabinet in February 2015, also states as one of its basic policies that "Japan will also proactively contribute to promoting basic human rights, including women's rights."⁵

We hope this Charter will make a difference. However, there has long been a significant gap between official rhetoric on human rights and implementation. Our research and interactions with JICA make it clear that JICA has chosen not to be a proactive and significant actor on human rights, even in autocratic, repressive or rights-abusing countries or in countries where Japan is a major donor.

Make Rights a Priority

Japan, as a global economic power and influential donor, can do much more to promote and protect human rights, both at the policy level and on the ground.⁶ Human Rights Watch is aware, for

¹ "Supporting global food security and going beyond," JICA, December 25, 2014, http://www.jica.go.jp/topics/news/2014/20141225_02.html (accessed June 14, 2015)

² "Build Back Better Reconstruction Seminar for Nepal," JICA, May 27, 2015, http://www.jica.go.jp/topics/news/2015/20150527_03.html (accessed June 14, 2015)

³ "Japan's Official Development Assistance Charter," Ministry of Foreign Affairs, August 29, 2003, <http://www.mofa.go.jp/policy/oda/reform/revision0308.pdf> (accessed June 14, 2015)

⁴ "JICA Guidelines for Environmental and Social Considerations," JICA, April 2010, http://www.jica.go.jp/english/our_work/social_environmental/guideline/pdf/guideline100326.pdf (accessed June 14, 2015)

⁵ "Cabinet decision on the Development Cooperation Charter," Ministry of Foreign Affairs, February 10, 2015, <http://www.mofa.go.jp/mofaj/gaiko/oda/files/000067701.pdf> (accessed June 14, 2015)

example, that strong labor safety standards demanded by JICA in the Delhi metro project resulted in more workers with safety harnesses and helmets.

Yet Japan has fallen behind other bilateral and multilateral donors in taking rights into account in its development policies and practices. For example, human rights are not mainstreamed within JICA (or MOFA). Human rights diplomacy is rarely conducted and the raising of specific human rights concerns publicly is especially rare. Training on human rights at JICA (and MOFA) is superficial at best. No one at MOFA or JICA is given the role of leading the government's efforts to promote and protect human rights on the ground, including in ODA recipient countries. JICA (and MOFA) does not have dedicated staff working on human rights on individual countries or in their respective embassies. While JICA has some experts working on human rights issues, they appear to avoid what are considered to be sensitive issues.

Unfortunately, our meetings and correspondence with JICA over the past year made it clear that the promotion and protection of human rights are not a significant priority within JICA's work. We have learned of few efforts to intervene on behalf of communities or individuals facing intimidation, violence or legal action from abusive governments, or threats to social and economic rights for which there is government indifference.

In JICA's February 13, 2015 response to Human Rights Watch's letter of December 22, 2014, JICA said that responsibility for addressing rights concerns is with recipient governments, not with JICA, stating that "project proponents including recipient governments bear the ultimate responsibility for the environmental and social considerations of projects," and "JICA stress that recipient government must hold the ultimate responsibility for environmental and social consideration as ownership of the recipient government/region is the major premise of JICA assistance."⁷ This appears to be an effort by JICA to avoid responsibility for addressing human rights violations related to JICA projects. JICA needs to change its approach and work, along with recipient governments, to prevent and redress human rights concerns. JICA should also be ready to speak out in public in such cases in order to put the government on notice and let everyone, including the public, know that JICA will not accept violations connected to its projects.

Spend more time learning about the rights situation

Though JICA has very hard-working and diligent staff, we were very surprised, even shocked, to learn that JICA staff in Tokyo are often unaware of human rights issues related to JICA projects. While your staff is to be commended for being attentive to the issues we raised in meetings, we expected your staff to be better briefed – as are other donors with whom we speak, including the World Bank, Asian Development Bank, and bilateral donors – about the overall human rights and political situation in a country and specific project-related rights issues.

We had hoped to report that JICA was taking many steps that we were not aware of to promote human rights in its projects. In our letters to JICA, Human Rights Watch asked for specific information in

⁶ According to DAC, in 2012 Japan was the top donor to countries such as India, Cambodia, Sri Lanka, Bhutan, Vietnam, Burma and Laos. "ODA White Paper – 2014," Ministry of Foreign Affairs, March 2015, http://www.mofa.go.jp/mofaj/gaiko/oda/shiryo/hakusyo/14_hakusho_pdf/pdfs/14_all.pdf (accessed June 14, 2015)

⁷ Letter from JICA to Human Rights Watch "Reply to the Question from Human Rights Watch regarding Human Rights Policies and Practices on December 22nd 2014," February 13, 2015, on file with Human Rights Watch.

response to many questions related to rights.⁸ In many cases we did not receive a direct response, so we followed up and asked the same question a second or even a third time (in writing or meetings). Unfortunately, many of those questions remain unanswered. Some of your staff explained that JICA simply didn't have the information requested. In many other cases, we received general answers to specific questions that did not provide the requested information.

One of our main findings is that JICA staff are often not well informed about the broader human rights and political environment in the country they are working on. Examples include staff working on Aceh in Indonesia not knowing that the so-called Shariah law had been imposed in Aceh, resulting in significant restrictions on and abuses against women and religious minorities. Women are barred from straddling motorcycles in Aceh. The government also imposes a curfew on women not going out at night after 11pm. Aceh also bans 16 religious organizations, including Muslim Ahmadiyah and Shia groups. Christians also face increasing difficulties in keep their churches open. We learned that JICA staff were unaware of this during a conversation about Japan's plans to celebrate the success of its aid effort after the 2004 tsunami. While the aid effort was very welcome, it is important that any celebration also recognize problems, such as the closing of more than 20 churches in Aceh since the tsunami reconstruction.

Your Bangladesh officer was unaware of any of the rights concerns we raised, which included basic issues like media censorship, extrajudicial killings of critics, and enforced disappearances of activists.

The officials we met about Sri Lanka produced helpful maps of JICA projects, but were unaware that in those same areas the ethnic Tamil community was suffering from abuses by the military, campaigns of intimidation, and a crackdown on dissent – including when members of the public complained about reconstruction projects. In one case JICA had changed the route of one expressway in response to community concerns, but that was the only example that could be provided about how community views were taken into account.

In a discussion about a JICA-funded training program at Balochistan University for Information and Technology in Quetta, Pakistan, we explained that ethnic Hazaras can no longer commute into Quetta to attend universities since those routes have been the location of a very large number of sectarian killings. Public transport operators no longer allow Hazara students ride on buses since they believe this makes the entire bus vulnerable to terrorist attacks. We emphasized that JICA had a responsibility to ask the university and the Balochistan government (under whose supervision the university operates) to take action to ensure access for the Hazara minority to the JICA-funded trainings, since to do otherwise JICA will inadvertently be assisting in anti-Hazara discrimination. JICA staff were unaware of this problem, despite widespread publicity.

In another project, JICA is assisting the provincial government in carrying out vocational training in Peshawar in Pakistan. Given widespread discrimination against women and high levels of violence against women in the province, we expressed concerns about access for women. We asked JICA about the percentage of female trainees and if any safeguards to allow for more female participation had been agreed on or discussed with the provincial government. JICA officials said they hadn't. This should have been done as a routine part of the project.

⁸ HRW letters to JICA: will made public at the time of the release

Build relationships with civil society, not just government

In our discussions with JICA staff it was clear that the large majority of their interactions with recipient countries are with recipient governments. Of course, discussions and ODA agreements with national and local governments are essential. Yet far too often JICA spends a disproportionate amount of its time concerned with the views and concerns of governments and too little time consulting with local communities, local experts and the broader public. Japan often attracts more scorn than appreciation for what many describe as its “blank check” aid programs, since it can appear to local communities (fairly or not) that JICA and the Japanese government are more aligned with and interested in serving the interests of often abusive governments than the people of these countries.

It is not clear that JICA officials are aware that recipient governments often not only lack capacity to implement projects, thereby necessitating assistance from JICA and other donors, but that they also lack the political will to engage in adequate consultations with affected communities or that they may retaliate against individuals or communities that complain about development projects.

We believe this is because JICA has a culture in which the beneficiary and main interlocutor too often is seen to be the national or local government in the recipient country. JICA staff spend large amounts of time speaking to and building relationships with government officials. This often means that JICA staff may only see one dimension of a project or issue.

This is an outdated approach. Other donors have long since understood the importance of spending time before, during and after projects, including infrastructure projects, to understand the national and local environment. This means understanding the human rights and political dimensions, such as the ability of local people to protest or complain, access phones or email, have proximity to JICA offices and Japanese embassies, and the ability to read and write. We were shocked that some JICA staff did not understand that these issues could be a barrier to the ability to communicate concerns to JICA. In some cases JICA staff seemed to think that referring local people to an embassy phone number to register concerns was sufficient.

Unfortunately, in many of the Asian countries JICA works in, the government’s human rights record is poor and those who complain against the government are targeted, including with violence and legal sanctions. In countries where people are extremely fearful of speaking out against governments, such as Vietnam, JICA needs to find secure ways to communicate with people so that they do not get into trouble. It is also important to disclose the names of complainants to local government officials only with informed consent and after an assessment is made that it is safe to do so. These are key components of successful projects embracing the “Do No Harm” approach.

Develop Standards to Monitor Sub-Contractors

JICA should apply the same standards to sub-contractors that it applies to contractors. Many human rights abuses in private or public development and economic activities are perpetrated by sub-contractors. As in the private sector, contractors are liable for and cannot disclaim responsibility for problems created by sub-contractors.

In our discussions with JICA we learned that JICA has not implemented any standard practices to ensure that sub-contractors are upholding JICA standards and are not committing human rights violations.

JICA should implement a new policy to identify and monitor the work of all JICA-funded sub-contractors (above a de minimus contractual amount), whether the sub-contractor is a government or private entity.

Before contracts are awarded, JICA should also ask for more detailed background information about sub-contractors, particularly whether they have been implicated in human rights abuses or corruption. This is important in troubled or conflict areas such as Khyber Pakhtunkhwa and Baluchistan provinces in Pakistan.

This was also important in the North and East in Sri Lanka, where JICA has had a major presence since the end of the conflict in 2009 between the government and the Liberation Tigers of Tamil Eelam. In these areas the military established an intrusive presence in the region, running various projects that were traditionally the domain of civilian government. Farms, fisheries, shops, schools, development projects, and reconciliation efforts between communities were routinely run by the military rather than local civilian government. As a result, the local population lived in daily fear of the military, which had been responsible for serious abuses against Tamil civilians during the war. At the same time, the military benefitted economically from these projects, while much of the local population was left out, leading to anger towards JICA and other donors. In discussions with JICA, it was made clear to us that JICA did not know who had been subcontracted for much of the work it was funding, leading to the possibility that rights-abusing military personnel could have been benefitting.

Recommendations

Taking into account our extensive interactions with JICA over the past year, below Human Rights Watch offers some recommendations about ways in which JICA can change its practices and policies in order to promote and protect human rights in its projects, and to remain relevant to the people of the countries in which it works.

- Be clear to recipient governments and the public that rights are a priority for JICA.
- Raise rights concerns with governments in private and public.
- Where rights violations occur, press governments to end violations, take action against violators, and ensure appropriate compensation or redress.
- Insert human rights language and adherence to minimum standards as a pre-condition to agreements with relevant governments.
- Integrate human rights due diligence into your project preparation, including by identifying risks of adverse human rights impacts related to your proposed activities, mitigating these risks, and taking all necessary measures to avoid human rights violations. Such analysis should continue throughout and following the life of a project, to ensure that emerging issues are identified and appropriately responded to.
- Engage in genuine consultation with local communities before, during and after projects.
- Proactively reach out to minority groups, marginalized groups, and local and international human rights groups, to understand the situation and make sure all voices are heard.
- Change existing practices to ensure that due weight is given to the views of local communities, vulnerable people and other nongovernmental actors when formulating and carrying out projects.
- Particularly in autocratic or abusive countries or environments, avoid depending mainly on the government for information, since such governments have a strong interest in keeping complaints from reaching JICA.

- Create stronger evaluation processes after the completion of a project to ensure that the needs of communities have been met and the project has done no harm to local people.
- Ensure that realistic, accessible methods are established to make it simple for members of local communities to contact JICA with suggestions, complaints or reports of human rights violations. Train staff and require them to respond expeditiously and, where necessary, positively to such complaints.
- Disclose the names or other identifying information of complainants to local government officials only with informed consent and after an assessment is made that it is safe to do so.
- Where necessary for security, hire and bring interpreters from Japan to speak to local residents.
- Incorporate gender, minority and disability considerations into every technical cooperation project, community based projects, infrastructure projects, and others. Develop projects specifically focused on improving the status of women and groups that are marginalized by virtue of ethnicity or other factors, based on an analysis of the need for such programming in each country. Include monitoring and evaluation to assess whether the goals were achieved.
- Identify and monitor the work of all JICA-funded sub-contractors (above a de minimus contractual amount), whether the sub-contractor is a government or private entity. Apply the same standards to sub-contractors as contractors. Before contracts are awarded, JICA should also ask for more detailed background information about sub-contractors, particularly whether they have been implicated in human rights abuses or corruption.

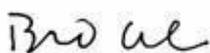
Conclusion

The limited and incomplete responses we have received in written and oral communications with JICA has led us to the disappointing conclusion that JICA does not engage in the kind of due diligence an organization of its size and experience should in key areas, such as how it deals with complaints, how it conducts community consultation, how it informs itself about local conditions, how it interacts with autocratic governments when there are problems, and other key issues. Lack of knowledge and weak consultation harm the very populations JICA projects are intended to assist.

Japan, often through JICA, as one of the world's largest donors, can and should play an increasingly important role in promoting and protecting human rights around the world. We believe that with greater attention and commitment it can do so. Implementation of the above recommendations would enhance JICA's inclusiveness, transparency, and accountability, and eventually help JICA's with smoother project implementation, since these steps would help identify problems before they arise.

We look forward to a continued dialogue with JICA. We would be pleased to meet with you or members of your staff to discuss these issues at your convenience.

Yours sincerely,



Brad Adams
Executive Director, Asia Division

cc: Prime Minister Shinzo Abe, Foreign Minister Fumio Kishida