

JAPAN

SUBMISSION OF HUMAN RIGHTS NOW

TO

THE COMMITTEE ON CIVIL AND POLITICAL RIGHTS

IN ADVANCE OF THE CONSIDERATION OF JAPAN'S REPORT

Human Rights Now

Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN is dedicated to the protection and promotion of human rights of people throughout the world.

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SUBMISSION OF HUMAN RIGHTS NOW TO THE COMMITTEE ON CIVIL AND POLITICAL RIGHTS

I. Introduction

1.1 Human Rights Now (hereinafter HRN) submits this report to the Human Rights Committee (hereinafter Committee) in advance of its review of Japan's Sixth Periodic Report on the implementation of the obligations under the International Covenant on Civil and Political Rights (hereinafter 'ICCPR') at the 111th session.

1.2 Since the last concluding observation by the Committee in 2008, little progress has been made to improve the human rights situation in Japan, and the Japanese government has failed to sufficiently implement the Committee's recommendations. Most of the recommendations, including those on the death penalty, lengthy pretrial detention and custodial interrogation, other infringements of defendant rights, women's rights, minority rights, rights of foreigners, and sexual slavery issues, have not at all been properly addressed by the Japanese authorities. There has been no serious discussion about the establishment of the National Human Rights Institution, despite the Committee's insistence on forming such a body. There has also been no progress in ratifying the first and second optional protocols.

1.3 Moreover, the following serious human rights problems have been observed since the last observation made by the Committee in 2008:

(1) Japan experienced a serious nuclear power plant accident in March 2011. The government's response and the measures it has taken have insufficiently protected the basic human rights of the affected people, including family rights and the rights to life, health, and information.;

(2) Hate Speech and xenophobic actions targeting Korean and Chinese immigrants has escalated throughout Japan;

(3) Despite the deep concerns raised by the international community, including the UN High Commissioner for Human Rights and the UN Special Rapporteurs on the freedom of expression and the right to health, the Japanese parliament enacted the controversial Secrecy Law which will seriously undermine the rights guaranteed under article 19 of the ICCPR;

(4) The Japanese government officially denies the forcible nature of Japanese military's sexual slavery. Such an attitude has allowed politicians and public figures to deny the fact and avoid responsibility for these heinous human rights violations; and

(5) The Japanese ruling party is actively discussing constitutional amendments, but the officially published draft of the amendment does not come close to meeting the international standards of human rights guaranteed by the ICCPR.

1.4 This report offers detailed information and HRN's recommendations on six main issues:

- 1) Hate speech targeting ethnic minorities, especially Korean Residents, in Japan
- 2) Criminal Justice System
- 3) Japan's Military Sexual Slavery
- 4) On-going Fukushima Nuclear Disaster
- 5) The Newly Enacted Secrecy Act
- 6) Proposed Amendments to the Japanese Constitution

II. Issues Particularly Concerning the “List of Issues”

A. Hate speech targeting ethnic minorities, especially Korean Residents, in Japan

1. Introduction

1.1 More than 500,000 Korean permanent residents live as live as permanent residents forming one of the largest ethnic minority groups in Japan. Most of them are descendants of Koreans who were forced to live in Japan in the early twentieth century when Korea was a Japanese colony. As described in the previous concluding observations of the Committee on the Elimination of Racial Discrimination (hereinafter “CERD”) and the Committee, Korean residents in Japan have been discriminated against in various areas aspects of public and private life, including education and social security.

1.2 In addition to persistent discrimination, Korean residents have recently been targeted for hate speech by xenophobic groups and their supporters. Hostile demonstrations and rallies targeting Korean residents in Japan have been gathering steam. For example, a group of scholars found that between March and August, there were at least 161 instances of street marches or vehicles mounted with loudspeakers blasting hate-filled slogans¹. The Japanese government, however, has not taken any specific measures to prevent hate speech against minorities. Nor has it conducted any studies on hate speech.

1.3 The issue of hate speech targeting Koreans was raised by the Committee in their November 2013 “List of Issues”² 10, regarding the Japanese government’s compliance with the ICCPR.

1.4 This section provides information on the rise of xenophobic groups in Japan, cases of hate speech targeting Korean residents, the damage done by hate speech to Korean residents, and the failure of the Japanese government to take action against hate speech.

2. Background

2.1 Since around the 2000s, xenophobic groups hostile to ethnic minorities, especially Korean residents, have been gaining power. A group called “Zaitokukai” is the largest among them. The group, formed in 2006, aims to deprive of special permanent residency status those long-term Koreans and Chinese residents who are descendants of individuals forced to live in Japan before WWII³, and the group opposes granting these residents various rights, including welfare entitlements. As of May 20, 2014, its membership has grown to more than 14,000 and its branches are located in various regions in Japan⁴.

¹ “Hate speech protests spreading to smaller cities around Japan,” available at: http://ajw.asahi.com/article/behind_news/social_affairs/AJ201311070011

² UN Human Rights Committee, List of Issues in relation to the sixth periodic report of Japan, CCPR/C/JPN/Q6/Add-1 Para. 10, noting, “Please provide information on measures taken by the State party to address statements and speeches targeting certain groups of people, in particular Koreans and lesbian, gay, bisexual and transgender people, inciting hatred and discrimination towards them.”

³ Regarding special permanent residency status, see, Miki Y. Ishikida, Living Together: Minority People and Disadvantaged Groups in Japan, 3-2-1(2005), available at: http://www.usjp.org/livingtogether_en/ltKoreans_en.html#mozTocId637851

⁴ Zaitokukai’s website, available at <http://www.zaitokukai.info>. Note that member registration is free of charge, and does not require personal information (such as real name or physical address) except for an e-mail address.

2.2 Zaitokukai, in collaboration with other xenophobic groups, has repeatedly held demonstrations and rallies filled with hate speech and intimidation against Korean communities, including Korean schools⁵ and Korean towns.

2.3 It is of grave concern that Japan has made no effort to prevent such hate speech at all. In the CERD's 2001 review of the Japanese government, the CERD expressed concern about discrimination affecting the Korean minority and made recommendations such as penalizing racial discrimination and taking measures to prevent high-level public officials from making discriminatory statements⁶.

2.4 In 2010, the CERD made similar recommendations, including the recommendations to adopt legislation outlawing direct and indirect racial discrimination and to take measures to prevent high-level public officials from making discriminatory statements⁷. The Japanese government, however, has not yet implemented these recommendations.

3. Cases – Escalation of Hate Speech Demonstrations in Korean Towns

3.1 Xenophobic groups have recently mobilized hundreds of people, and held marches and rallies blasting hate speech in Korean towns, mainly in Tokyo and Osaka. The marches and rallies are regularly filmed, and group members often publicly release the videos on the web⁸.

(1) Hate speech threatening a “massacre” of Koreans in Osaka Korean Town

3.2 Xenophobic groups organized a hate speech demonstration on February 24, 2013 in Tsuruhashi, a Korean town located in Osaka. Around 100 supporters gathered and blasted hate speech targeting Koreans over loudspeakers. They said, for example:⁹

3.3 “Koreans are cockroaches and they must get out of Japan!” “Koreans are prostitutes who will do anything for money!” “Korean residents are illegal immigrants and criminals!” “Fucking Koreans must die!” “If [Koreans] behave with this arrogance further, [we Japanese] will carry out Tsuruhashi Massacre like Nanking Massacre!”¹⁰

3.4 Police officers were present on the site, but took no action to prevent the hate speech of the participants.

(2) Hate speech referring to “Extermination” and “Gas Chambers” in Tokyo Korean Town

3.5 Xenophobic groups organized a hate speech demonstration on February 9, 2013 in Shin-Okubo, a Korean town located in Tokyo. Around 200 supporters gathered and blasted hate speech targeting Koreans over loudspeakers. For example, they said:¹¹

3.6 “Koreans are parasites, cockroaches and criminals. Koreans are the enemy of Japan!” “Get maggot Koreans out of Japan!” “Koreans are murderers and rapists!” “Exterminate Koreans!” “Clear the land of Shin-Okubo and make it a gas chamber! Get Koreans into the gas chambers!”

⁵For video of Zaitokukai's attack on Korean schools in Kyoto with English subtitles, see <https://www.youtube.com/watch?v=8C1NbntRWDI>.

⁶CERD/C/304/Add.114, Para. 7, 12, 13, 14, 16 and 18

⁷CERD/C/JPN/CO/3-6 Para. 9 and 14.

⁸See the following site for a video with English subtitles. <https://www.youtube.com/watch?v=GrxOVbkMG-A>

⁹<https://www.youtube.com/watch?v=xq8oAZ0sQLM>

¹⁰<https://www.youtube.com/watch?v=GoTBRpcaZS0>

¹¹https://www.youtube.com/watch?v=4ySNSac_X_w

3.7 Police officers were present on the site, but again condoned the hate speech of the participants. These demonstrations have been repeatedly organized and at least nine of them were held in Shin-Okubo between January 2013 and June 2013. The most recent demonstration was organized on May 11, 2014 in Shinjuku, only 200 meters away from Shin-Okubo Korean town.¹²

4. Damage Caused by Hate Speech

4.1 Due to hate speech made by xenophobic organizations, many Korean residents in Japan feel physically threatened. Hate speech also has a hugely negative psychological impact, especially among Korean students. Korean immigrants are not the only victims of hate speech. Naturalized Korean Japanese and their descendants, who have lived as Japanese nationals and hold Japanese nationality, also feel threatened by hate speech targeting Koreans. According to a survey of around 200 young generation Korean residents and Korean Japanese under 30 years old, conducted by Zainichi Korean Seinen Rengo (Korean Youth) between June 2013 to March 2014, around one-third of them reported changes in their lifestyles to avoid hate speech such as avoiding discussion on history about Korea or Japan and avoiding their opinions on the Internet. Loss of self-esteem was also reported. For example, responses included “I became fearful of Japanese people”, “I tend to avoid being known to Japanese people as Korean or Korean Japanese”, and “I feel negative about my Koreanness”¹³.

4.2 In addition, after the hate speech demonstrations became common, the number of customers visiting Korean towns dropped sharply, and the sales of Korean restaurants and Korean shops in Korean towns plummeted accordingly.¹⁴ For example, the number of Japanese customers visiting Shin-Okubo, a Tokyo Korean town, in 2014 was less than one-third of the number two years ago.¹⁵ More than 150 Korean stores and restaurants in Shin-Okubo have closed or changed ownership over the past year and a half.¹⁶

5. The Japanese Government’s Complicity and Inaction

5.1 Despite widespread hate speech and its enormous damage to Korean residents, the Japanese government has not taken any effective measures to prevent hate speech.

5.2 In the most recent report regarding its compliance with CERD, the Japanese government reported that it “does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that the withdrawal of its reservations or legislation to impose punishment against dissemination of racist thoughts and other acts should be considered, especially at the risk of unduly stifling legitimate speech.”¹⁷ In response to the “list of issues ¶ 10”, the Japanese government has reported that it will conduct various activities through the Human Rights Organs of the Ministry of Justice, and will “take up issues of foreign national’s rights more frequently at various training sessions.”¹⁸

¹² <https://www.youtube.com/watch?v=1cefp6Xc5Xk>

¹³ Korean Youth, “Questionnaire about discrimination against Korean Youths with respect to hate speech against Korean residents and Internet use.” (forthcoming),

¹⁴ “Anti-Korean demonstrations hurt businesses in Shin-Okubo district”, *Japan Daily Press*, available at: <http://japandailynews.com/anti-korean-demonstrations-hurt-businesses-in-shin-okubo-district-0533307/>

¹⁵ Video available at:

http://w3.sbs.co.kr/news/newsEndPage.do?news_id=N1002383661

¹⁶ Id.

¹⁷ Seventh, Eighth, and Ninth Combined Periodic Report by the Government of Japan under Article 9 of the International Convention on Elimination of All Forms of Racial Discrimination (hereinafter “Japan CERD Report 2013”), CERD/C/JPN/7-9 Para. 84

¹⁸ Replies of Japan to list of issues in relation to the sixth periodic report of Japan CCPR/C/JPN/Q/6/Add.1, Para80

5.3 Although the Human Rights Organs of the Ministry of Justice have conducted various training for decades, it has not sufficiently prevented either hate speech or discrimination against ethnic minorities. Rather, hate speech has recently been widespread throughout Japan. In addition, the Japanese government has not yet conducted investigations on the situation or on the gravity of hate speech with respect to the number of participants, the participating organizations, the time and place of demonstrations, the content of the hate speech, the response of police officers, or the damage and harm to hate speech victims. It is clear that the measures taken by the government are not effective to prevent hate speech.

5.4 Japan has not yet enacted any legislation to regulate hate speech. The Japanese government has argued that there is no need for additional legislation to prevent discriminatory speech because (i) if discriminatory ideas are aimed at a certain individual or group, it is possible to penalize them under existing crimes such as the crime of defamation, insult, damage to reputation/obstruction of business, or the crime of intimidation under the Penal Code,¹⁹ and (ii) a claim for damages is also possible under the civil laws²⁰.

5.5 However, the Penal Code only criminalizes acts such as defamation and insults directed at specific individuals. Hate speech targeting Koreans or Chinese as a whole are not covered by the Penal Code.²¹ Thus, hate speech repeated in Korean towns in Tokyo and Osaka such as speech threatening to “exterminate Koreans” cannot be regulated under the existing law.

5.6 Even if speech is directed at a certain individual or group, current law is insufficient to ensure protection for hate speech victims. Under the criminal law, although victims can file a complaint with the police or prosecutors, prosecutors have discretion as to whether or not to bring an action, and they are reluctant to do so. As for civil suits, there are too many hurdles for victims to bring a lawsuit. First, it normally takes several years to obtain final judgment in a civil case. Second, victims have to bear the cost of legal fees. Third, victims bear the burden of proving all elements of any tort claims. Fourth, victims may be targeted for subsequent hate speech attacks if their personal information becomes public by bringing a lawsuit.

6. Recommendations

6.1 HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Acknowledge the severity of the issue and the increases both in the number of hate speech cases and in the gravity of those cases;
- Conduct a thorough investigation on its reality, considering the State parties’ obligation under Article 20;
- Establish a concrete legislative and administrative framework to prevent or stop hate speech which: (a) includes laws prohibiting all forms of discrimination and acts of hate speech; (b)

available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fQ%2f6%2fAdd.1&Lang=en

¹⁹ Japan CERD Report 2013, CERD/C/JPN/7-9 Para. 83-86.

²⁰ Japanese government, Comments of States Parties on the concluding observations adopted by the Committee: A. The initial and second periodic reports of Japan, CERD A/56/18 Para. 5 and 6, available at:

[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f56%2f18\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f56%2f18(SUPP)&Lang=en)

²¹ Kyoto District Court October 7, 2013, Hei 22 (wa) no. 2655, 2208 Hanrei Jiho, 74 (Japan).

specifically contains clauses against such acts; and (c) ensures extensive and appropriate provisions for remedies to the victims;

- Prepare and implement a concrete national action plan for education addressing the issue of hate speech that incorporates international human rights standards. This educational plan must: (a) contain topics and methods that clearly establish hate speech as inappropriate and indefensible; and (b) be ubiquitous in public education, central and local governments, public and private institutions, law enforcement organizations, companies, universities, media, etc; and

- In order to eliminate discrimination and acts of hate speech, ensure active participation of relevant stakeholders by hearing and reflecting the views of such actors as victims groups, other minority groups, lawyers and other experts in human rights (particularly regarding this issue), counselors, researchers, and NGOs.

B. Criminal Justice System

1. Introduction ~ Non-compliance with the Recommendations

1.1 Since the last concluding observations were released by the Committee in 2008, little progress has been made towards reforming the criminal justice to bring it into compliance with Articles 9 and 14 of the ICCPR.

1.2 In its 2008 concluding observations, and particularly in paragraphs 18 and 19, the Committee recommended various reforms of the pretrial detention/interrogation system. It also asked the government to ensure that the criminal justice system does not rely largely on confessions. However, these recommendations have not been sufficiently implemented.

1.3 Because of widespread fraud in the criminal justice system, a series of serious wrongful conviction cases have recently come to light. However, the government's response and subsequent action has been far from sufficient to resolve the underlying issues.

2. Wrongful Convictions

2.1 A number of false charges and wrongful convictions have been recently revealed in Japan. As described below, the most common causes of wrongful convictions are false confessions, and prosecutors withholding exculpatory evidence from defendants.

(1) Ashikaga case

2.2 The Ashikaga case was the first DNA exoneration in Japan. In 1991, an innocent man, Mr. Toshikazu Sugaya, was arrested on suspicion of the rape and murder of a fourteen-year-old girl. After a long and intense interrogation, he was forced to falsely confess. Based on the confession and an inaccurate DNA test result, the court convicted Mr. Sugaya in 1993 and sentenced him to life in prison. Recently, however, new and sophisticated DNA tests proved that he was not the actual perpetrator. The court granted a retrial and acquitted him in March 2010. Mr. Sugaya spent nineteen years in custody as a result of his wrongful conviction.

(2) Fukawa case

2.3 In December 2009, the Supreme Court granted a retrial of the "Fukawa" case. The charges there were for burglary and murder in 1967. Two men were convicted based on false

confessions and sentenced to life in prison. On review, the court found reasonable doubt existed as to the accused's culpability, and expressed serious doubt as to the reliability of the confessions. In a May 2011 retrial, a court found the two men not guilty.

(3) Govinda Case

2.4 In 1997, an innocent Nepalese national, Govinda Prasad Mainali, was falsely charged for the murder of a female office worker. The Tokyo District court acquitted him due to insufficient evidence. However, the Tokyo High Court overturned this decision and wrongfully convicted him, imposing a life sentence in December 2000. The Supreme Court affirmed the conviction in October 2003. In the trial process, the prosecutor submitted a piece of DNA evidence found near the crime scene identifying Govinda as the perpetrator. The High Court extensively relied on this evidence, even though it was not actually found the crime scene. It was later revealed that the prosecutor withheld more important DNA evidence, specifically hair and semen that had been found in the victim's body. During the retrial motion process, a DNA test was conducted and it showed that the DNA type of the hair found in the victim's body was clearly different from Govinda's. This result suggested that Govinda was innocent. The High Court granted a retrial and acquitted Govinda in November 2012.

(4) Muraki case

2.5 In 2009, a former official at the Ministry of Health, Labour, and Welfare, Ms. Atsuko Muraki, was arrested and charged with violating the Postal Services Act and fabricating official documents. After her arrest, both Ms. Muraki and her colleague Mr. Kamimura were subjected to abusive interrogations by the prosecutors in order to extract false confessions. As a result, Kamimura incriminated himself and Muraki. The Tokyo District Court excluded Kamimura's confession statement from the evidentiary record, and acquitted Muraki. In the wake of the acquittal, it was revealed that the chief prosecutor fabricated a floppy disk seized from Kamimura's office in order to help support the prosecutor's theory of the case. The chief prosecutor was arrested, charged with and subsequently convicted of fabrication of evidence.

3. Death Penalty

3.1 Even more seriously, there have been a number of wrongful convictions in death penalty cases in Japan.

(1) "Hakamada" case

3.2 On March 27th 2014 a death row inmate, Mr. Iwao Hakamada, was released after nearly 48 years of detention. He had been charged for murder and arson in 1966, subsequently gave a forced confession. He was wrongfully convicted and sentenced to death in 1968 and kept in prison for nearly 48 years, becoming the world's longest-serving death row inmate. At 78 years old, he now suffers from severe mental illness as a result of the long-term inhuman treatment to which he was subjected while on death row. He now suffers from a constant fear of execution. In 2012, during the retrial motion process, a DNA test was conducted. It found that the biological evidence did not match Hakamada's DNA. On March 27th 2014, the Shizuoka District Court ordered a retrial after finding that the DNA test proved Hakamada's innocence, and that key evidence may have been fabricated by the police. The court also criticized the fact that the confessions were obtained under duress, and that he had been subjected to an average of 12 hours of interrogation per day. However, the prosecutor has still not admitted fault and has instead appealed this decision.

(2) Okunishi case

3.3 A death row inmate, Mr. Masaru Okunishi, has been claiming his innocence for 49 years, since his initial detention in 1962. In March 1961, several women in the village of Nabari were killed by poisoned wine. A villager, Mr. Okunishi was forcibly taken to the police station and confessed to poisoning the wine after 40 hours of coercive interrogation. Although the trial court acquitted him, the appeals court convicted him and sentenced him to death based primarily based on his confession. Okunishi filed a motion for retrial which the Nagoya High Court granted in 2005. In 2006, the same High Court overturned their own decision on the basis of Okunishi's confession. In April 2010, the Supreme Court remanded the case and ordered the Nagoya Appeals Court to reinvestigate. However, the High Court again denied Okunishi's motion. As a result, Okunishi remains in death row. He suffers from severe illness. A significant amount of evidence was withheld by the prosecutor and has not yet been disclosed, even though Okunishi's life is at stake.

4. Video Recording

4.1 Despite the serious issues highlighted by the cases above, reform of the criminal justice system has not progressed. Although false confessions are recognized as the leading cause of wrongful convictions, video and/or audio monitoring of interrogations has not been widely implemented.

(1) Video recording as a trial

4.2 In April 2011, in the response to the Muraki case and a comprehensive review of the prosecutor's office, the Justice Minister asked the prosecutor's office to videotape custodial interrogations in cases where the prosecutor's office is in charge of the investigation. In May 2011, the prosecutor's office started to videotape custodial interrogations in felony cases, cases involving the mentally disabled, and cases that prosecutors are in charge of primary investigation as a trial²³. Additionally, the National Police Agency (NPA) have started videotaping custodial interrogations of select felony cases, as well as cases involving the mentally disabled, in April and May 2011. However, this practice is far from sufficient. The police videotaped interrogations only in very limited, select cases. Also the police do not record entire interrogations, but instead selectively record only portions of the interrogations.

(2) Special team for the criminal justice reform

4.3 In June 2011, the Ministry of Justice established a special team for criminal justice reform under its legislative council. However, team has acted slowly. It has not yet conducted any hearings, talked to non-profits, affected people, or even the victims of the wrongful convictions. In April 2014, the secretariat of the special team issued the "Secretariat's Tentative Plan for Reform". However, this plan is far from sufficient to address the root causes of wrongful conviction or bring about the broad reforms necessary to comply with the ICCPR.

(3) Video Recording

4.4 The Secretariat's Tentative Plan proposed videotaping custodial interrogations "from the beginning until the end" in certain cases. However, two different options were proposed. One would require recording only in cases which will be tried before the Saiban-in system (lay judge system). The other would require recording in all custodial interrogations.

²² Sup. Ct. 3d Petty Bench, April 5, 2010, (Japan).

²³ Grillings of Suspect Get Taped in Entirety, available at <http://search.japantimes.co.jp/cgi-bin/nn20110526a5.html>.

4.5 The Saiban-in system, which was introduced to Japan in 2009, hears only a limited number of felony cases, and it accounts for only 3% of all charged cases. Furthermore, the plan proposed a wide range of exceptions to mandatory video-taping, when:

- (a) video-recording is difficult due to technical reasons or other "compelling circumstances"
- (b) The suspect(s) refuse to be videotaped
- (c) The authority believes that the suspect cannot make a sufficient statement on tape due to a threat against the suspect or his/her family made by others involved in the crime
- (d) The case is related to organized crime

4.6 These exceptions are too broad and allow for wide discretion in determining whether video recording is mandatory in a given case. Thus, the reform plan greatly limits the scope of mandatory video recording.

5. Other reform regarding custodial interrogation

5.1 Criminal justice reform such as the abolition of substitute prisons ("daiyo kangoku")²⁴, the imposition of time limits on interrogations, and the right to have a lawyer present during an interrogation are important criminal justice reforms which must be taken. All of them are recommended by the Committee. However, these issues have not properly addressed by the special team under the legislative counsel of the Ministry of Justice. The "Secretariat's tentative plan for reform" proposed in April 2014 does not include any of above reforms.

6. Disclosure of evidence

6.1 The Committee recommended that defendants be given the right to access the evidence used by the prosecutor, saying "in accordance with the guarantees provided for in article 14, paragraph 3, of the Covenant, the State party [must] ensure that its law and practice enable the defense to have access to all relevant material so as not to hamper the right[s] of [the] defense"²⁵. Nonetheless, the Japanese government has failed to take actions to implement the required reform. When the Code of Criminal Procedure was amended in 2004, it included a specific set of rules governing the disclosure of evidence. These rules, however, did not ensure the right of the defendant to access all of the materials held by the prosecutor, nor did they obligate the prosecutor to disclose those materials which could be advantageous for the defendant.

6.2 This has resulted in wrongful conviction cases such as the Ashikaga case, the Govinda case, and the Hakamada case. In each of these cases, it was later found that the wrongful convictions were made because the prosecutor hide advantageous evidence from the defendant. It is unacceptable that defendants are deprived of the means to present evidence

²⁴ "Police cells were originally meant to be places to keep arrested suspects temporarily until taking them to court. ... but in [certain] circumstances...the Prison Law allow[s] the use of police cells as a substitute. This is the daiyo kangoku system" "The essential nature of daiyo kangoku is that the police, who perform the investigations, detain and control suspects, and exercise total control over suspects 24 hours. Suspects who do as the police say are sometimes treated to cigarettes and meals in interrogation rooms, or otherwise given preferential treatment, but suspects who deny charges are interrogated from morning until night, and those who do not do as the police say are anxious about what detrimental treatment they might receive. This system totally exhausts suspects physically and mentally, and casts aspersions on or even destroys their character, until forcing confessions. Even if suspects are not subjected to direct violence or intimidation, the total night-and-day control itself acts as pressure on suspects and pushes them to do as the investigating authorities say" "Japan's 'Substitute Prison' Shocks the World", Japan Federation of Bar Associations, available at: http://www.nichibenren.or.jp/library/ja/publication/booklet/data/daiyou_kangoku_leaflet_en.pdf

²⁵HRC, CCPR/C/79/Add.102. (available at: http://www.mofa.go.jp/policy/human/civil_ccpr.html)

and subject to false charges sustained only by hiding evidence which would exonerate them. Such a practice clearly violates Article 14 of ICCPR.

6.3 The “Secretariat’s Tentative Plan for Reform” does not refer to this issue. It does not call for the complete disclosure of evidence and especially of that evidence which may be advantageous to defendants. The plan does say that “upon the request from [the] defense attorney, the prosecutor must immediately provide a list of the evidence he or she holds to the defendant/defense attorney without delay”. However, this was merely a proposal that “Secretariat’s Tentative Plan for Reform” has included in relation to disclosure.

Moreover, wide exceptions are proposed to this “list disclosure” requirement. The plan goes on to say that “prosecutor is allowed to exclude certain information from the list to be disclosed to the defense in cases where the disclosure of the information could cause risk as follows; 1) where a possible harm to one’s life, health or property, or threatening actions could result, 2) where a considerable harm to one’s honor or peaceful social life could result, 3) where obstacles to proving or investigating the case could arise.”

These provisions are very vague, and allow prosecutors wide discretion to refuse to disclose information to the defense.

6.4 Moreover, the proposed reform is limited only to cases being tried in the first instance. Post conviction procedures are excluded. Today, an increasing number of cases in which the accused is acquitted on retrial are being reported. The complete disclosure of evidence at retrial procedures should be made a priority.

7. DNA Testing

7.1 In spite of frequent wrongful convictions on the basis of faulty or non-existent DNA testing, defendants still have no right to DNA testing. Moreover, the current system allows the authority to dispose of all DNA materials without the defendant’s consent after those materials have been tested, which violates Article 14 of ICCPR. However, this issue was not properly discussed by the special team under the legislative council of the Ministry of Justice, nor has the “Secretariat’s Tentative Plan for Reform” proposed a guarantee of defendants’ right to have DNA testing.

8. Proposal to increase wire-tapping powers

8.1 As discussed, “Secretariat’s Tentative Plan for Reform” included only a few proposals to reform the current system in conformity with Article 14 of ICCPR. The plan instead proposed to introduce a wide range of wire-tapping powers. This proposal is based on arguments made by the government, that “there is a need [for] new investigation methods which [do] not rely on interrogation”. There is significant concern that the introduction of a wider range of wire tapping powers would lead to violations of individual privacy rights and risks rolling back important human rights protections.

9. Recommendations

9.1 Thus, there has been little progress made to change the criminal justice system in accordance with the recommendations reiterated by the Committee. Current practices violate the rights of suspects and defendants, which are guaranteed in the Covenant and continue to irreparably victimize innocent people with false charges and wrongful convictions.

In order to reform the entire system so as to meet the obligations of Articles 9 and 14th, HRN suggests that the Committee make the following recommendations to the Japanese government in its concluding observations:

- Conduct a comprehensive and thorough investigation on the causes of false charge and wrongful convictions in Japan by establishing an independent expert committee with effective participation of the victims of wrongful conviction;
- Identify the cases of false charge and wrongful convictions, and establish a concrete plan of reform to prevent false charge and wrongful conviction;
- Start videotaping the entire process of custodial interrogations without exception, create strict time limits for interrogations, and establish the right of the defendant's lawyer to be present at an interrogation;
- Require the complete disclosure of evidence, especially of that which is advantageous to the defendant, at both trials of first-instance and retrials;
- Ensure the right of the defendant to access DNA test results;
- Abolish the substitute prisons system (Daiyo Kangoku); and
- Refrain from expanding the scope of wire tapping;

C. Japan's Military Sexual Slavery

1. Introduction

1.1 Japan's 6th Periodic Report of April 2012 stresses that "it is not appropriate to mention the issue" since this grave affront to the honor and dignity of women was "before Japan's accession of the Covenant" in 1979.

1.2 Through the List of Issues prepared in November 2013, Japan was requested to provide information on whether the State Party is considering any legal responsibility for the so called "comfort women" system in Para 22, regarding the Article 8 of the ICCPR on the Elimination of slavery and servitude. Although the Japanese government has promised to implement further investigation on the matter, Japan is not taking any action and rather seems to be trying to eliminate the fact from its history.

2. Back ground

2.1 In the last six years since the periodic review of Japan's 5th report in 2008, the Japanese government has never acknowledged its legal responsibility for the military sexual slavery during World War II in a manner acceptable to the majority of victims and survivors. In spite of the recommendations reiterated on this issue by the Committee and other UN human rights bodies, the Japanese government has yet to take any legislative and administrative measures to provide victims with full and effective compensation or other reparations.

2.2 Further, no action has been taken to investigate and prosecute perpetrators who are still alive. Instead of making efforts to educate students and the general public about the issue and to refute and sanction any attempts to defame victims or to deny the incident, the government condoned such attempts made by some politicians, including cabinet members,

and the mainstream media. The survivors have been re-traumatized and continue to suffer grave distress. Many of them have passed away without having their dignity restored.

2.3 It is internationally recognized that the entire system of sexual slavery was planned, designed and operated by the Imperial Military of Japan, as clarified in the reports filed by Ms. Radhika Coomaraswamy and Ms. Gay J. McDougall, the UN Special Rapporteurs on the issues at hand. Those reports came to this conclusion on the basis of extensive research.²⁶ Faced with growing criticism in the international community, a statement was released in 1993 by the then Chief Cabinet Secretary Yohei Kono, admitting the “involvement” of the Japanese military and expressing “apologies and remorse”. The statement clearly admitted that “[t]he recruitment of the “comfort women” was conducted mainly by private recruiters who acted in response to the request of the military. The government study has revealed that in many cases they were recruited against their will, through coercion, etc., and that, at times, administrative / military personnel directly took part in the recruitment”. Ever since then, the government of Japan has consistently said that the statement should be regarded as its official apology.

3. Denial of the forcible nature of the sexual slavery

3.1 However, the government, particularly the administration of Prime Minister Shinzo Abe, since its inception in December 2012, has tried to evade its obligations by denying the forcible nature of the military sexual slavery in terms of the manner of recruiting the victims. The Abe administration reinstated its cabinet decision in 2007, which said that “among the documents obtained by the Japanese government, the government found no statements which directly suggest the forcible recruit made by the army or authority”. The cabinet statement clearly denied the forcible nature of the sexual slavery, and is contrary to the Kono statement.

3.2 Furthermore, the government announced its intension to “review” the above mentioned Kono statement. On February 28, 2014, Yoshihide Suga, the Chief Cabinet Secretary stated that the government should re-examine the investigation process of “comfort women” which ultimately resulted in the Kono statement. Immediately facing strong criticism from the governments of neighboring countries, the administration has withdrawn its commitment to reviewing it.

3.3 However, the Abe administration has not yet acknowledged legal responsibility for this grave human rights violation. This administration has not yet officially withdrawn from the 2007 cabinet decision.

3.4 Alarminglly, the Abe administration has not yet withdrawn from the abovementioned cabinet decision in 2007.

3.5 Recently, Abe left comments at the press interview saying that “considering the “comfort women” experienced extremely difficult times, I express great sympathy for them. The 20th century was a century in which a lot of human rights were violated, including those of women.” He added that the Japanese government would like to help ensure that such things would not be repeated in the 21st century. Although publicly made, those remarks do not specifically admit that the Japanese government systematically committed human rights violations. In the meantime, Abe’s Special Advisor, Koichi Hagiuda publicly claimed that the government should review the Kono statement, which contradicts the government’s current position.

²⁷ Human Rights Now is an international human rights NGO based in Tokyo, Japan <<http://hrn.or.jp/eng>>

4. Refusal to implement treaty bodies' recommendations

4.1 In 2013, the Committee Against Torture (CAT) expressed grave concern over Japan's failure to address the victims of sexual slavery, and urged the government to take immediate measures to find victim-centered solutions to the issues of "comfort women", in particular by:

- (a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;
- (b) Refuting attempts by government officials and other public figures to deny the facts of sexual slavery, as such denials serve only to re-traumatize the victims;
- (c) Disclosing related materials, and investigating the facts thoroughly;
- (d) Recognizing the victim's right to redress, and accordingly providing them full and effective redress and reparations, including compensation, satisfaction and the means for as full a rehabilitation as is possible;
- (e) Educating the general public about the issue (such as by including the events in all history textbooks) as a means of preventing further violations of the State party's obligations under the Convention.

However, none of these recommendations have yet to be implemented.

4.2 Recently, public figures and politicians have repeatedly denied the fact of sexual slavery. For example, in May 2013, Mr. Tohru Hashimoto, Mayor of Osaka City and a co-leader of the Japan Restoration Association, said "the "comfort women" was necessary". In 2014, Mr. Katsuto Momii, Chairperson of the NHK (Japan Broadcasting Association) said that the "comfort women" system was practiced by every other military during the war. The government has never made any attempt to refute these denials.

4.3 Although the government planned to review the investigation of sexual slavery, it has never publicly disclosed all the documents pertaining to sexual slavery. Nor has it recognized the victims' right to effective redress and reparation.

4.4 Lastly, the Japanese government has failed to educate the general public about sexual slavery. The public are seriously affected by the false denials of the existence of sexual slavery, since public figures and even government officials repeat such allegations and these remarks are widespread through the media.

4.5 Further, in response to the politician's question regarding implementation of the above CAT recommendations, the Abe administration declared that the government has no obligation to implement UN human rights treaty bodies' recommendations since they are not legally binding. Such an attitude is contrary to the state party's duty of implementing treaty's obligation and is damaging to the monitoring mechanisms of human rights treaties. Moreover, it contravenes Article 98 of the Constitution of Japan that stipulates that "the treaties concluded by Japan... shall be faithfully observed."

5. Recommendations

5.1 HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Officially acknowledge legal responsibility for the crime of planning and operating the sexual slavery system as committed by the Imperial Military of Japan, including the forcible nature of the system
- Apologize unreservedly to the victims and survivors so as to restore the victims' dignity;
- Prosecute and punish perpetrators who are still alive with appropriate penalties;
- Refrain from any attempt to deny the facts or negate responsibility;
- Refute and sanction any attempts to deny the facts or to defame and re-traumatize the victims through repeated denials;
- Take immediate and effective measures, both legislative and administrative, and provide all the survivors with appropriate remedies including compensation, rehabilitation, and guarantees of non-recurrence
- Disclose all the relevant documents and information materials in the government's possession;
- Acknowledge the survivors' oral testimony as solid evidence; and
- Redouble efforts to educate students and the general public about this issue by citing the factual events in all historical textbooks and other educational materials.

III. Newly Emerged Human Rights Problems

D. On-going Fukushima Nuclear Disaster

1. Introduction

1.1 It has already been three years since the nuclear accident at the Fukushima-Dai-ichi Nuclear Power Station on the 11th of March, 2011²⁷. Response of the Japanese government is extremely insufficient to protect affected people.

The Right to Life (Article 6), the Right of Access to Information (Article 19), the Right to Family Life (Article 23), and the Right to Participation to Public Affair (Article 25) of the affected people continue to be violated.

2. Background

2.2 More than two million people have been living in the contaminated areas as defined by the 1mSv/year exposure standard (excluding background radiation). 1,704 of the 3,089 deaths certificated as “disaster related death[s]” occurred in Fukushima²⁸. This is the largest number among the affected prefectures by far.

2.3 There are serious concerns over the affected population's right to health, which are serious enough to threaten even their right to life (Art. 6).

²⁷ Human Rights Now is an international human rights NGO based in Tokyo, Japan <<http://hrn.or.jp/eng>>

²⁸ Reconstruction Agency, Section on “disaster related death”, available at http://www.reconstruction.go.jp/topics/main-cat2/sub-cat2-1/20140527_kanrenshi.pdf (last visited on June 6, 2014).

The most vulnerable population, such as children, pregnant women, people with disabilities, and the elderly presents particular concern. The government has also failed to provide accurate information and to disclose the level of contamination to the people living in the contaminated area in a timely manner. This constitutes a violation of the victims' right to access information (Art. 19). Furthermore, without sufficient financial and physical support, a number of mothers and expecting mothers evacuated from the contaminated area with their children, either forcibly or voluntarily. They had no choice but to live apart their spouse or partners. The Japanese government then has failed to protect their right to family life (Art 23). The Japanese government has also failed to involve the affected individuals and community organizations in the decision making process for current and future nuclear and health policies (Art. 25).

2.4 In the second round of Universal Periodic Review (hereinafter "UPR") of the national report, the UN Human Rights Council (hereinafter "Council") adopted the recommendations suggested by the Austrian government in March 2013, that the Japanese government should "[t]ake all necessary measures to protect the right to health and life of residents living in the area of Fukushima from radioactive hazards".²⁹

The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover, recommended in his May 2013 report, after his mission to Japan in November 2012, that the Japanese government had a human rights obligation to take comprehensive measures to prevent nuclear-related health risks to the affected community.³⁰ However, the Japanese government has ignored these recommendations.

3. The Right to Life (Art. 6)

3.1 The Japanese authorities have taken inadequate measures to protect the affected population's right to life (Art.6). Many people, including children and pregnant women, still live in areas highly contaminated by radioactive substances that continue to be released from the destroyed power plant. This is because the government drew the boundary of the evacuation zones based on an exposure level of 20mSv/year per year³¹, a threshold 20 times higher than international protection standards. In the areas with radiation levels below this threshold, many have had no choice but to remain in these contaminated locations, since the government provides almost no support for their evacuation. This undermines international standards as well as wider domestic regulatory standards, which prohibit entry to areas with radiation levels above 5mSv/year.

The government has instead implemented policies based on the position that radiation exposure lower than 100mSv/year is safe. This assumption has greatly limited the scope of the support policies.

3.2 Based on the above insufficient standard, the government currently plans to cancel some of the designated evacuation areas (within a 20km ring of the disaster site). This decision will be accompanied by the termination of monthly compensation by the Tokyo Electric Power Company (TEPCO). Therefore, many of the evacuated will be forced to choose between returning to contaminated areas or remaining in their inadequate, temporary shelters with very little financial support.

²⁹ Human Rights Council, A/HRC/22/14/Add.1, para. 147.155

³⁰ A/HRC/23/41/Add.3

³¹ Although the government considers exposure below 100mSv/year to be safe, it decided to use a 20mSv/year standard in setting the evacuation zone. 20mSv/year is still much higher than internationally accepted standards, however.

3.3 The health examination services provided by the government have also been inaccurate and insufficient. The health management survey for the people living in the affected area is limited to a behavior survey conducted in the immediate aftermath of the disaster and a thyroid test for children residing in Fukushima. The thyroid examinations extend only to those under 18, and the follow-up tests are limited to one every two years, despite the fact that during the course of the existing survey 90 cases of thyroid cancer were either identified or suspected. Other than thyroid examinations, the government has not conducted any health monitoring for people living in the affected area (such as blood or urine sampling, dental exams, ophthalmological exams, etc.) nor kept any record of illnesses other than thyroid cancer.

3.4 In this regard the Special Rapporteur on the right to health recommended that the Japanese government “formulate a national plan on evacuation zones and dose limits of radiation by using current scientific evidence, based on human rights rather than on a risk-benefit analysis, and reduce the radiation dose to less than 1 mSv/year”³². He also noted that the health management survey conducted by the Fukushima prefectural authorities was inadequate and urged the Japanese government to monitor “the impact of radiation on the health of affected persons through holistic and comprehensive screening for a considerable length of time and make appropriate treatment available to those in need”³³ emphasizing that “health monitoring should be provided to persons residing in all affected areas with radiation exposure higher than 1 mSv/year”.³⁴ However, none of these recommendations have been implemented.

3.5 Furthermore, it is important to note that the number of “disaster related death[s]” has increased in the aftermath of this disaster. 3,089 deaths were certified by the municipal governments as “disaster related death[s]” resulting from the Great East Japan Earthquake³⁵. It included people who committed suicide because of severe depression caused by their situations after this disaster. In Fukushima prefecture, there were 1,704 “disaster related death[s]”, which was more than the number of people who died directly from the tsunami and earthquake. Many of them were afflicted people over the age of 66 with illness, most of who lived in temporary shelters. Some of them died in isolation.

3.6 Most local governments recognize a death as “disaster related” if two conditions are met: first, that the deceased’s physical and mental exhaustion got much worse during the evacuation, and second that the surviving family is eligible to receive payment under the Act for the Payment of Solatia for Disaster.³⁶ However, there is not a common standard among local governments for certifying that kind of death. It depends on the judgment of each municipal government.

4. The Right of Access to Information (Art. 19)

³² A/HRC/23/41/Add.3., para.78(a)

³³ A/HRC/23/41/Add.3., para.77(a)

³⁴ A/HRC/23/41/Add.3., para.77(b)

³⁵ Reconstruction Agency, Section on “disaster related death”, available at http://www.reconstruction.go.jp/topics/main-cat2/sub-cat2-1/20140527_kanrenshi.pdf (last visited on June 6, 2014). The Japanese Reconstruction Agency collects the data on “disaster related death” by referring to each prefectural government, which compiles that kind of sort of data, based on the applications submitted to their city governments.

³⁶ This Act is intended to provide basic support for people who became physically and mentally disabled as a result of damage caused by a natural disaster, and for the families of the deceased by a disaster, making use of the payment of solatia (compensation for emotional injury).

4.1 The Japanese government has failed to protect the right of access to accurate information. Among other things, it has not disclosed the level of contamination to the people living in the contaminated area in a timely manner.

4.2 The day after the Fukushima nuclear accident, about 170,000 residents living in the vicinity of the nuclear plant were evacuated without being given detailed information on radioactive discharge. Such information should have been provided by the Network System for Prediction of Environmental Emergency Dose Information (SPEEDI Network System). The SPEEDI Network System is operated by the Nuclear Safety Technology Center, which is one of the extra-governmental organizations of the Ministry of Education, Culture, Sports, Science and Technology (MEXT), in cooperation with the relevant governmental agencies such as the MEXT and local authorities. The government then has the ability to provide the affected people with the relevant information when a large amount of radioactive material is emitted in the event of nuclear emergency.

4.3 On 23 March, twelve days after the disastrous accident, the Japanese government disclosed part of the information and data. They waited until May to publish the rest of the data, even though they had obtained it at the time of the accident. This implies that the data obtained by SPEEDI was not used in setting up the evacuation zone, nor in designating the initial evacuation. In addition, the government did not provide the affected people with stable iodine, which is a common measure in the aftermath of nuclear emergency. It prevents those exposed to radiation from taking in radioactive iodine, which increases the risk of thyroid cancer. Only some local governments distributed stable iodine, on a case by case basis. As a result many residents have been exposed to the radioactive material released into the atmosphere without adequate protective measures.

4.4 The government also failed to disclose the level of contamination to the people living in the contaminated areas in a timely manner. The level of contamination has not been fully monitored, updated and disclosed to the affected people. The government provided monitoring posts (machines which measure radiation levels) throughout Fukushima prefecture. However, residents claim that the disclosed data gathered from the monitoring posts is far lower than the actual contamination level.

4.5 Moreover, the government has not provided proper guidance regarding the risk of radiation. Instead, the Fukushima prefectural government insists that there is “no evidence of physical harm [resulting from exposure to radiation levels which are] under 100mSv per year”. The national government published a school textbook to reinforce this assertion, saying that there is “no evidence of physical harm [from exposure to radiation levels] under 100mSv per year”. People who are concerned with the situation have become an isolated minority, who are discouraged from choosing to self-evacuate.

4.6 In this regard, the Special Rapporteur on the right to health urged “the Government to ensure accurate representation of the health effects associated with the nuclear accident and to include methods of preventing and controlling health problems in a manner that is effective, age-appropriate and easy to understand” 37.

4.7 In addition to such recommendations, it should be noted that the following concluding observations of the Committee on Economic Social and Cultural Rights (CESCR) concerning the Hanshin-Awaji Earthquake disaster³⁸ were included in the second periodic report of Japan. "With respect to the nuclear power installations, the Committee

³⁷A/HRC/23/41/Add.3., para. 51.

³⁸The Hanshin-Awaji Earthquake occurred on January 17, 1995. Its epicenter was roughly 20km outside of Kobe, and it resulted in an estimated 6,434 deaths as well as ten trillion yen (~\$100bn) in damage.

recommended increased transparency and disclosure to the public of all necessary information on issues relating to the safety of nuclear power installations. It further urged the government to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents".³⁹ However, the government failed to implement these recommendations.

4.8 In the third Japanese national report to the CESCR, in its concluding observations the Committee also urged the Japanese government to revise their policies and systems on the human rights situation of the people affected by the Great East Japan Earthquake and Fukushima Nuclear Disaster, with particular focus on the right to adequate food (ICESCR Article 11) and the right to health and medical services (ICESCR Article 12).⁴⁰

5. The Right to Family Life (Art.23)

5.1 The Japanese government has also failed to protect the right to family (Art 23) of the affected population. 84,671 of the 258,219 people affected by the disaster remain displaced throughout Japan as a result of their evacuation from the contaminated area within Fukushima.⁴¹ Many of them live in provisional housing created by local governments. It is worth noting that a number of mothers and pregnant women, who decided to self-evacuate with their children, have no choice but to live separated from their spouse or partners, without sufficient financial and physical support. In most cases the mother and their children live outside of Fukushima prefecture while the fathers to work in their hometown as bread-winners. The longer they live apart from each other, the more they tend to feel overwhelming stress, which may result in strife and discord within their family, including separation and divorce.

6. The Right to Participation in Public Affair (Art. 25)

6.1 In June 2012, the government passed the Act Concerning the Promotion of Measures to Provide Living Support to the Victims, including the Children, who were Affected by the TEPCO Nuclear Accident in Order to Protect and Support their Lives(hereinafter the Victim Protection Law), which provided that the government is to take measures to support self-evacuation, long-term medical care and medical checks, access to information, and proper risk communication, among other things for the affected population, including areas with exposure levels less than 20mSv/year. However, for two years the Act has not been followed by adequate measures.

6.2 In this regard, the Special Rapporteur on the right to health recommended "the Government [must] ensur[e] community participation in conformity [with] the Victims Protection Law".⁴² He urged "the Government to involve individuals and community organizations in current and future nuclear and health policies, including in data collection and radiation monitoring, planning evacuation centres, designing health management surveys, decisions regarding radiation levels and evacuation zones, and in setting compensation amounts".⁴³

6.3 However, the government has not implemented these recommendations. In 2003, the Cabinet adopted several policies based on the 2012 Victims Protection Law without sufficient consultation with the affected people. Although the government conducted public comment for the implementing policy of the law in Autumn 2013, it ignored the most

³⁹The Committee on Economic Social and Cultural Rights, "Consideration Of Reports Submitted By States Parties Under Articles 16 And 17 Of The Covenant : Concluding Observations Of The Committee On Economic, Social And Cultural Rights", E/C. 12/1/1 Add. 67, para. 22.

⁴⁰E/C.12/JPN/CO/3., paras. 24 and 25.

⁴¹ Announced by the Japanese Reconstruction Agency on May 23, 2014, available at http://www.reconstruction.go.jp/topics/main-cat2/sub-cat2-1/20140523_hinansha.pdf

⁴² A/HRC/23/41/Add.3., para. 74.

⁴³ A/HRC/23/41/Add.3., para. 75.

of the voices of those affected. The policies adopted mainly promote victims' returning to their hometowns, whereas the Victims Protection Law aims to support self-evacuation, regardless of individuals' choices between evacuation and return. The government produced a measure which covers only an extremely small portion of residents. There is no effective mechanism to ensure participation of the affected community in the decision making process of the relief policy including the implementation of the Victim Protection Law.

7. Recommendations

7.1 HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Reform all relevant policies based on the recommendations of the UN Special Rapporteur on the right to health;
- Take concrete and immediate action in conformity with the Victim Protection Law with effective participation of the affected people,
- Take all necessary measures to protect the health and life of the people affected by this nuclear disaster, and restore the living environment where the radiation dose exceeds 1mSv/year (excluding background radiation), in accordance with international standards;
- Strictly monitor the levels of radioactive contamination and disclose such data and information to the public in a timely manner;
- Provide accurate information and disclose the level of contamination to the people living in the contaminated area in a timely manner, and ensure the levels of contamination and the conditions of the nuclear plant are strictly monitored and disclosed to citizens in a timely manner;
- Disclose all relevant information regarding individual health conditions and health examination results [to the affected individuals];
- Take all necessary and long-term measures to reduce the risk of illness caused by radioactive exposure for all the affected people, with due consideration of health risks of low level radiation exposure. Appropriate measures include long-term monitoring of the health conditions of affected people, free periodical medical checks, free examinations of internal radioactive exposure levels, as well as free healthcare and medical treatment for radiation related illness;
- Take all necessary measures to protect the right to family of the affected population, with sufficient financial and physical support and with due consideration to the current situation of separated families;
- Provide all necessary information about radiation damage to the residents living in all affected areas, ensure compensation, and support relocation. Should the residents of these areas decide to relocate, the government ought to support such relocation, give displaced persons the appropriate protections of internally displaced persons (IDP) and provide sufficient compensation to allow them to rebuild their lives; and
- Ensure full community participation in current and future nuclear and health policies, including in data collection and radiation monitoring, planning evacuation centres, designing health management surveys, decisions regarding radiation levels and evacuation zones, and in setting compensation amounts, with due consideration to particularly vulnerable populations, such as women and children.

E. The Newly Enacted Secrecy Act

1. Introduction

1.1 On December 6th 2013, despite strong opposition both domestically and internationally, a controversial secrecy bill was approved during the 185th Extraordinary Diet session.

1.2 This Act contains a real risk of serious human rights abuses, especially regarding the right to access public information as stipulated in the article 19 of the ICCPR. There is also grave concern that the government will be able to excessively restrict the exercise of freedom of expression and freedom of information.

2. The act was passed despite international and domestic concerns

2.1 The bill was drafted and reviewed in the Diet in haste without ensuring transparency or sufficient time for scrutiny and debate by politicians, much less the public.

2.2 Soon after the outline of the bill was disclosed to the public in August 2013, the government started to gather public comments on the bill. The term for public comments was only 2 weeks. Even though there were many objections to the bill, negative public comments were ignored and the bill was approved by the cabinet for submission to the national diet. Nearly 70,000 out of the 90,000 public comments received by the government were against the bill.⁴⁴

According to the poll approved by a news service agency, over 80% of respondents expressed opposition or concern over the bill.⁴⁵ More than 10,000 protestors were believed to participate in a demonstration near the diet in order to express their opposition to the bill.

2.3 Japanese civil society groups have also expressed their concerns regarding the bill. Since it causes excessive restriction of article 19 rights and other human rights guaranteed by the ICCPR, HRN, together with other international human rights organizations including Human Rights Watch, Amnesty International Japan and PEN International, has serious concerns about the bill. The Japan Civil Liberties Union, the Japan Federation of Bar Associations, and other law organizations have also opposed the Bill. Moreover, the international community expressed their concerns on the bill.⁴⁶

2.4 In November 2013, the UN Special Rapporteur on freedom of expression, Mr. Frank La Rue, stated: “Transparency is a core requirement for democratic governance. The [Act] not

⁴⁴Public comments available at:

<http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=060130903&Mode=2>
“90,000 Comments in Just 15 Days”, available in Japanese at: <http://www.tokyo-np.co.jp/article/feature/himitsuhogo/list/CK2013120302000124.html>

⁴⁵ “Japan enacts controversial state secrets law”, available at: <http://rt.com/news/japan-enacts-state-secrets-law-871/>

⁴⁶“Japan's Illiberal Secrecy Law”, available at:

http://www.nytimes.com/2013/10/30/opinion/international/japans-illiberal-secrecy-law.html?_r=2&

“Japanese Parliament must reject new secrets bill”, available at:

<http://www.article19.org/resources.php/resource/37346/en/japanese-parliament-must-reject-new-secrets-bill>

“Japan: Amend ‘Special Secrets’ Bill to Protect Public Interest”, available at:

<http://www.hrw.org/news/2013/11/25/japan-amend-special-secrets-bill-protect-public-interest>

only appears to establish very broad and vague grounds for secrecy but also includes serious threats to whistle-blowers and even journalists reporting on secrets.”⁴⁷

2.5 Furthermore, the UN High Commissioner for Human Rights, Ms. Navi Pillay stated that “[The Japanese government] should not rush through the law without first putting in proper safeguards for access of information and freedom of expression.” It is rare for the UN to express concerns on legislation before it is actually enacted.

2.6 However, the Japanese government did not take the human rights concerns seriously and the bill was enacted without sufficient discussion in the Diet. The bill was forced through by the administration of Prime Minister Shinzo Abe and passed on 6th December 2013, only four days after Ms. Navi Pillay expressed her concern.

3. Concerns over the Japanese Secrecy Act

3.1 The designation of secrecy can be made arbitrarily by ‘a chief of an administrative agency’ (Article 3), and there is no mechanism for democratic control by third parties or the Diet, which means that there is no institutional security to preventing inappropriate designations of secrecy. The designation of secrecy will be valid for 5 years, but it can be extended largely without limitation. Principles of disclosure of secrets are not stipulated. The Secrecy Act will enable the government of Japan to severely restrict the freedom of expression in a largely arbitrary fashion. The Act contradicts international human rights law, as pointed out by the UN High Commissioner for Human Rights, Ms. Navi Pillay and the UN Special Rapporteur on freedom of expression and rights to health. As stipulated in the ICCPR, freedom of expression enshrined in Article 19 includes the freedom to seek, receive and transmit information and ideas of all kinds. It is subject to restrictions only so long as the conditions set forth in that article are met. Since the government of Japan claimed that there has been some misunderstanding on the part of the UN, Ms. Pillay has made clear that her office will be willing to continue its dialogue on this issue and has urged the Abe administration to send an official translation of the law for further scrutiny. However, the government has yet to release such a translation.

(1) Very broad and vague grounds for secrecy

3.2 According to the Act, a wide range of information will be specified as a ‘secret’ and kept away from civilian eyes. Information defined as a ‘secret’ in this Act includes information on defense, diplomacy, counterintelligence and counterterrorism; which means that large amounts of information will be specified as secret.

3.3 The Act gives heads of government agencies sweeping powers to designate secret information in these four categories. The Act itself does not specify any clear objective criteria for determining what counts as a secret and there is no legal limitation on what may be designated as a secret. Although the Act says that criteria will be designed based on consultation with academics, the consultation system has not yet been specified in the Act. There is a high probability that almost all information related to military, diplomacy and counterterrorism will be categorized as ‘secret’. This will keep a large amount of information away from the public, and is highly likely to violate the ‘right to information’.

(2) Inadequate checks, balances and safeguards

⁴⁷ “Japan: ‘Special Secrets Bill threatens transparency’ – UN independent experts”
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14017&LangID=E>

3.4 The designation of “secret” can be made arbitrarily by “a chief of an administrative agency” (Article 3). There is no mechanism for democratic control by third parties or the Diet, which means that there is no institutional security to prevent inappropriate designations of “secret”. The designation of “secret” will valid for 5 years, but it can be easily extended to as long as 30 years. The principles for disclosing secrets are not specified.

(3) No protection for whistleblowers or public interest defense

3.5 The Act does not contain any safeguards providing immunity for whistle-blowers. The current Whistle-Blower Protection Act protects whistle-blowers from retaliation such as dismissal, but provides no protection from prosecution for any criminal charge. This means that governmental officers could be punished when they accuse the government of unjust and illegal acts.

(4) Punishment of complicity without commission

3.6 A further problem with the Secrecy Law is that it has an article that specifies that mere complicity, without commission, will be punished as follows: if "a person colludes with, abets and agitates someone else to disclose secret [they] will be sentenced to imprisonment of less than 5 years" (Article 24). This article contains a risk of punishing activities of journalists and grossly violating freedom of the press and freedom of expression.

3.7 Although article 21 provides for consideration of freedom of the press and expression, this is merely an abstract advisory provision which does not prevent abuse of investigation authority as there is no clear definition of who is "a person who is in charge of [a] publication or [a member of the] press", whom the Act designates as entitled to this consideration. Civil society organizations such as NGOs might be punished due to their monitoring activities and discussions over it if they gather and release information about the government. The integral function of democracy that civil society provides--checks and balances by overseeing governmental administration and authority--will be seriously damaged by this law.

(5) Limitation of the disclosure to the Diet and the court

3.8 The Act stipulates that information which has been designated as a secret will not be disclosed to courts or the Diet except in limited and exceptional circumstances. The disclosure to the Diet will occur only "when the disclosure of information is acknowledged as information which will not cause serious damage to our national security, and will only be disclosed to the closed-door session or investigation of the official meeting of houses or committees of Parliament. The members of Parliament cannot use their investigative power in order to obtain a copy of [a] secret [document]." Furthermore, the disclosure to courts is also strictly limited. It will surely disturb judicial review. In cases of criminal trials, defendants will face challenges in defending themselves fairly. Their rights to receive due process and public trial may well be violated unduly. This Act will allow the government and bureaucrats to function beyond the knowledge of the Diet or the courts. Major decisions regarding national defense and diplomacy might be done without recognition or public knowledge.

3.9 After the Secrecy Act was enacted, the Japanese government established an advisory sub-cabinet committee on preserving information. The committee is comprised of various individuals including experts. However, the body has only advisory powers and thus is not an effective mechanism to prevent excessive restrictions of the freedom of information. Additionally, although the government plans to establish a monitoring body in the parliament, the proposed body would also have only advisory power. It is doubtful that this monitoring body would be able to effectively control excessive suppression of information.

3.10 Even before this Act, Japan had a comparatively poor record in terms of the publication of information that had at one time been designated as secret. Until now, only the Defense Ministry had the power to designate state secrets. Between 2006 and 2011, of the 55,000 documents so designated, the Ministry destroyed 34,000 at the end of their classification period, releasing only a single document into the public domain⁴⁸. This Act will make an already comparatively opaque regime even less transparent, undermining the basic human right to receive information.

4. Recommendations

HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Examine all the provisions of the Secrecy Act carefully to find out whether they are in conformity with the ICCPR, particularly Article 19;
- Either Amend or Abolish the Secrecy Act in order to meet the obligations under the ICCPR;
- Release the official English translation for international scrutiny without further delay; and
- Continue sincere dialogue with the Committee and other UN human rights bodies such as the Office of High Commissioner for Human Rights and UN Special Rapporteurs who expressed grave concern over the Act.

F. Proposed Amendments to the Japanese Constitution

1. Introduction

1.1 The Liberal Democratic Party (hereinafter “LDP”) of Japan adopted a draft of its constitutional Amendment in April 2012. HRN is concerned that this Amendment may cause excessive restriction of the human rights to all individuals in Japan. The general provisions and several important articles are inconsistent with the state party's obligation under the ICCPR.

2. Background

2.1 In Japan, the LDP is actively campaigning for amendments to the constitution. The Leader of the LDP, Prime Minister Shinzo Abe has publicly called for the constitution to be amended. Other LDP leaders and Ministers have also echoed Mr. Abe's call. In August 2013, the Vice Prime Minister Taro Aso said, “why don't we learn from the techniques of the Nazis in order to amend the constitution”. In response to strong international criticism, he immediately withdrew this remark, but there is still concern that the Constitutional amendment process will be processed without due consideration of human rights.

2.2 In April 2012, the LDP adopted a draft of the constitutional amendment. Based on this document, the LDP recently organized a nationwide town-hall meeting about the

⁴⁸ “Japan's Illiberal Secrecy Law”, available at: http://www.nytimes.com/2013/10/30/opinion/international/japans-illiberal-secrecy-law.html?_r=2&

Constitutional Amendment. After examining the LDP's draft amendment, HRN is particularly concerned about the changes made to the human rights provisions of the Constitution.

3. General Provisions on Human Rights

3.1 The LDP draft restricts human rights by changing the general provisions of relevance as follows:

- (1) It newly stipulates that "(The people) shall be aware that the exercise of freedom and rights carries with it duties and responsibilities, and shall not be contrary to public interest nor to public order at any time," (Article 12, draft) replacing the term "public welfare." This term is very vague and open-ended and would allow excessive restriction of human rights;
- (2) In 2008, the Committee expressed its concerns over the Japanese Constitution as follows;
 - "The Committee reiterated its concern that the concept of "public welfare" is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (Article 2)";
 - Furthermore, the Committee recommended that Japan adopt legislation clearly defining the concept of "public welfare" so as to clarify that any restrictions placed on the rights guaranteed in the Covenant on grounds of "public welfare" may not exceed those permissible under the Covenant.
- (3) It contradicts Article 97, which holds that "the fundamental human rights guaranteed by this Constitution to the people of Japan are fruits of the age old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate"

However, the government kept silent on these recommendations, and instead brought about a new, arguably even more open-ended concept of restriction.⁴⁹

3.2 This draft proposal is associated with the removal of article 97, which emphasizes the inviolate and universal nature of human rights guaranteed in the constitution. The proposed amendment suggests the draft's intention to allow the government to lower the current level of human rights protection in Japan.

4. Public Emergency (ICCPR Art. 4)

4.1 There is no provision concerning public emergencies in the current Constitution. However, the draft introduces a new provision about "public emergencies".

- It newly stipulates that "When a state of emergency is declared, every person shall be subject to the orders of the state and other government agencies issued to protect people's lives, health and property, as provided by law." (Article 99 (3), draft), and justifies restrictions of human rights in an emergency.

4.2 This provision is not in accordance with Article 4 of the ICCPR, which specifies how human rights may be curtailed during an emergency. The proposed Article 99(3) could justify

⁴⁹ Concluding observation of the fifth periodic report submitted by Japan Human Rights Committee, CCPR/C/JPN/CO/5, Para. 10

sweeping restrictions of human rights in an emergency situation, without providing any safeguards or limitation on power.

5. Prohibition against Torture (ICCPR, Art. 7)

5.1 Article 36 of the current Constitution provides as follows:

- The infliction of torture and cruel punishments by any public officer is absolutely forbidden.

5.2 However, the proposed new draft removed the word “absolutely”. The proposed article is as follows:

- The infliction of torture and cruel punishments by any public officer is forbidden.

5.3 The proposed amendment intentionally removed the word “absolutely”. This is in tension with the absolute prohibition of torture and other cruel, inhuman and degrading treatment and punishment enshrined in Article 7 of the ICCPR as well as CAT.

6. Prohibition of Servitude (ICCPR, Art. 8)

6.1 Article 18 of the current Constitution provides as follows.

- No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

The draft proposed the following provision to replace the current provision.

- No one shall, regardless of their will, be detained for social and economic reasons.

6.2 The current provision reflects the international human rights norm of prohibiting slavery, the slave-trade and involuntary servitude (Article 8, ICCPR). However, the draft intentionally removes “involuntary servitude” from the constitutional guarantee. It poses a risk of degrading the protection of human rights as a state party of ICCPR.

6.3 It is also a concern that this amendment will make it easier to enforce compulsory military deployment within the Japanese Self Defense Force. Indeed, in a TV interview, LDP Secretary General Mr. Ishiba underscored that “constitutional amendment is necessary to have a system to impose the death penalty for someone on duty who refuses to go to armed conflict. It is difficult to impose such a harsh punishment against an individual who refuses to be deployed”. The Committee found that the Korean Military Service system violates those rights guaranteed by Article 18 of the ICCPR since it fails to provide for conscientious objectors.⁵⁰ In Japan, the Constitutional amendment may cause the same or worse violations of human rights for people who reject involuntary servitude.

7. Freedom of Expression, Association and Assembly (ICCPR, Art. 19, 21, 22)

7.1 Article 21 provides that “Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated”. Thus, the Japanese constitution guarantees a high level of protection of freedom of expression, assembly and association.

⁵⁰ “Conscientious Objection to Military Service”, available at:
http://www.ohchr.org/Documents/Publications/ConscientiousObjection_en.pdf

7.2 However, the new draft proposed a new provision in order to restrict those rights. The draft proposed that “Any activities, or conspiracy, done for the purpose of harming the public interest or public order are prohibited.” (Article 21 (2), draft)

7.3 The proposed provision uses a value-based, open ended concept of “public interest or public order”. There is a risk that authorities might single-handedly and arbitrarily categorize organizations which oppose specific government policy as trying to harm public interest or public order. Once such a designation is made, the organization might be banned. The proposed draft creates a risk of excessive restriction of freedom of expression, association and assembly.

7.4 On November 29, 2013 the LDP’s Secretary General, Shigeru Ishiba, made the following comment about protesters against the Japanese Secrecy Bill (enacted December 2013) on his blog. “If you want to realize your ideas and principles, you should follow democratic principles, by gaining as much support as you can. I think the strategy of merely shouting one’s opinions at the top of one’s lungs is not so fundamentally different from an act of terrorism” (DEC 1, 2013, The Japan Times⁵¹).

7.5 Although Mr. Ishiba later withdrew his comment, this underlying sentiment suggested that any active opposition group will have to risk being designated as an association “with the purpose of harming public interest or public order” under the new provision of the draft if it is enacted. Against this background, it is clear that not only does Article 21(2) of the draft disrespect the right of free association and peaceful assembly, but also enables the government to impose drastic restrictions on those rights.

8. Freedom of the Association of the Workers (ICCPR Art. 22)

8.1 The current Constitution guarantees worker’s rights as follows,

- Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

8.2 The draft introduces a new provision which stipulates that “Because public officers are servants of the whole society, all or parts of the rights of public officers under the preceding clause can be restricted as provided by law.” (Article 28 (2), draft).

8.3 This new provision in the draft specifically denies the right of public officers to organize trade unions and to bargain and act collectively. It is therefore a clear violation of the workers’ rights under the ICESCR, as well as of Article 22 of the ICCPR.

9. Recommendations

9.1 It is a serious concern that the ruling party proposes such a problematic amendment which detracts from international human rights norms without due consideration of its treaty obligation.

This proposal, as well as the ongoing campaign for this proposal, is often associated with the ruling party’s remarks repeatedly denying international human rights concerns. It also

⁵¹ “Secrecy law protests ‘act of terrorism’: LDP secretary-general”, available at: <http://www.japantimes.co.jp/news/2013/12/01/national/politics-diplomacy/secrecy-law-protests-act-of-terrorism-ldp-secretary-general/>

negatively impacts the general public and fosters incorrect interpretations of protection of human rights throughout the society.

It is also a concern that this amendment may well cause excessive restriction of the human rights of all individuals in Japan once it is adopted.

HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Incorporate established international human rights norms and standards, including its treaty obligation under the ICCPR, into any institutional reform.

G Recommendations in relation to the principle subject

Further, HRN suggests the Committee make the following recommendations to the Japanese government in its concluding observations:

- Sincerely implement all recommendations made by the Committee without further delay;
- Ensure effective participation of and dialogue with civil society organizations in the follow up process of the recommendations made by the Committee;
- Ratify the Optional Protocol 1 of the ICCPR without further delay; and
- Establish the National Human Rights Institution in accordance with the Paris Principle.