



General Assembly

Distr.: General
XX May 2016

English only

Human Rights Council

Thirty-second session

Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Japan: Continuing Serious Threats to the Independence of the Press

1. Introduction

Recent actions taken by the Government and ruling party (“LDP”) in Japan have raised serious concerns over freedom of expression and the right of access to information. In April 2016, the United Nations Special Rapporteur on freedom of opinion and expression visited Japan and called on the Japanese Government to take urgent steps to protect the independence of the media and promote the public’s right of access to information.¹

Human Rights Now² welcomes the Special Rapporteur’s (“SR”) preliminary observations and recommendations.

The trend of government interference of the media began in 2013 with the passage of the Act on the Protection of Specially Designated Secrets and has continued since.

Further, according to a Japanese magazine, there are documents evidencing that the Japanese Government surveilled the SR and NGO member helping the SR during his visit.³

2. Concerns over Government Interference with, Intimidation of, and Pressure on the Media

a) Appointment of Broadcasting Chairman Deferential to LDP

In 2014, Prime Minister Abe appointed Katsuto Momii, known to be deferential to the LDP, as chairman of the public broadcasting company NHK. At his inauguration press conference, Mr. Momii stated that NHK should toe the government line, saying, “When the government says ‘right,’ we cannot say ‘left’.”⁴ Mr. Momii later withdrew this comment, but at the Diet, he insisted that he still personally held this opinion.⁵

¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842&LangID=E>

² A Tokyo based international human rights NGO

³ Abe Shigeo, “Government Surveillance on the UN Special Rapporteur” FACTA p.63, 20 May 2016

⁴ <http://variety.com/2014/biz/asia/new-nhk-boss-katsuo-momii-stokes-controversy-1201072002/>

⁵ http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/009418620140227005.htm

Most recently, during a meeting at NHK on April 20, 2016, he said NHK's reporting on the recent Kumamoto earthquakes, including the disaster's possible effects on nuclear power generation, should be "based on authorities' official announcements."⁶

b) LDP's Demands to the Media

Since 2014, The LDP and the Government have either suggested or claimed that it can revoke licenses based on violations of Article 4 of the Broadcast Act, which calls on broadcasters to be politically neutral and not distort the facts.

In November 2014, the LDP sent a letter to all major broadcasting companies demanding "fair and neutral reporting" in their coverage of the then-upcoming elections. The LDP sent a separate letter to TV Asahi criticizing its reports on PM Abe's economic policy and reiterated the demand for "fair and neutral reporting."⁷

Although an LDP spokesperson claimed this was not "pressure," some believe it was an implicit threat aimed at the media, considering the fact that the government has control over broadcasting licenses under the Broadcast Act.

c) LDP's Investigation of the Media

On April 17, 2015, an LDP investigative committee summoned executives from NHK and TV Asahi to explain certain "scandals" that had plagued the stations, explicitly pressuring the stations to modify the content of their reporting. After the investigative committee meeting, the head of the committee noted, "We will act upon the Broadcast Act when reporting distorts the facts. The Government has the power to revoke licenses."⁸

In November 2015, the BPO issued a report about the NHK "Close-up Gendai" case.⁹ While the report was critical of NHK's program for violating journalistic ethics, it also criticized the government for interfering in NHK's activities and pressuring it to change its content.¹⁰

⁶ Asahi Shimbun, 6 May 2016, Available at: <http://www.asahi.com/ajw/articles/AJ201605060034.html>

⁷ Asahi Shimbun, 10 April 2015, Available at: <http://www.asahi.com/articles/ASH4B3SDNH4BUTFK004.html?iref=reca>; Japan Times, 22 April 2015, Available at: <http://www.japantimes.co.jp/opinion/2015/04/22/editorials/political-pressure-broadcasters/#.VV3yIPmqkr>

⁸ Asahi Shimbun (18 April, 2015) Available at: <http://www.asahi.com/articles/DA3S11710894.html>

⁹ See 3(c)

¹⁰ "Protecting broadcasters' freedom", The Japan Times, 15 Nov. 2015, Available at: www.japantimes.co.jp/opinion/2015/11/15/editorials/protecting-broadcasters-freedom/#.VwUH84ORXFr

It was later reported that as a result of the BPO's criticism, the LDP was considering instituting government involvement in the operation of the BPO. Even if the Government does not follow through with this plan, the mere threat of involvement chills the BPO's ability to be an effective watchdog.

d) Warnings by the Government Minister to Cease Broadcasting

The LDP has continued to maintain its suspension threats. As recently as February 2016, in response to a question in a Diet session, Internal Affairs Minister Sanae Takaichi said that the government has the legal authority to order broadcasters to cease broadcasting if they fail to show "fairness" or "political neutrality" in their reporting.¹¹ Chief Cabinet Secretary Yoshihide Suga supported this statement, saying that it was in accordance with existing law.¹²

e) Replacement of Outspoken News Anchors

In early 2016, three news anchors with a reputation for asking tough questions, Ichiro Furutachi, Shigetada Kishii, and Hiroko Kuniya,¹³ almost simultaneously removed from popular Japanese TV news programs.

There is no evidence that the Government explicitly ordered these removals. However, it is fair to say that self-censorship has been prevailing among broadcast media companies in Japan as a result of the series of government interference noted above.

4. Interference is Not Consistent with International and Domestic Law

Article 4 of the Broadcast Act lays out professional norms, including that broadcasters "not harm public safety or good morals," "be politically fair," "not distort the facts," and "clarify the points at issue from as many angles as possible." As the SR noted in his preliminary observations, "the Government – *any* government

¹¹ Tomohiro Osaki, "Sanae Takaichi warns that government can shut down broadcasters it feels are biased," Japan Times, 9 Feb 2016, Available at: <http://www.japantimes.co.jp/news/2016/02/09/national/politics-diplomacy/minister-warns-that-government-can-shut-down-broadcasters-it-feels-are-biased/#.VwSH-0eT7nc>

¹² Id.

¹³ McCurry, *supra* note 5.

– should not be in the position of determining what is fair. This is a matter for public debate and Japan already has a body responsible for self-regulation, the BPO.”¹⁴

The SR also expressed concern about pressures on NHK. The SR noted that the “fact that the Diet appoints the members of NHK’s Board of Governors, as well as approves the budget of the NHK, particularly when the Diet is so significantly controlled by one coalition, raises a perception that the broadcaster lacks independence.”¹⁵

In his preliminary observations, the SR suggested “a review of the current legal framework” and recommended that the Government “repeal Article 4 [of the Broadcast Act] and get itself out of the media-regulation business.”¹⁶ HRN shares the SR’s concerns and highly appreciate his recommendations.

The threats and interference of the Government are also inconsistent with Article 21 of the Japanese Constitution and Article 19 of the ICCPR, which provide for the right to freedom of expression.

5. Government Surveillance on the SR

FACTA, a monthly magazine,¹⁷ unearthed memoranda evidencing that the Intelligence Agency of the Cabinet Secretariat (*Naikaku Jyohou Chousa Shitsu*)¹⁸ surveilled the SR and local NGO members working with him during his country visit to Japan. The article mentions only the SR and the Secretary General of HRN as being targets of this surveillance.¹⁹ The HRN has requested the Ministry of Foreign Affairs to provide an explanation of the surveillance, but it has not yet received any reply. However, HRN has confirmed with FACTA that they have a copy of the memoranda and the Government has not denied the charges.

The head of FACTA’s also informed HRN that the memoranda include reports about a meeting between the HRN Secretary General and the SR during his visit in Japan.

¹⁴ Preliminary observations by the United Nations Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye, 19 April 2016, Available at: <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842&LangID=E>

¹⁵ Id.

¹⁶ Id.

¹⁷ <http://facta.co.jp/>

¹⁸ <http://www.cas.go.jp/jp/gaiyou/jimu/jyohoutyousa.html>

¹⁹ <https://facta.co.jp/article/201606009.html>

The date of the meeting was included in the memoranda though it was not made public.

While FACTA has informed HRN that the names of other members of the public that the SR met with are not included in the memoranda, FACTA has only received portions of the memoranda. HRN is gravely concerned that the full memoranda may include the names of journalists who met with the SR on the condition of anonymity. Such surveillance would deeply undermine the activity of the SR and endanger the freedom of journalists.

6. Recommendations

The ongoing pressure, intimidation, and interference by the government and LDP against media and broadcasters for their political reporting are a serious threat to freedom of expression and may constitute violations of this right. In light of this situation, HRN makes the following recommendations.

HRN urges the Japanese Government:

- To respect and protect freedom of expression in accordance with ICCPR Article 19.
- To seriously consider all the recommendations made by the SR in his preliminary observations and review its entire policy toward media freedom.
- To refrain from any interference with the Japanese media and the BPO.
- To refrain from invoking Article 4 of the Japanese Broadcast Act as a means to control the media.
- To review the Special Secrets Act in accordance with ICCPR Article 19.
- To take steps to ensure broadcasters' freedom of expression.
- To provide a sincere explanation over the reported surveillance of the SR's mission and disclose the concerning memoranda if any.
- To refrain from any attempt to monitor the activity of UNSRs and the people interviewed by the UN mission.