

**United Nations**  
**Office of the High Commissioner for Human Rights**

# **Universal Periodic Review**

## **Stakeholder 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 dedicates to protection and promotion of human rights of people worldwide.*

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## I. Introduction

In March 2013, the Human Rights Council adopted the outcome of the UPR second cycle on Japan, which included 174 recommendations under 34 themes.<sup>1</sup> Japan supported 117 of the recommendations, noted 57 of them, and followed up on 125 of them in a midterm report issued in January 2017.<sup>2</sup>

However, the Japanese government has failed to sufficiently implement these and UN human rights bodies' recommendations, including on the death penalty, criminal justice, and women's rights. There has also been no progress on the establishment of a National Human Rights Institution in accordance with the Paris Principle and no progress in ratifying the optional protocols on individual communication systems. Moreover, the human rights situation in Japan has also been deteriorating due to the failure of the current government to meet obligations under human rights treaties.

Human Rights Now (HRN), a Tokyo-based international human rights NGO, highlights the following six areas of concern regarding the human rights situation in Japan: women's, children's, and LGBT rights; the situation in Fukushima; freedom of expression; hate speech; the situation in Okinawa; and the death penalty and criminal justice issues.

## II. Women's, Children's, and LGBT Rights

### 1 Overview

Japan has failed to comply with previous CEDAW recommendations<sup>3</sup> by maintaining discriminatory laws against women.<sup>4</sup> The Supreme Court recently upheld as constitutional a provision requiring married partners to adopt the same surname, despite the law frequently compelling women to change their name.<sup>5</sup> The government has also failed to take meaningful steps to address the gender pay gap and domestic violence.<sup>6</sup> Further, it has failed to address the

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<sup>1</sup> OHCHR, Universal Periodical Review Second Cycle – Japan, (recommendations are listed under the link “Matrices of Recommendations”), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>.

<sup>2</sup> Ministry of Foreign Affairs (Japan), “Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review,” Jan. 2017, <http://www.mofa.go.jp/mofaj/files/000225031.pdf>.

<sup>3</sup> Committee on the Elimination of Discrimination against Women (CEDAW) “Concluding observations on the combined seventh and eighth periodic reports of Japan,” UN Doc. CEDAW/C/JPN/CO/7-8, 7 March 2016, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CEDAW/C/JPN/CO/7-8](http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/JPN/CO/7-8)

<sup>4</sup> Minpo [Civil Code], article 730, <http://law.e-gov.go.jp/htmldata/M29/M29HO089.html> (Japanese language only)—The age of marital consent for women is 16, whereas the age for men is 18; Minpo [Civil Code], article 733—Only women are barred from remarrying for 100 days following a divorce.

<sup>5</sup> Supreme Court Decision, Case No. 1023, 16 December 2015,

[http://www.courts.go.jp/app/files/hanrei\\_jp/546/085546\\_hanrei.pdf](http://www.courts.go.jp/app/files/hanrei_jp/546/085546_hanrei.pdf) (Japanese language only)

<sup>6</sup> See Gender Equality Bureau Cabinet Office, “Haigusha kara no boryoku ni kannsuru deta”, 16 September 2016,

[http://www.gender.go.jp/policy/no\\_violence/e-vaw/data/pdf/dv\\_dataH2809.pdf](http://www.gender.go.jp/policy/no_violence/e-vaw/data/pdf/dv_dataH2809.pdf) (Japanese language only) —23.7% of Japanese women claim to have been subjected to DV; Ministry of Health, Labor and Welfare, “Kekka no gaiyo,” 2016

<http://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/z2016/dl/01.pdf> (Japanese language only) — the gender pay gap in Japan is 27%.

issue of “comfort women”; the bilateral agreement between Japan and South Korea<sup>7</sup> is not victim-centered. Moreover, references to this issue are almost eradicated from school textbooks due to the government’s persistent efforts.<sup>8</sup>

Despite LGBT people facing various forms of discrimination, the government has not ratified comprehensive legislation to eliminate discrimination based on sexual orientation and gender identity.

## 2 Sexual exploitation of women and girls

### 2.1 Child Pornography

In 2014, Japan criminalized possession of child pornography. Despite this step, HRN found that child pornography, in particular pornography of clothed, sexualized children, continues to be available in both adult video shops and online shopping sites. Authorities narrowly interpret the law and the public remains unclear on the definition and scope of child pornography.<sup>9</sup>

### 2.2 Forced Adult Pornographic Videos

An HRN investigation found that significant numbers of Japanese women and girls are coerced into filming adult pornographic videos (“AV”) in recent years.<sup>10</sup> After being scouted as non-pornographic models or actresses, they are lured into signing contracts with agents<sup>11</sup> who later force them to film AVs.<sup>12</sup> Refusals to follow orders are met with baseless threats to pay exorbitant fees for contract breach, threats to expose them to parents and schools, and physical violence.<sup>13</sup> Although this is recognized as a grave human rights violation against women, there is no legislation adequately protecting females from these problems.

## 3 Violence against Women

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<sup>7</sup> AP, Kyodo, AFP-Jiji, Japan, South Korea reach ‘final’ deal to settle ‘comfort women’ issues, *The Japan Times*, 28 December 2015, <http://www.japantimes.co.jp/news/2015/12/28/national/politics-diplomacy/south-korea-japan-reach-deal-to-settle-comfort-women-issue/#.WMo0XxKGOT8>

<sup>8</sup> OHCHR, “Preliminary Observations by the U.N. Special Rapporteur on the Right to Freedom of Opinion and Expression, Mr. David Kaye at the end of his Visit to Japan (12-19 April 2016)”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842&LangID=E>.

<sup>9</sup> Human Rights Now, Nihon jido poruno kisei no jitsujō to kadai: kodomo-tachi o mamoru tame ni, nani ga motome rarete iru no ka~’ utagawashi-sa’ no kabe o koete~[The Reality and Issues regarding the Child Pornography Regulations in Japan: What is required to protect children? – Transcend the wall of ‘doubtfulness’], at 3-4, <http://hrn.or.jp/wpHN/wp-content/uploads/2016/09/33f47e793333c9ddbaf3efcc9a977f7.pdf> (in Japanese).

<sup>10</sup> Human Rights Now, Japan: Coerced filming of Adult Pornographic videos Human Rights Violation against Women and Girls Manifesting from the Adult Pornographic Film Industry in Japan (published 3 March 2016), <http://hrn.or.jp/eng/wp-content/uploads/2016/06/ReportonAVindustry-20160303-tentative-translation.pdf>.

<sup>11</sup> Human Rights Now, The Pursuit of Ending Forced Appearances in Pornographic Films – Report & Symposium at the National Diet of Japan (published 22 Nov. 2016), <http://hrn.or.jp/eng/news/2016/11/22/the-pursuit-of-ending-forced-appearances-in-pornographic-films-report-symposium-at-the-national-diet-of-japan/>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Japanese law restrictively defines rape as the use or threat of violence to force a woman into sexual intercourse.<sup>14</sup> Moreover, the law falls behind international standards: marital rape is not explicitly criminalized,<sup>15</sup> and the age of sexual consent remains 13.<sup>16</sup> Recently proposed amendments to the rape laws are grossly insufficient and do not address the requirement of violence.<sup>17</sup>

#### 4 Recommendations

- Eliminate all discriminatory provisions against women in existing laws;
- Implement a victim-centered approach towards redressing ‘comfort women’ victims;
- Intensify efforts to eliminate sexual exploitation of women and girls, including forced appearance in pornographic films;
- Implement concrete policies to eradicate child pornography from the market and internet;
- Amend the Penal Code to expand the definition of rape and criminalize all sexual conduct without consent.

### III. Human Rights Situation of People Affected by the Fukushima Disaster

#### 1 Overview

The March 2011 nuclear disaster in Fukushima released huge amounts of radioactive material which continues to pose health risks particularly to vulnerable groups such as pregnant women, girls, and infants. However, the Japanese government fails to protect the rights to health and life of affected people and implement the recommendations made by the UN Special Rapporteur for Health, Anand Grover<sup>18</sup> and various human rights treaty bodies.<sup>19</sup>

The Japanese government has issued evacuation orders based on a 20 millisievert-per-year standard, which is significantly greater than the 1mSv/year standard for public exposure

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<sup>14</sup> Keihou (Penal Code), article 177.

<sup>15</sup> Human Rights Now, Keiho no sei hanzai kitei no kaisei-an ni tsuite no seimei [Statement regarding the revision proposal of the criminal law sexual offence provision], <http://hrn.or.jp/activity/10262/> (in Japanese).

<sup>16</sup> Id.

<sup>17</sup> “Seihanzai wo genbatsuka - kakugikkettei”, *Mainichi Shimbun*, 7 March 2017, <http://mainichi.jp/articles/20170307/k00/00e/040/151000c> (Japanese language only).

<sup>18</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Japan (15 - 26 Nov. 2012), A/HRC/23/41/Add.3, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3_en.pdf).

<sup>19</sup> Human Rights Committee, “Concluding observations on the sixth periodic report of Japan, 20 Aug. 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/JPN/CO/6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/JPN/CO/6&Lang=En), and CEDAW, “Concluding observations on the combined seventh and eighth periodic reports of Japan” 10 Mar. 2016, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fJPN%2fCO%2f7-8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fJPN%2fCO%2f7-8&Lang=en).

recommended by the International Commission on Radiological Protection (ICRP) and Japan's own pre-disaster standard.<sup>20</sup>

There are broad areas with large populations not included in the evacuation zones in Fukushima. Without sufficient financial support for evacuation from the government, many people who cannot afford to relocate have no choice but to stay within affected areas. Some families, including pregnant women and children, decided to evacuate without any financial support from the Japanese government. They were only provided free housing support from the government.<sup>21</sup> These insufficient policies have caused negative impacts over the affected people and evacuees; however, the latest policy will terminate existing support for evacuees. On March 11, 2017, the sixth anniversary, President Abe stated that Fukushima has been primarily restored and used language suggesting the issue has ended and the government will not review its decision to end support.<sup>22</sup>

## 2 Lifting evacuation orders

The government decided that all remaining evacuated areas under 20mSv/year are being lifted in March 2017.<sup>23</sup> However, exposure levels will remain high due to the nature of the radioactivity and environment, insufficient decontamination, and conditions which promote recontamination.<sup>24</sup>

## 3 Compensation and housing support is ending

Following the lifting of evacuation orders in March 2017, TEPCO will terminate monthly compensation payments for evacuees under the orders in March 2018.<sup>25</sup> The government also decided to terminate housing support for evacuees not under the orders by March 2017.

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<sup>20</sup> The ICRP has recommended a 1mSv annual dosage limit for the public since 1990. Most countries have adopted this standard for their nuclear disaster managements. The ICRP is the international organization on radiological protection established in 1928. It focuses on the prevention of cancer and other diseases associated with exposure to ionising radiation, as well as protection of the environment, with their scientific expertise and has played a key role in elaborating international common standards for radiological protection for international and domestic legislation, guidelines, programmes, and practice. See 1990 Recommendations of the International Commission on Radiological Protection (Publication 60. Annals of the ICRP, Vol.21, Nos. 1-3) (1991); The 2007 Recommendations of the International Commission on Radiological Protection (Publication 103. Annals of the ICRP, Vol.37, Nos. 2-4) (2007); and "IAEA, Radiation protection and safety of radiation sources: International Basic Safety Standards – Interim Edition, General Safety Requirements", No.GSR Part 3 (Interim)(Vienna 2011), at 90.

<sup>21</sup> "Higashinohon daishinsai go nen: jishu hinan no inochizuna, ato ichi nen jutaku musho teikyō uchikiri," *Mainichi Shimbun*, 11 Mar. 2016, <http://mainichi.jp/articles/20160311/ddm/010/040/006000c>.

<sup>22</sup> "Fukushima governor unhappy with Abe's disaster anniversary speech," *The Japan Times* 14 Mar. 2017, <http://www.japantimes.co.jp/news/2017/03/14/national/fukushima-governor-unhappy-abes-disaster-anniversary-speech/#.WNDbEaKZFPY>

<sup>23</sup> The Reconstruction Agency, "Higashinippon daishinsai kara no fukkō ni muke ta michinori to mitōshi," Jul. 2016, [http://www.reconstruction.go.jp/topics/main-cat1/sub-cat1-1/160809\\_mitonoritomitoshi.pdf](http://www.reconstruction.go.jp/topics/main-cat1/sub-cat1-1/160809_mitonoritomitoshi.pdf); Greenpeace, "No Return to Normal: The Fukushima Daiichi Nuclear Disaster," 3 Feb. 2017, [www.greenpeace.org/japan/global/japan/pdf/nrn\\_finweb5.pdf](http://www.greenpeace.org/japan/global/japan/pdf/nrn_finweb5.pdf) (documenting exposures in evacuation-lifted areas with higher levels of exposure despite this designation).

<sup>24</sup> Greenpeace, "Radiation Reloaded: Ecological Impacts of the Fukushima Daiichi Nuclear Accident 5 years later," 4 Mar. 2016, [http://www.greenpeace.org/japan/ja/library/publication/20160304\\_report/](http://www.greenpeace.org/japan/ja/library/publication/20160304_report/).

<sup>25</sup> Tokyo Electric Power Company (TEPCO) Press Release, 26 Aug. 2016, [http://www.tepco.co.jp/cc/press/2015/1258474\\_6818.html](http://www.tepco.co.jp/cc/press/2015/1258474_6818.html).

Evacuees losing the payments or housing support on which they rely are pressured to return to affected areas which remain unsafe. 70% of voluntary evacuees reported being unable to find housing once their housing support ends,<sup>26</sup> and a majority of evacuees in Tokyo listed housing as their greatest concern, most stating that housing support was ending too early.<sup>27</sup>

#### 4 Insufficient health services

The Japanese government has failed to establish free, periodic, and comprehensive health checks for affected persons except biennial ultrasound examinations for Fukushima children.<sup>28</sup> As of December 2016, 189 children in Fukushima prefecture were diagnosed with or believed to have thyroid cancer since the disaster.<sup>29</sup> The prefectural government has nevertheless failed to acknowledge the impact of radiation on children and has not expanded its healthcare services.

#### 5 Recommendations

- Use a 1mSv/year standard for lifting evacuation orders;
- Continue compensation and housing support as long as required by evacuees;
- Improve health monitoring and services for affected persons.

### IV. Freedom of Expression

#### 1 Overview

The Japanese government attempts to control media and journalism, raising serious concerns over the freedom of expression and right to information.<sup>30</sup> In April 2016, Special Rapporteur on the Right to Freedom of Opinion and Expression David Kaye conducted a country visit to Japan and made preliminary recommendations, including to respect media independence and review the SDA.<sup>31</sup> However, most of these recommendations have not been addressed by the government.

#### 2 Act on the Protection of Specially Designated Secrets (“SDA”)

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<sup>26</sup> “70% of voluntary Fukushima evacuees undecided where to live after free housing ends,” *Mainichi*, 26 Mar. 2016, <http://mainichi.jp/english/articles/20160326/p2a/00m/0na/012000c>.

<sup>27</sup> “Genpatsu jiko hinan sha jūtaku mushō teikyō no keizoku o' tonai hinan sha ni to ankēto,” *Tokyo Shimbun*, 10 May 2016, <http://www.tokyo-np.co.jp/article/tokyo/list/201605/CK2016051002000171.html>.

<sup>28</sup> Fukushima Health Management Survey, <http://fmu-global.jp/fukushima-health-management-survey/>

<sup>29</sup> Friends of the Earth, “Fact Sheet: kodomo-tachi no kōjōsen gan no jōkyō,” 1 Feb. 2017, [http://www.foejapan.org/energy/fukushima/pdf/factsheet\\_thyroid\\_170201.pdf](http://www.foejapan.org/energy/fukushima/pdf/factsheet_thyroid_170201.pdf).

<sup>30</sup> Japanese Constitution, article 21; United Nations Treaty Collection, “International Covenant on Civil and Political Rights,” article 19, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en).

<sup>31</sup> Preliminary Observations by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression, Dr. David Kaye, 19 Apr. 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19842&LangID=E>.

The SDA was enacted despite serious concerns raised by the UN human rights chief and experts in relation to the rights to information and freedom of expression.<sup>32</sup> Its broad and vague definition of secrecy allows authorities to withhold information even if disclosure would not harm national security,<sup>33</sup> and it may violate the ‘right to know’ in areas of immense public interest. The government has not sufficiently clarified the preconditions for state secrets designations or implemented effective checks on abuse.<sup>34</sup> Provisions introducing severe punishments for leaking and “abetting, conspiracy, incitement” without providing sufficient safeguard for whistleblowers seriously threaten freedom of press and expression and are inconsistent with Japan’s international human rights law obligations.<sup>35</sup>

### 3 Government Media Pressure

Since 2014, the Liberal Democratic Party (LDP), the ruling party of Japan, and the Japanese 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 facts. Although the act explicitly guarantees broadcasters’ freedom of expression and disallows government interference with reporting, the LDP and government persistently invoke the act to threaten media freedom<sup>36</sup>

On April 17, 2015, an LDP investigative committee summoned NHK and TV Asahi executives to explain the content of their programming, explicitly pressuring the stations to modify the content of their reporting. And in 2016, Internal Affairs and Communications Minister Sanae

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<sup>32</sup> On 22 November, Frank LaRue, UN Rapporteur on Freedom of Expression, and Anand Grover, Special Rapporteur on the Right to Health expressed concern that “the draft bill not only appears to establish very broad and vague grounds for secrecy but also includes serious threats to whistleblowers and even journalists reporting on secrets.” On 2 December, Navi Pillay stated that Japan’s Government “should not rush through the law without first putting in proper safeguards for access of information and freedom of expression as guaranteed in Japan’s constitution and international human rights law.” See HRN, “Statement reflecting on the approval of the special secrets bill,” 12 Dec. 2013, [http://hrn.or.jp/eng/wp-content/uploads/2013/12/20131212\\_statementonssb.pdf](http://hrn.or.jp/eng/wp-content/uploads/2013/12/20131212_statementonssb.pdf);

OHCHR, “Japan: ‘Special Secrets Bill threatens transparency’ – UN independent experts,” 22 Nov. 2013, <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14017&LangID=E>;

“UN human rights chief voices fear over Japan’s secret protection bill,” *Japan Press Service*, 4 Dec. 2013, <http://www.japan-press.co.jp/modules/news/index.php?id=6727>.

<sup>33</sup> Act on the Protection of Specially Designated Secrets, Act No. 108 of 2013.

<sup>34</sup> For instance, although Diet boards can request the files designated as state secrets and recommend declassification, the government can refuse if it believes that doing so would harm national security. The Foreign Ministry has been known to refuse board questions by stating that disclosing such information “would enable third-party countries to determine what steps Japan is taking and would hurt the trust between Japan and its partner countries” or “would harm Tokyo’s relations with other governments.” See “Diet Oversight of State Secrets,” *The Japan Times*, 9 Apr. 2016, <http://www.japantimes.co.jp/opinion/2016/04/09/editorials/diet-oversight-state-secrets/#.WMDzTRhh3BI>.

<sup>35</sup> Human Rights Now, “Statement on Japan’s Special Secrets Bill”, at 1, [http://hrn.or.jp/eng/wp-content/uploads/2013/11/20131125\\_SpecialSecrecyBillfor-enactment.pdf](http://hrn.or.jp/eng/wp-content/uploads/2013/11/20131125_SpecialSecrecyBillfor-enactment.pdf)

<sup>36</sup> The purpose of the Broadcast Law, as defined in Article 1, is to “ensure freedom of expression through broadcasting by guaranteeing the impartiality, truth and autonomy of broadcasting.” Further, Article 3 provides that broadcast programs will not be interfered with or regulated except as pursuant to the law. See the Broadcast Act, Act No. 132 of 1950, last amended 30 May 2008, articles. 1, 3, <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan044126.pdf>.

Takaichi threatened to “shut down” media considered biased, invoking the Broadcast Act which gives the ministry licensing authority.<sup>37</sup>

#### 4 Media Self-Censorship

These interferences have had a significant chilling effect and led to widespread self-censorship among Japanese media.<sup>38</sup> Since 2016, news anchors and a producer were removed for criticizing the government.<sup>39</sup> Furthermore, government attempts to influence journalists through secluded conversations constitute undue media interference.<sup>40</sup>

#### 5 Government Surveillance

It has been reported that the government engaged in surveillance of HRN’s Secretary General in the occasion of David Kaye’s country visit in 2016.<sup>41</sup> This is an act of intimidation against those working with the U.N.<sup>42</sup>

#### 6 Recommendations

- Implement David Kaye’s preliminary recommendations;
- Refrain from misapplying the Broadcast Act and ensure the media’s independence;
- Cease ongoing pressure and interference of media personnel;
- Review the SDA in accordance with ICCPR Article 19;

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<sup>37</sup> Human Rights Now, “Statement Regarding Japan’s Continuing Serious Threats to the Independence of the Press”, [hereinafter “HRN Statement on Independence of the Press”], at 4, [http://hrn.or.jp/eng/wp-content/uploads/2016/05/1902\\_A\\_HRC\\_32\\_NGO\\_Sub\\_En.pdf](http://hrn.or.jp/eng/wp-content/uploads/2016/05/1902_A_HRC_32_NGO_Sub_En.pdf); see also Tomohiro Osaki, “Sanae Takaichi warns that government can shut down broadcasters it feels are biased,” *The Japan Times*, 9 Feb. 2016, <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>; Human Rights Now, “Statement Regarding HRN’s Protest of Government and Ruling Party Intervention in Freedom of Speech”, at 2, <http://hrn.or.jp/eng/wp-content/uploads/2015/08/20150630-Freedom-of-speech-English.pdf>. Additionally, the head of an LDP-led investigative committee stated, “we will act upon the Broadcast Act when reporting distorts the facts. The Government has the power to revoke licenses.” See HRN Statement on Independence of the Press, at 3.

<sup>38</sup> Martin Fackler, “The Silencing of Japan’s Free Press,” *Foreign Policy*, 27 May 2016, <http://foreignpolicy.com/2016/05/27/the-silencing-of-japans-free-press-shinzo-abe-media/>; Linda Sieg, “Under Abe’s Reign, Media Self-censorship in Japan is Rising,” [hereinafter “Silencing Japan’s Free Press”], *The Japan Times*, 25 Feb. 2015, <http://www.japantimes.co.jp/news/2015/02/25/national/media-national/japanese-media-self-censorship-seen-growing-abes-reign/#.WMIadhhh3BI>; HRN Statement on Independence of the Press, above note 37, at 4.

<sup>39</sup> Silencing Japan’s Free Press, *id.*

<sup>40</sup> See e.g., Martin Fackler, “Effort by Japan to Stifle News Media is Working,” *The New York Times*, 26 Apr. 2015, [https://www.nytimes.com/2015/04/27/world/asia/in-japan-bid-to-stifle-media-is-working.html?\\_r=0](https://www.nytimes.com/2015/04/27/world/asia/in-japan-bid-to-stifle-media-is-working.html?_r=0); see also “Protecting Broadcasters’ Freedom,” *The Japan Times*, 15 Nov. 2015, <http://www.japantimes.co.jp/opinion/2015/11/15/editorials/protecting-broadcasters-freedom/#.WNTaiFOLSmz>.

<sup>41</sup> Around the time of Kaye’s visit, FACTA magazine published information received through a leaked internal memorandum about government-mandated surveillance of the SR and Kazuko Ito, a Japanese international human rights attorney who assisted in the SR visit. See Mandates of the Special Rapporteurs on the Promotion and Protection of the Right to Freedom of Opinion and Expression, on the Rights to Freedom of Peaceful Assembly and of Association, and on the Situation of Human Rights Defenders, [hereinafter “Mandates of the Special Rapporteurs”], UA JPN 4/2016, 30 May 2016, [https://spdb.ohchr.org/hrdb/33rd/public\\_-\\_UA\\_JPN\\_30.05.16\\_\(4.2016\).pdf](https://spdb.ohchr.org/hrdb/33rd/public_-_UA_JPN_30.05.16_(4.2016).pdf); see also Human Rights Council, 2016 Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights A/HRC/33/19, 16 Aug. 2016, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Actsofintimidationandreprisal.aspx>. Despite the Ministry of Foreign Affairs’ insistence that their internal investigation found the allegations to be baseless, HRN confirmed that FACTA has a copy of the memorandum. See HRN Statement on Independence of the Press, above note 37, at 5.

<sup>42</sup> Mandates of the Special Rapporteurs, *id.*, at 2.



- Cease surveillance of those cooperating with the U.N.

## V. Hate Speech

### 1 Overview

A Japanese Ministry of Justice investigation revealed 1,152 incidents of racial hate speech in Japan between April 2012 and September 2015, with no indication of the numbers subsiding.<sup>43</sup> Hate speech in Japan is often xenophobic, with ethnically Korean and Chinese persons frequently targeted.<sup>44</sup>

### 2 Legal Developments

In May 2016, the National Diet passed ‘The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan’ (the 2016 Act).<sup>45</sup> Article 2 defines “unfair discriminatory speech and behavior” as acts intending to incite the exclusion of foreign nationals from communities by harming their body, reputation, or property. As required by Article 7, the Ministry of Justice has begun a public awareness campaign against hate speech.<sup>46</sup>

### 3 Persisting Problems

While the Japanese government cites the 2016 Act as evidence of their compliance with international standards,<sup>47</sup> the law fails to fully comply with previous recommendations by the Working Group on Japan’s second UPR,<sup>48</sup> the Human Rights Committee (HRC),<sup>49</sup> and the Committee on the Elimination of Racial Discrimination (CERD) for the prohibition of hate speech including in rallies and online.<sup>50</sup>

<sup>43</sup> Ministry of Justice, “Heitosupichi ni kansuru jittai chosa houkokusho,” March 2016, <http://www.moj.go.jp/content/001201158.pdf> (Japanese language only)

<sup>44</sup> See Korean Residents Union in Japan, “Report on the issue of Racism and Hate Speech in Japan,” 18 July 2014, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT\\_CERD\\_NGO\\_JPN\\_17699\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_17699_E.pdf).

<sup>45</sup> Ministry of Justice, <http://www.moj.go.jp/content/001199550.pdf> (Provisional English translation)

<sup>46</sup> Ministry of Justice, “Stop! Hate Speech,” [http://www.moj.go.jp/ENGLISH/m\\_jinken04\\_00001.html](http://www.moj.go.jp/ENGLISH/m_jinken04_00001.html)

<sup>47</sup> The Government of Japan, “Mid-term report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review,” January 2017, at 10, <http://www.mofa.go.jp/mofaj/files/000225031.pdf>

<sup>48</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review - Japan” UN Doc. A/HRC/22/14, 14 December 2012, Para. 147.37, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/187/52/PDF/G1218752.pdf?OpenElement> - The Working Group called on the government to take legislative measures to prohibit hate speech.

<sup>49</sup> Human Rights Committee, “Concluding observations on the sixth periodic report of Japan,” UN Doc. CCPR/C/JPN/CO/6, para. 12, 24 August 2014, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/JPN/CO/6](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/JPN/CO/6). The HRC called on the government to prohibit hate speech and racist demonstrations, and to ensure the investigation and prosecution of perpetrators.

<sup>50</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations on the combined seventh to ninth periodic reports of Japan,” UN Doc. CERD/C/JPN/CO/7-9, 26 September 2014, Para 7, 11, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CERD/C/JPN/CO/7-9](http://www.un.org/en/ga/search/view_doc.asp?symbol=CERD/C/JPN/CO/7-9). The CERD called on the government to prohibit hate speech, including online hate speech, and to ensure the investigation and prosecution of perpetrators, where appropriate.

The 2016 Act does not prohibit hate speech or criminalize serious hate speech, leaving Japan in violation of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as interpreted by the CERD in General Recommendation No. 35.<sup>51</sup>

To comply with the requirement of having due regard to other rights when implementing Article 4(a) and (b) ICERD, Japan maintains a reservation that Article 4 must be implemented consistently with rights under the Constitution of Japan.<sup>52</sup> As the CERD's General Recommendation No. 35 comprehensively explains this requirement, the reservation unnecessarily restricts the full enjoyment of the protection from hate speech.<sup>53</sup>

The government has also taken no measures to tackle false and xenophobic stories that proliferate online and harm the reputation of ethnic minorities, thereby failing to comply with the CERD's recommendations.

#### 4 Recommendations

- Amend the 2016 Act to prohibit hate speech, including demonstrations that incite racial discrimination, and criminalize serious forms of hate speech;
- Take measures to enable internet providers to remove online hate speech on their own motion and ensure the correction and removal of false online hate speech and;
- Withdraw its reservation to Article 4 ICERD.

## VI. The Situation in Okinawa

### 1 Overview

Okinawa disproportionately bears US military bases. 74% of facilities for exclusive US military use, 70% of US forces, and 87.4% of marines in Japan are deployed in Okinawa (25,843 army, navy, air force, and marine personnel and 15,365 marines as of June 2011, after which the US government stopped publishing data on numbers).<sup>54</sup> Despite Okinawans' demands for relief, the Japanese government is imposing further burdens without consultation. On July 1, 2014, construction of a new base began in Henoko to relocate a US airbase, restricting ancestral sea and coastal areas, without local people's consultation or consent. In the forested area around Takae, since July 2016 construction of helicopter pads has deprived Okinawans of use of their ancestral land and residences by noise and environmental destruction. Okinawans have protested construction in Henoko and Takae, but the government has forcibly and violently cracked-down on the protesters.

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<sup>51</sup> CERD, "General recommendation No. 35 - Combating Hate Speech," UN Doc. CERD/C/GC/35, 26 September 2013, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CERD/C/GC/35](http://www.un.org/en/ga/search/view_doc.asp?symbol=CERD/C/GC/35).

<sup>52</sup> United Nations Treaty Collection, "International Convention on the Elimination of All Forms of Racial Discrimination," [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-2&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec)

<sup>53</sup> CERD General Recommendation No. 35, *above* note. 51.

<sup>54</sup> Okinawa Prefectural Government, "US Military Base Issues in Okinawa," 2011, at 14-15, <http://www.pref.okinawa.jp/site/chijiko/kichitai/documents/2011.6%20eng.pdf>.

## 2 Self Determination

The Ryukyu/Okinawan people have been recognized by the Human Rights Committee<sup>55</sup> and CERD<sup>56</sup> as an indigenous people to Okinawa, grounding their self-determination right to use and access ancestral lands.

The UN Declaration on the Rights of Indigenous Peoples calls governments to recognize indigenous rights to land; consultation and cooperation; free, prior, and informed consent (FPIC) on important decisions; and restrictions on unjustified military activity on their land.<sup>57</sup> However the Japanese government made decisions about the development and military use of Okinawan ancestral land without their consultation or consent.

## 3 Freedom of Assembly and Press

The Japanese government has removed sit-in protesters from Takae since 2016 and Henoko since 2014 using excessive and violent techniques such as throttling by the throat, inconsistent with the right to assembly under ICCPR Article 21 without any sufficient justification based on imminent threat.<sup>58</sup> The government has also restricted journalists from covering the story by barring or arresting them, inconsistent with ICCPR Article 19.<sup>59</sup>

## 4 Arbitrary Detention

Hiroji Yamashiro, a prominent protest leader, was arrested three times since October 2016 for multiple offenses and kept in pretrial detention for five months before bail release.<sup>60</sup> The details of the case, including waiting 10 months after an incident before making an arrest,<sup>61</sup> indicate the

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<sup>55</sup> CCPR, “Concluding observations on the sixth periodic report of Japan,” CCPR/C/JPN/6, 20 Aug. 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en).

<sup>56</sup> CERD, “Concluding observations of the Committee on the Elimination of Racial Discrimination, Japan,” 6 April 2010, CERD/C/JPN/CO/3-6,

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fJPN%2fCO%2f3-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fJPN%2fCO%2f3-6&Lang=en).

<sup>57</sup> United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 Oct. 2007, arts. 26, 19, 30, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>58</sup> Ryukyu Shimpō, “<Shasetsu> Karetsu na henoko keibi shimin no inochi kiken ni sarasu na,” 23 Nov. 2015, <http://ryukyushimpō.jp/editorial/entry-176412.html>; Jon Mitchell, “Injuries to Okinawa anti-base protesters ‘laughable,’ says U.S. military spokesman,” *The Japan Times*, 9 Feb. 2015, <http://www.japantimes.co.jp/community/2015/02/09/issues/injuries-okinawa-anti-base-protesters-laughable-says-u-s-military-spokesman>; “<Takae heri paddo> Kidō tai kyō kara 100 nin chō tōnyū sharyō tekkyō mo shiya,” *Okinawa Times*, 19 July 2016, <http://www.okinawatimes.co.jp/articles/-/54490>; Cf. HRC, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” 4 Feb. 2016, paras. 18, 31, 57, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66\\_E.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx).

<sup>59</sup> Takashi Abe, “Okinawa. Takae de no kisha kōsoku mondai o kangaeru 'dojin' bōgen mo tobidasu zōo no genba,” *Okinawa Times*, 12 Nov. 2016, <http://www.okinawatimes.co.jp/articles/-/70787>; Motohiko Kimura, “Okinawa. Takae no genba ni i ta kameraman wa, aru hi totsuzen taiho sare ta. Neraware ta hōdō no yakuwari,” *Huffington Post*, 26 Dec. 2016, [http://www.huffingtonpost.jp/2016/12/23/takae-rody-shimazaki\\_n\\_13809760.html](http://www.huffingtonpost.jp/2016/12/23/takae-rody-shimazaki_n_13809760.html).

<sup>60</sup> “Anti-base Okinawa activist released after five months in detention,” *The Japan Times*, 19 Mar. 2017, <http://www.japantimes.co.jp/news/2017/03/19/national/crime-legal/anti-base-okinawa-activist-released-five-months-detention/#.WNIG5FXyiDI>; Lawrence Repeta, “The silencing of an anti-US base protester in Okinawa,” *The Japan Times*, 4 Jan. 2017, <http://www.japantimes.co.jp/opinion/2017/01/04/commentary/japan-commentary/silencing-anti-u-s-base-protester-okinawa/#.WNliuKKZFPY>.

<sup>61</sup> *Id.*

purpose is to weaken the protest movement and continue interrogations about the protests, inconsistent with ICCPR Article 9 prohibiting arbitrary arrests and unreasonably long pretrial detentions.

## 5 Recommendations

- Respect Okinawans' indigenous rights and cease construction which does not follow the principle of FPIC;
- Cease arbitrary detentions of Okinawan protesters;
- Allow protesters to assemble and journalists to report on the Okinawa situation without unjustified interference.

## VII. Criminal Justice System

### 1 Capital Punishment

Despite recommendations to ratify the ICCPR's second optional protocol, the Japanese government refuses to abolish the death penalty and to introduce a moratorium on executions. It has only expanded it.<sup>62</sup> Since 2007, Japan has had over 100 death-row inmates and over 129 in 2016.<sup>63</sup>

### 2 Criminal Justice Procedure

#### 2.1 Pretrial detention and interrogation

In Japan, pretrial detention can last up to 23 days in *daiyou kangoku*, where suspects are obliged to face interrogations up to 8 hours per day.<sup>64</sup> Judicial control is a mere formality; there is no pretrial bail;<sup>65</sup> attorneys are not permitted in custodial interrogations; and videotaping of custodial interrogation is limited.<sup>66</sup> This raises the risks of police abuse and coercive self-incrimination. The government consistently fails to implement reforms to meet ICCPR Articles 9 and 14.<sup>67</sup>

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<sup>62</sup> Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, Jan. 2017, [https://www.upr-info.org/sites/default/files/document/japan/session\\_14\\_-\\_october\\_2012/japan\\_mid-term\\_2nd\\_cycle\\_2017.pdf](https://www.upr-info.org/sites/default/files/document/japan/session_14_-_october_2012/japan_mid-term_2nd_cycle_2017.pdf).

<sup>63</sup> "Japan's Death-Row Population Numbers 129 as 2016 Ends," *The Japan Times*, 30 Dec. 2016, <http://www.japantimes.co.jp/news/2016/12/30/national/crime-legal/japans-death-row-population-numbers-129-2016-ends/#.WNlgu4VOJm9>.

<sup>64</sup> Human Rights Now, Written Submission Provided for the Summary of the Human Rights Situation in Japan, Office of the United Nations High Commissioner for Human Rights (Feb. 7, 2008) [*hereinafter* "HRN 2008 UPR Report"], [https://www.upr-info.org/sites/default/files/document/japan/session\\_2\\_-\\_may\\_2008/hrnjpnuprs22008humanrightsnowasianlegalresourcecenteruprsubmissionjoint.pdf](https://www.upr-info.org/sites/default/files/document/japan/session_2_-_may_2008/hrnjpnuprs22008humanrightsnowasianlegalresourcecenteruprsubmissionjoint.pdf);

Human Rights Committee, Concluding observations on the fifth periodic report submitted by Japan CCPR/C/JPN/CO/5, 2008

<sup>65</sup> HRN 2008 UPR Report, *id.*, at 2-3.

<sup>66</sup> *Id.*

<sup>67</sup> *See id.* at 2.

## 2.2 Fair Trial

The conviction rate is more than 99%, and it is based primarily on confession, which raises doubts about the “presumption of innocence”.<sup>68</sup> Defense rights to examine evidence have been significantly limited due to inadequate discovery rules.

## 2.3 Wrongful Convictions

Because of these structural problems of Japanese criminal justice, Japan has experienced significant numbers of wrongful convictions, including the Ashikaga, Fukawa and Govinda cases.<sup>69</sup> In March 2014, the Shizuoka District Court reopened the “Hakamada Case,” finding the defendant not guilty due to a forced confession and releasing him from death row after almost 48 years.<sup>70</sup> Despite this series of miscarriages of justice, the Japanese government has still failed to properly address the root causes of wrongful convictions.

## 2.4 Recent Reforms

In May 2016 the legislature permitted videotaping of custodial interrogations, wider disclosure of evidence, wiretapping, and plea bargaining.<sup>71</sup> However, only 3% of cases fall under the videotaping requirement, with exceptions even for those cases. The 2016 criminal justice reforms do not sufficiently address core issues. There are no substantive changes on pretrial detention and interrogation length or the presence of attorneys at interrogations. Thus, someone interrogated for a minor charges, which does not require videotaping, may be coerced to confess a major crime.<sup>72</sup>

Although the discovery law was revised in 2016,<sup>73</sup> prosecutors are not required to turn in exculpatory evidence to the defense counsel. There is also no discovery rule for convicted persons in the retrial procedure, even for death penalty cases. Moreover, expanded wiretapping under the 2016 revision threatens the right to privacy.

## 3 Recommendations

- Ensure that custodial interrogations, without exception, be videotaped;
- Ensure that a defendant’s lawyer may be present at interrogations;
- Require prosecutors to disclose all evidence;

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<sup>68</sup> HRN 2008 UPR Report, *above* note 64, at 3.

<sup>69</sup> <http://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1141&context=uclr>

<sup>70</sup> Justin McCurry, “Japanese Man Freed After 45 Years on Death Row as Court Orders Retrial,” *The Guardian*, 27 March, 2014, <https://www.theguardian.com/world/2014/mar/27/japanese-man-freed-death-row-retrial>.

<sup>71</sup> *Id.*

<sup>72</sup> *See, e.g.*, “Prosecutors File Charges Against Ex-CEO of Mt. Gox Bitcoin Exchange,” *The Japan Times*, 12 Sep. 2015, <http://www.japantimes.co.jp/news/2015/09/12/national/crime-legal/prosecutors-file-charges-ex-ceo-mt-gox-bitcoin-exchange/#.WMAdQP195m8> (Mark Karpeles, founder of Mt. Gox bitcoin exchange, was re-arrested repeatedly so that the Japanese police could extract a confession for a greater crime the suspected he committed (fraud or embezzlement. His initial charge of “improper use of electronic funds” did not fall under the recording requirement.).

<sup>73</sup> *See* “Problematic Criminal Justice Reforms,” *The Japan Times*, 1 June 2016, <http://www.japantimes.co.jp/opinion/2016/06/01/editorials/problematic-criminal-justice-reforms/#.WNlmlf195m8>.

- Introduce a moratorium on executions and encourage national debate on the death penalty.<sup>74</sup>

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<sup>74</sup> Philip Brator, "Waiting for the Death-Penalty Debate that Never Comes," *The Japan Times*, 22 March 2014, <http://www.japantimes.co.jp/news/2014/03/22/national/media-national/waiting-for-the-death-penalty-debate-that-never-comes/#.WMD0NPI95m8>.