



# Human Rights Now

## **Human Rights Now Stakeholder Submission for Japan's Universal Periodic Review (Fourth Cycle)**

14 July 2022

**About Human Rights Now:** Human Rights Now (HRN) is a Tokyo-based international human rights NGO founded in 2006 as the first international human rights NGO based in Japan and obtaining UN consultative status in 2012. Human Rights Now works for the promotion and protection of human rights for people in the world, with a special focus on Asia. Our activities include researching and writing reports and statements, participating in UN and other international forums, conducting human rights advocacy, and providing empowerment training and education programs and seminars. Our members comprise over 700 individuals and organizations, including lawyers, scholars, journalists, law firms, former UN officials, retired Japanese Supreme Court Justices, and activists.

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## **I. Introduction**

1. While the government of Japan accepted 145 recommendations (out of 217 recommendations under 52 themes)<sup>1</sup> from its third UPR cycle, it has not followed up on them in a midterm report.<sup>2</sup>
2. Further, the government has failed to sufficiently implement or address the recommendations, including on women's rights, hate speech, and indefinite immigration detention.
3. Human Rights Now (HRN) highlights the following areas of concern regarding the human rights situation in Japan.

## **II. Gender Based Discrimination and Violence**

### Overview

4. The government has failed to fully comply with prior UPR recommendations to prevent violence against women and girls.<sup>3</sup> Over 95% of sexual violence incidents in Japan are not reported to police and only 0.7% of sexual violence victims surveyed report that their attackers faced criminal punishment.<sup>4</sup> Amid the COVID-19 pandemic, domestic violence has hit record-high levels despite laws against spousal violence.<sup>5</sup>

### Right to Keep Surname after Marriage

5. Married couples are legally required to use the same surname, and the Supreme Court recently upheld the rule's constitutionality.<sup>6</sup> However, this contravenes established international human rights jurisprudence that a person's chosen name is an important element of the right to privacy.<sup>7</sup> Despite this and the shift of public opinion against it, the government has failed to end the rule.<sup>8</sup>

### Abortion Law

6. While abortions are legal under certain conditions in Japan, outside a few exceptions, they require the consent of the husband, creating an unjustified burden on women inconsistent with sexual and reproductive rights and the right to bodily autonomy which includes, as reiterated in the 2021 Nairobi Summit on ICPD25 Follow-up Report, women's right to make their own choices regarding abortion services.<sup>9</sup>

### Violence Against Women

7. One out of 13 Japanese women report being forced to engage in sexual intercourse.<sup>10</sup> The legislative developments since Japan's last UPR cycle (including sexual assault against males in the definition of "forced sexual intercourse" and raising the minimum penalty to five years' imprisonment in 2017)<sup>11</sup> were greatly insufficient to address sexual violence in Japan and the government's failure to meet international standards for prevention through legislation.<sup>12</sup> In 2019, for example, there were four shocking acquittals for sex crimes due to the woman victim not

resisting (due to intoxication, incest, etc.) despite lack of consent being proven.<sup>13</sup> The current law retains the requirements of “violence or threat” and “inability to resist” that exclude assault cases involving nonresistance. Also, the age of consent is 13, which the CRC Committee described as “very low” and recommended states to review for reform.<sup>14</sup> The definition of forced sexual intercourse also excludes sexual violence among some sexual minorities, due to its requirement of the involvement of male genitalia.<sup>15</sup> Moreover, the law does not explicitly address marital rape nor presume non-consent where the perpetrator exploits a power-relation (such as incest, work superiors, doctors, teachers, etc.).

### Sexual Harassment

8. Among Japanese women, 46% report experiencing some form of online harassment and 32% of women report specifically experiencing sexual harassment on the internet and social media.<sup>16</sup> In 2019, the Labor Ministry performed 7,323 workplace harassment consultations.<sup>17</sup> Despite voting to pass the ILO Convention on Violence and Harassment, the government has not made the necessary legislative developments, such as explicitly banning sexual harassment, to ratify the Convention.<sup>18</sup> Newly introduced legislation on workplace harassment is non-enforceable and does not cover freelancers or politicians, despite 60% of female municipal councilors having reported facing sexual harassment.<sup>19</sup>

### 9. Recommendations

- Reform the Penal Code amendment to change the legal standard for forcible sexual intercourse, include a broader array of acts of sexual violence in the definition of the crime, including involving status relationships, based on international standards, and raise the age of sexual consent.
- Establish victim-centered redress mechanisms and counseling services for victims of sexual exploitation and other forms of violence against women and girls.
- Ratify the ILO Convention on Violence and Harassment and reform the law to ban sexual harassment.
- Encourage private actors to safely and effectively moderate online platforms against sexual harassment; provide legal remedies for victims.
- Amend the civil law to allow married couples to maintain their surname based on their choice.
- Amend the abortion law to eliminate the requirement of husbands’ consent.

## III. Racial Discrimination

### Overview

10. The government has not followed up on UPR recommendations to adopt new legislation or reform its 2016 Hate Speech Act to address the proliferation of online hate speech.<sup>20</sup> Xenophobic

and racist speech online has been linked to a recent increase in hate crimes against ethnic Koreans in Japan.<sup>21</sup>

### Hate Speech

11. The government has not amended the national 2016 Act to explicitly prohibit hate speech, to address the role of the internet in hate speech, nor to criminalize serious forms of hate speech, even though several municipalities have asked for more guidance on what constitutes hate speech under the Act or passed explicit ordinances of their own.<sup>22</sup> Full enjoyment of protection from hate speech is also undermined by the fact that the government still has not withdrawn its reservation to ICERD Article 4.<sup>23</sup>

### 12. Recommendations

- Amend the 2016 Act or introduce new legislation to address the proliferation of hate speech and define punishments for violations of anti-hate speech laws.

## **IV. Technical Intern Abuse**

### Overview

13. In 1993, the government launched the Technical Intern Training Program (TITP) to offer foreign interns work opportunities and professional development in Japanese companies, but the TITP has instead become a hotbed of human rights abuses. Alleged violations include exploitation of workers, sexual harassment, disappearances, violence and death, confiscation of documents and passports, and forced labor.<sup>24</sup> Migrants often pay up to \$10,000 for job opportunities to the sending agencies in their home countries, and they are required by those agencies to commit to conditions that mandate forfeiture of thousands of dollars if they leave.<sup>25</sup> Many interns are paid less than minimum wage. Interns have been particularly vulnerable to mistreatment and poor working conditions due to the pandemic.<sup>26</sup>

### Trainee Abuse

14. To date, the government has not prosecuted or convicted perpetrators of forced labor and other abuses within TITP despite numerous reports of labor trafficking and other offenses, inconsistent with prior UPR recommendations to rectify labor standards violations.<sup>27</sup> Between 2012 and 2017, 171 trainees died while in the program; as of 2019, 9,052 foreign trainees have disappeared from their workplaces.<sup>28</sup> Inconsistent with UPR recommendations to ensure the right to just and favorable work conditions, the program remains a source of widespread reports of sexual abuse, labor-related deaths, and dangerous working conditions that amount to forced labor.<sup>29</sup>

### Lack of Oversight

15. In 2017, the government enacted the Technical Intern Training Act (TITA) and established the Organization for Technical Intern Training (OTIT) to ameliorate and monitor interns' working conditions. However OTIT, staffed by 350 workers, is not equipped to address the volume of reported labor rights violations, especially as the program continues to grow to as many as 400,000 interns.<sup>30</sup>

#### 16. Recommendations

- Ensure the investigation of companies to identify the human rights abuse risks for technical interns whom they employ directly or their supply chain companies employ, and address any risks found.
- Fundamentally review the technical interns system and introduce a new migrant system in accordance with international standards.

### **V. Immigrant Detention and Refugee Rights**

#### Overview

17. Following the death of Sri Lankan Wishma Sandamali at an immigrant detention center in 2021, the government failed to ensure accountability and conducted insufficient investigation. The Immigration Services Agency (ISA) continues to deny detained immigrants medical care and to arbitrarily and indefinitely detain immigrants. The government also promoted amendments to the Immigration Control Act subjecting refugee applicants to possible deportation. Although rejected in 2021, the government has not abandoned possible resubmission.

#### Deaths at Detention Facilities

18. Since 1997, at least 24 foreign nationals have died in immigration detention.<sup>31</sup> Similar to other cases, Ms. Sandamali complained of illness weeks before her death but was not given appropriate medical care.<sup>32</sup> A majority of Japan's immigration detention centers still do not have a full-time physician on site.<sup>33</sup>

#### Arbitrary Detentions

19. Despite a September 2020 opinion from the Working Group on Arbitrary Detention that the policy of indefinite detention violated the UDHR and ICCPR,<sup>34</sup> ISA still sets no clear criteria to detention, no limit on the length of detention by the deportation order, and no effective legal review for the detention. At least five detained immigrants have committed suicide, often after years of indefinite detention.<sup>35</sup> In 2019, 198 immigrants went on hunger strike to protest their indefinite detention and poor conditions, at least one of whom died of starvation.<sup>36</sup>

20. ISA may detain immigrants without visas on the belief that they will abscond, without providing any evidence supporting that belief.<sup>37</sup> The ISA, which also oversees visa issuances,

detains even individuals who meet the criteria for a visa, such as immigrants married to Japanese citizens.<sup>38</sup>

### Refugee Rights

21. ISA granted refugee status to just 74 people out of 2,413 applicants in 2021 (3%), and only 1.4% in 2020, an extremely low refugee recognition rate.<sup>39</sup> Since March 2022, Japan has accepted Ukrainians only as “evacuees,” a temporary status that carries fewer rights than refugee status.<sup>40</sup> Breaking from the international norm, ISA maintains that those fleeing the war in Ukraine do not meet the criteria for refugee status.<sup>41</sup> Moreover, such treatment is strictly limited to people from Ukraine; people fleeing serious threats in Myanmar, Hong Kong, Afghanistan, and other states are denied refugee, evacuee, or any other status.

### 22. Recommendations

- Immediately accept the request for a Country Visit by The UN Working Group on Arbitrary Detention and cooperate with the WG.
- Limit immigrant detentions to only cases where detention is necessary as a last resort to a legitimate purpose such as preventing escape, with sufficient evidence of a flight or other risk, and immediately release all detainees detained unnecessarily.
- Reduce detentions to a maximum reasonable period such as 6 months, in line with international standards.
- Maintain full-time medical staff at all facilities, and provide detainees access to medical care.
- Reform the entire refugee system in accordance with international standards and adhere to the non-refoulement principle.
- Ensure independent, speedy, and effective judicial review of detention decisions.

## VI. Children’s Rights

### Child Pornography

23. Child pornographic material continues to be widely produced and disseminated in Japan. A 2016 HRN investigation revealed the narrow definition of child pornography allows sexual exploitation of minors, and gaps in enforcement also perpetuate the wide availability of child pornography.<sup>42</sup>

### Discriminatory School Rules

24. Many schools require students with hair that is not naturally black and straight to submit documentation corroborating their natural hair color and texture.<sup>43</sup> Last year, an Osaka court held that high schools could force students to dye their hair black if suspected of lying about their natural hair color.<sup>44</sup> Such policies discriminate students of mixed or non-Japanese descent.

## 25. Recommendations

- Broaden the definition of child pornography and increase efforts to prosecute viewing and possession of it in any form.
- Eliminate all discriminatory school rules.

## VII. Freedom of Expression

### Overview

26. Despite calls to revise the legislative framework on news media to expand media freedoms,<sup>45</sup> the government has recently taken measures to restrict freedom of expression, which have resulted in arbitrary arrests and censorship of anti-government perspectives.

### Arbitrary Arrests

27. Japanese police have arrested both protesters and journalists at protests against the new US military base on Okinawa<sup>46</sup> and against the Tokyo Olympics.<sup>47</sup>

### Press Freedom

28. The government has not significantly amended the 2013 Act on the Protection of Specially Designated Secrets, which imposes significant penalties on anyone, including whistleblowers and journalists, who leaks a government secret.<sup>48</sup> While an independent Cabinet Office-based inspectorate and oversight boards in the Diet have nominal oversight powers, in practice the oversight boards rarely review classified documents to confirm the validity of the secret designation.<sup>49</sup> As a result, the Act creates opportunities for officials to hide government activities from legitimate public scrutiny, and restricts press freedom to investigate government actions.<sup>50</sup>

29. The government has not addressed the Special Rapporteur on Freedom of Expression's concerns about the intimidation of journalists who challenge government actions. The Ministry of Internal Affairs and Communications retains its authority under Article 4 of the Broadcast Act to revoke broadcast licenses for reporting it deems not "politically fair," creating a significant incentive for journalists to self-censor.<sup>51</sup>

30. The government has also used the Passport Act to prevent Japanese war correspondents from traveling overseas.<sup>52</sup> These passport denials seriously violate the journalists' freedom of travel and freedom to report on international conflicts. As a collateral result, the government's violation of these journalists' freedom to travel effectively limits Japanese peoples' access to information about ongoing international conflicts.

## 31. Recommendations

- Implement the Special Rapporteur's recommendation to revise Article 4 of the Broadcast Act and implement an independent broadcasting regulator.

- Revise the Government Secrets Act to establish clear and unambiguous parameters for what constitutes a secret.
- Empower relevant oversight bodies to conduct meaningful review of agency secret designations under the Government Secrets Act.
- Cease arbitrary passport revocations for Japanese journalists.

## **VIII. Fukushima**

32. More than 40,000 people remain displaced due to the Fukushima nuclear disaster and are subsisting without sources of livelihood, compensation, or housing assistance from the government.<sup>53</sup> Affected people continue to be forced to live in unsafe areas, as the government pursues decontamination policies prioritizing speed and cost-effectiveness over the safety of those living in radiation hotspots.<sup>54</sup>

### 33. Recommendations

- Implement the Special Rapporteur on Right to Health's recommendations<sup>55</sup> to ensure rights to health of all affected people, including medical assistance and housing support to allow continued evacuation.
- Conduct environmental impact assessments of decontamination actions to prevent further exposure and protect the environment.
- Accept the request for a Country Visit by the UN Special Rapporteur on IDPs and provide access to investigate the situation of people affected by the Fukushima disaster.

## **IX. SOGI Rights**

34. Japan's government has failed to pass legislation to prohibit discrimination based on sexual orientation and gender identity, despite widespread national support and prior UPR recommendations to do so before the Tokyo 2020 Olympics.<sup>56</sup> It has also failed to legislate same-sex marriages despite the district courts of Sapporo and Osaka declaring non-recognition of equal same-sex marriages unconstitutional.<sup>57</sup> Further, Japan's Gender Identity Disorder Special Cases Act contains discriminatory provisions that require transgender people to undergo invasive and unnecessary medical procedures to have their gender legally recognized.<sup>58</sup>

### 35. Recommendations

- Enact legislation that explicitly prohibits discrimination based on sexual orientation and gender identity.
- Legalize same-sex marriages.
- Ensure the enforcement and protection of laws, such as those regarding sexual or domestic violence, are applied equally to sexual and gender minorities.



- End coerced sterilization of transgender people under the legal gender recognition process; revise the GID Special Cases Act.

## **X. Death Penalty**

36. The government has taken no steps towards eliminating the death penalty; rather, the current Kishida administration executed three people in December 2021. The administration has made no effort to educate the public on international trends and norms for abolition, despite using public support as justification for its policy to maintain the death penalty. A long-standing Ministry of Justice policy notifies inmates of their executions mere hours before they are scheduled to occur, imposing excessive psychological distress on inmates and their families and raising serious due process concerns.

### 37. Recommendations

- Introduce a moratorium and cease all executions.
- Establish a study group for abolishing the death penalty.

## **XI. Business and Human Rights**

38. Despite recent development of a National Action Plan (NAP) for implementing the UN Guiding Principles on Business and Human Rights (UNGPR), Japanese companies still fail to conduct effective human rights due diligence within their supply chains.<sup>59</sup> A survey of major companies by MOFA and METI in 2021 demonstrates the inadequacy of companies' due diligence programs compared to international standards,<sup>60</sup> and the government should follow up with legislation requiring companies to conduct effective due diligence and remediation of violations consistent with international standards. The absence of an NHRI has compounded the problem, and the government has also failed to support companies' due diligence for heightened risk in conflict areas.<sup>61</sup>

### 39. Recommendations:

- Integrate the UNGP into procurement decision-making.
- Create a law requiring government operations and companies to conduct effective human rights due diligence over domestic and global supply chains.
- Establish an NHRI in accordance with the Paris Principles.
- Support companies' due diligence for heightened risk in conflict areas.

## **XII. Right to Education**

40. Despite withdrawing its reservation of ICESCR article 13.2(b), the government has made little effort to introduce free education for higher education. Many students and families suffer

from heavy tuition fees, and significant numbers of youth gave up higher education during the COVID-19 crisis. Moreover, primary and secondary education impose significant fees for materials, uniforms, study trips and lunches, all of which are a heavy burden on families and children in poverty.

#### 41. Recommendations

- Ensure free primary, secondary and higher education.

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<sup>3</sup> Report of the Working Group, Japan Universal Periodic Review Third Cycle, <https://www.ohchr.org/en/hr-bodies/upr/jp-index>.

<sup>4</sup> Megha Wadhwa, Ben Stubbings, "Surviving sexual assault in Japan, then victimized again", 27 Sept. 2017, <https://www.japantimes.co.jp/community/2017/09/27/issues/surviving-sexual-assault-japan-victimized/>; Aya Shiota, "Many sexual violence victims in Japan do not report assaults to police, support groups: survey", Mainichi, 24 Nov. 2020, <https://mainichi.jp/english/articles/20201123/p2a/00m/0na/024000c>.

<sup>5</sup> Japan Times, "Japan sees record number of domestic violence consultations amid pandemic," 3 March 2022, <https://www.japantimes.co.jp/news/2022/03/03/national/crime-legal/domestic-violence-2021/>.

<sup>6</sup> Japan Times, "Japan's top court says forcing couples to share surname is constitutional", 23 June 2021, <https://www.japantimes.co.jp/news/2021/06/23/national/crime-legal/top-court-surname-ruling/>.

<sup>7</sup> Coeriel and Aurik v. Netherlands, United Nations Human Rights Committee, Communication No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (1994); Burghartz v. Switzerland, Eur. Ct Hum. Rts., judgment 22 Feb. 1994, 18 E.H.R.R. 101.

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<sup>11</sup> Kayoko Kitagawa, "Penal Code Amendment Pertaining to Sexual Offenses," 6 February 2018, <https://www.waseda.jp/foiaw/icl/news-en/2018/02/06/6110/>.

<sup>12</sup> UN Handbook for Legislation on Violence Against Women, 2010, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.

<sup>13</sup> Satoko Nakagawa, "More calls for release of court ruling texts amid recent sex crime acquittals", Mainichi, 22 May 2019, <https://mainichi.jp/english/articles/20190522/p2a/00m/0na/015000c>.

<sup>14</sup> Unite for Children & UNICEF, "Legal minimum ages and the realization of adolescents' rights", 6 April 2016, [https://www.comprehensivesexualityeducation.org/wp-content/uploads/20160406\\_UNICEF\\_Edades\\_Minima\\_Engl\\_.pdf](https://www.comprehensivesexualityeducation.org/wp-content/uploads/20160406_UNICEF_Edades_Minima_Engl_.pdf) (citing CRC COBs 2011, para 27 and 28).

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