



**Human Rights Now**

**Submission by Human Rights Now to the UN Human Rights Committee  
in advance of the examination of the State Party report  
for Japan at the 136th Session**

September 2022

**Human Rights Now**

Human Rights Now (“HRN”) is a Tokyo-based international human rights NGO focusing on human rights issues in the Asia region through fact-finding, advocacy, and empowerment work. HRN was founded in 2006 by lawyers, academics, and journalists; has over 700 members; and received special consultative status with the Economic and Social Council in 2012.

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## I. Introduction

### 1. Context of this submission

HRN is making this submission in advance of the Human Rights Committee's (the Committee) examination of Japan's seventh periodic report (CCPR/C/JPN/7) on the measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant), and HRN appreciates the questions and issues which were raised in the List of Issues adopted by the Committee (CCPR/C/JPN/QPR/7).

This submission provides an overview of major concerns HRN has about the Japanese government's compliance with its obligations under the Covenant. It highlights concerns with respect to a number of issues:

- Restrictions on freedoms of press, academic, and artistic expression, as well as assemblies, and
- The government's failure to end, prevent, and prohibit hate speech
- Arbitrary detention in immigration detention facilities and the ill treatment of detainees
- Business and human rights issues, including abuses against technical intern trainees
- Gender based discrimination and violence
- Discrimination based on sexual orientation and gender identity
- Children's rights, including child pornography and discriminatory school rules
- Death penalty and cruel and inhuman treatment in the method of execution
- Rights of people affected by the Fukushima disaster

## II. Restrictions on Press, Academic, and Artistic Expression and Assemblies (Articles 19, 21)

### 2. Background

The Japanese government has recently taken several measures to restrict journalistic, academic and artistic expression, which in practice have suppressed information and opinions critical of the government. Recently passed legislation has the potential to further crack down on freedom of expression and access to information.

### 3. Press freedom

#### a. Secrets Law

The government of Japan continues to enforce 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>1</sup> The law's ambiguous definition of "secret" and the lack of oversight on secret designations create opportunities for officials to hide government activities from legitimate public scrutiny.<sup>2</sup> While an independent Cabinet Office-based inspectorate and

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<sup>1</sup> Mina Pollmann, "Japan's Troubling State Secrets Law Takes Effect", Diplomat, 18 Dec. 2014, <https://thediplomat.com/2014/12/japans-troubling-state-secrets-law-takes-effect/>

<sup>2</sup> Ken Aoshima and Mami Yamada, "Gov't's state secrecy law still vague, rapped 5 years after enactment", Mainichi, 6 Dec. 2018, <https://mainichi.jp/english/articles/20181206/p2a/00m/Ona/017000c>

oversight boards in the Japanese Diet have nominal oversight powers, in practice the oversight boards rarely review classified documents to confirm the validity of the secret designation.<sup>3</sup> Even without active prosecutions, arbitrary application of the Act impedes the right to access information.

b. Restrictions on assemblies and media coverage near military facilities

Amidst significant protests against a new U.S. military base on Okinawa, in 2021, the Japanese government passed a law restricting land use near military bases which effectively criminalizes peaceful protests near military bases and prevents media coverage of such protests without justification.<sup>4</sup>

c. Intimidation of journalists

Japan has not addressed the Special Rapporteur on Freedom of Expression's concerns about the government's threats of travel or access restrictions ("access journalism" tactics) to intimidate and censor journalists who challenge government actions. For example, the government has used the Passport Act, which allows it to revoke the passports of citizens who have been denied entry to another country, to prevent Japanese war correspondents including Jumpei Yasuda from traveling overseas.<sup>5</sup> Such passport denials restrict journalists' freedom to travel and report on international conflicts, destroying their ability to exercise their right to seek, receive, and impart information regardless of frontiers. The government's actions have had a chilling effect on Japanese journalists reporting on politically sensitive international issues such as ongoing conflicts, limiting people's access to important information.

d. Abuse of the Broadcast Act

Broadcast journalism is especially vulnerable to government intimidation and censorship. The Ministry of Internal Affairs and Communications (MIC) has falsely claimed that it can revoke broadcast licenses of broadcasters based on the content of their reporting (e.g., for reporting it deems not "politically balanced") under Article 4 of the Broadcast Act, although this interpretation is unconstitutional and denied by mainstream legal opinion.<sup>6</sup> Nevertheless, the threat of license revocation, even if illegal or *ultra vires*, gives broadcast journalists a significant incentive to self-censor. In 2018, NHK, Japan's public media service, pulled a story critical of how the government sold a publicly-owned insurance company after government officials objected to the story.<sup>7</sup> In 2019,

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<sup>3</sup> Mainichi, "Upper house board overseeing special secrets law reports no progress on verification", 8 June 2017, <https://mainichi.jp/english/articles/20170608/p2a/00m/0na/006000c>

<sup>4</sup> Library of Congress, "Japan: Major Land-Use Regulation Act Enacted", Global Legal Monitor, <https://www.loc.gov/item/global-legal-monitor/2021-09-08/japan-major-land-use-regulation-act-enacted/>

<sup>5</sup> Jiji Press, "Japanese Journalist Yasuda Denied Passport Reissuance", 16 Jul. 2019, <https://www.nippon.com/en/news/yjj2019071601009/japanese-journalist-yasuda-denied-passport-reissuance.html>

<sup>6</sup> David Kaye, "Report of the Special Rapporteur on [freedom of expression] on his mission to Japan", A/HRC/35/22/Add.1, 29 May 2017, [https://hrn.or.jp/wpHN/wp-content/uploads/2017/05/A\\_HRC\\_35\\_22\\_Add.1\\_AUV.pdf](https://hrn.or.jp/wpHN/wp-content/uploads/2017/05/A_HRC_35_22_Add.1_AUV.pdf), "The Broadcast Act (Act No. 132 of 1950) (Unofficial Translation)", [https://www.soumu.go.jp/main\\_sosiki/joho\\_tsusin/eng/Resources/laws/pdf/090204\\_5.pdf](https://www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/pdf/090204_5.pdf)

<sup>7</sup> Akiko Asami, "Growing demand for independence and substantive self-regulation in Japan's public service media", LSE, 2 Feb. 2021, <https://blogs.lse.ac.uk/medialse/2021/02/02/growing-demand-for-independence-and-substantive-self-regulation-in-japans-public-service-media/>

NHK journalists gave interviews where they expressed intense pressure to self-censor in order to avoid publishing news that may trigger retaliatory action from the government.<sup>8</sup> MIC's false claim of authority to revoke broadcast licenses, combined with recent laws and policies restricting journalists' ability to report freely, reveal a worrying trend towards censoring and possibly punishing criticism of the state. The government must amend Article 4 to remove any ambiguity about the government's inability to arbitrarily revoke broadcasting licenses based on content, and it should establish an independent body to regulate and provide oversight over decisions affecting broadcasters.

#### 4. Conspiracy Law

In 2017, the Diet passed a counterterrorism conspiracy law that criminalizes 277 often vague or ambiguously defined acts, such as "planning" and "preparatory acts", some of which, as the Special Rapporteur for Privacy at the time described, "appear totally unrelated with the scope of organized crime and terrorism."<sup>9</sup> For example, the Japanese Federation of Bar Associations noted that in deliberations in the Diet on the law, "it was explained that organized crime groups are not limited to groups which routinely repeat crimes" and that "the Law is applicable to acts regarding preparation even if they are daily activities without any specific danger as compared with preparatory acts under crimes of preparation."<sup>10</sup> The Special Rapporteur for Privacy also expressed his concern that the law will affect the rights to privacy and expression as well as allow the government to arbitrarily target NGOs for their legitimate activities.<sup>11</sup>

#### 5. Restrictions on academic freedom

In 2020, then-Prime Minister Suga made the unprecedented decision to refuse six scientists' appointments to the Science Council of Japan (SCJ). Prime Minister Suga offered no explanation for denying these six candidates out of SCJ's 105 recommended appointments, but the six scientists have all voiced opposition to the government's security and criminal justice policies in the past.<sup>12</sup> Refusing appointments to scientists based on policy objections seriously undermines academics' rights to academic freedom and the right to education, as the decision has significantly deteriorated the government's relationship to SCJ.<sup>13</sup> Rather than rectify this relationship and reaffirm Japan's

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<sup>8</sup> Japan Times, "Japan falls to 71st in world press freedom rankings", 4 May 2022, <https://www.japantimes.co.jp/news/2022/05/04/national/press-freedom-index-japan-fall/>; Tomoyuki Isoyama, "NHK and Japan Post, which one is closer to the 'gangsters'?" (in Japanese), 4 Oct. 2019, <https://president.jp/articles/-/30221>

<sup>9</sup> "Japan passes controversial anti-terror conspiracy law", BBC, 15 June 2017, <https://www.bbc.com/news/world-asia-40283730>; Joseph Cannataci, "Letter of the Special Rapporteur on the right to privacy to the government of Japan", OHCHR, 18 May 2017, [https://hrn.or.jp/eng/wp-content/uploads/2017/06/OL\\_JPN.pdf](https://hrn.or.jp/eng/wp-content/uploads/2017/06/OL_JPN.pdf); HRN, "Japan: UN Special Rapporteur Expresses Concern over the Government's Conspiracy Bill", 1 Jun. 2017, <https://hrn.or.jp/eng/news/2017/06/01/japan-conspiracy-bill/>

<sup>10</sup> JFBA, "Report of JFBA Regarding the Seventh Periodic Report by the Government of Japan", [https://www.nichibenren.or.jp/library/pdf/activity/international/library/human\\_rights/iccr\\_7en.pdf](https://www.nichibenren.or.jp/library/pdf/activity/international/library/human_rights/iccr_7en.pdf), at 13.

<sup>11</sup> Cannataci, supra, note 9.

<sup>12</sup> Tomohiro Ikeda, Mirai Nagira and Ayumu Iwasaki, "PM Suga refuses to appoint 6 scholars to Science Council of Japan in unprecedented move", Mainichi, 2 Oct. 2020, <https://mainichi.jp/english/articles/20201002/p2a/00m/Ona/007000c>

<sup>13</sup> HRN, "The Refusal to Appoint Members of the Science Council of Japan is an Unacceptable Violation of International Human Rights Law", 6 Oct. 2020, <https://hrn.or.jp/eng/news/2020/10/06/statement-scj-appointment-refusals/>

commitment to academic freedom, the current administration of Prime Minister Kishida is upholding the previous administration's decision.<sup>14</sup>

## 6. Restrictions on artistic freedom

In 2019, the Aichi prefectural government shut down an exhibition at the Aichi Triennale containing works critical of Japan's imperial past, including a statue depicting a Korean comfort woman, citing security concerns due to the controversial nature of the works.<sup>15</sup> Takashi Kawamura, the mayor of Nagoya, openly called for the censorship of the exhibition, saying it "tramples on the feelings of Japanese citizens."<sup>16</sup> The Ministry of Education, Culture, Sports, Science and Technology subsequently withdrew its previously-approved subsidy for the Triennale.<sup>17</sup> Later art exhibitions faced similar harassment.<sup>18</sup>

## 7. Recommendations

HRN calls on the government of Japan to:

- Adopt the Special Rapporteur's recommendation to revise Article 4 of the Broadcast Act and implement an independent broadcasting regulator and oversight body.
- Repeal the Government Secrets Law and the Conspiracy Law.
- Stop any pressure on and interfere with acts of journalists, and ensure the freedom of press.
- Immediately appoint the six scientists recommended by the SCJ, and refrain from any interference with the activity and integrity of the SCJ.
- Respect freedom of artistic expression, including controversial art, and take effective measures to protect art from any harassment, threat, or intimidation.

## III. The Government's Failures to Take Sufficient Measures to End, Prevent, and Prohibit Hate Speech (Article 20)

### 8. Hate speech

Xenophobic and racist speech online has been linked to a recent increase in hate crimes against ethnic Koreans in Japan.<sup>19</sup> However, the government has not adopted new legislation or reforms its 2016 Hate Speech Act to address the proliferation of hate speech, particularly online.<sup>20</sup> The

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<sup>14</sup> Keishi Nishimura and Rintaro Sakurai, "Let's talk, Kishida tells science council; but ban stands", Asahi Shinbun , 14 Jan. 2022, <https://www.asahi.com/ajw/articles/14521859>

<sup>15</sup> Tadasu Takahashi, "Freedom of Expression and the 2019 Aichi Triennale", Tokyo Review, 8 May 2020, <https://www.tokyoreview.net/2020/05/aichi-triennale-2019-freedom-expression/>

<sup>16</sup> NHK, "Triennale Political Speech: A Constitutional Scholar's Thoughts" (in Japanese), 4 Sept. 2019, <https://www.nhk.or.jp/politics/articles/statement/22216.html>

<sup>17</sup> Takahashi, supra, note 15.

<sup>18</sup> Asahi Shinbun, "EDITORIAL: Questions yet to be answered about art festival in Hiroshima", 17 Apr. 2020, <https://www.asahi.com/ajw/articles/13305003>

<sup>19</sup> Asahi Shinbun, "Worrying spike in hate crimes against Korean residents in Japan," 11 Jan. 2022, <https://www.asahi.com/ajw/articles/14519025>; HRN, "The Realities of Hate Speech Against Korean Residents In Japan," 4 December 2015, <https://hrn.or.jp/eng/news/2015/12/04/hatespeech-report-koreans/>.

<sup>20</sup> HRN, "Statement Concerning the Effects of COVID-19 on Migrant Workers in Japan," 12 November 2020, <https://hrn.or.jp/eng/news/2020/11/12/statement-covid19-and-migrants/>.

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>21</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>22</sup>

## 9. Recommendations

HRN calls on the government of Japan to:

- Establish a concrete legislative and administrative framework, amending the 2016 Act and/or introducing new legislation, to end and prevent hate speech that prohibits all forms of discrimination and acts of hate speech and provides extensive and appropriate remedies to victims.
- Establish and implement other measures to prevent hate speech including investigations on its prevalence, a concrete national action plan for public education unambiguously rejecting hate speech, and hearings and other engagements with all relevant stakeholders.

## IV. Arbitrary Detention in Immigration Detention Facilities and Ill-Treatment in their Facilities (Articles 2, 7, 9, 10, 14, 26)

### 10. Background

The Immigration Control and Refugee Recognition Act (ICRRA) authorizes the Immigration Bureau to unilaterally issue detention orders for foreign nationals who do not have a valid visa and vests the power to grant provisional release with Immigration Services Agency (ISA) officials.<sup>23</sup> In practice, the ISA's policies subject immigrants to arbitrary and indefinite detentions without a proper court order.<sup>24</sup> Although Japan has made efforts to reduce the number of detained individuals due to the ongoing coronavirus pandemic,<sup>25</sup> the ISA continues to make detention decisions arbitrarily, and it subjects those detained to unlawful punishment including solitary confinement<sup>26</sup> and to denial of medical treatment, resulting in the death of several detained immigrants.<sup>27</sup>

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<sup>21</sup> Japan Times, "Three years after enactment of Japan's hate speech law, politicians call for increased efforts to eradicate discrimination," 31 May 2019, <https://www.japantimes.co.jp/news/2019/05/31/national/three-years-enactment-hate-speech-law-politicians-call-increased-efforts-eradicate-discrimination/>.

<sup>22</sup> ICERD, United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&clang=en#11](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en#11).

<sup>23</sup> "Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951)", rev'd May 12, 2008, ch. 5 § V.54.(2), ch. 5 § II.39.(1)-(2), <https://www.cas.go.jp/jp/seisaku/hourei/data/icrra.pdf>

<sup>24</sup> Eugene Lang, "Sri Lankan's death in Japan exposes disregard for detainee rights", Nikkei Asia, 18 Aug. 2021, <https://asia.nikkei.com/Spotlight/Japan-immigration/Sri-Lankan-s-death-in-Japan-exposes-disregard-for-detainee-rights>

<sup>25</sup> Japan Times, "Concerns linger over Japan's long-term detention of asylum-seekers", 22 Nov. 2021, <https://www.japantimes.co.jp/news/2021/11/22/national/immigration-asylum-japan-coronavirus/>

<sup>26</sup> Asako Kamihigashi, "The violent truth about immigration detention centers in Japan: Part 2 of 2", Mainichi, 21 Feb. 2022, <https://mainichi.jp/english/articles/20220221/p2a/00m/0na/020000c>

<sup>27</sup> Lang, supra, note 24.

## 11. Arbitrary detentions in immigration detention centers

The unilateral authority of the ISA in immigration detention decisions subjects immigrants to arbitrary detention. The UNHRC has expressed that for detentions to not be arbitrary, they must be necessary and reasonable in all circumstances, adding that the mandatory and non-reviewable detention of refugees and asylum seekers would be arbitrary.<sup>28</sup>

Under the ICRR, immigration officials may detain immigrants without valid visas on the belief that they will abscond, without proffering any evidence supporting that belief.<sup>29</sup> The ISA, which also oversees visa issuances, has detained individuals even when they fit the criteria for a certain type of visa, such as immigrants married to Japanese citizens.<sup>30</sup> Although the ISA vowed last year to end its policy of mandatory detention for undocumented immigrants after Sri Lankan Wishma Sandamali died at a detention facility due to a lack of medical care, the National Diet has not passed any legislation to prohibit mandatory detention or otherwise limit the ISA's broad discretion over detention policy.<sup>31</sup>

Despite the growing international consensus that indefinite detention violates immigrants' rights<sup>32</sup> and a September 2020 opinion from the Working Group on Arbitrary Detention that Japan's indefinite detentions of a Turkish and an Iranian asylum seeker violated the UDHR and ICCPR,<sup>33</sup> neither Japanese law nor ISA policy set limits on the length of detention. Many immigrants, including asylum seekers, have been in detention for years without explanation as to why the ISA deems their detention necessary.<sup>34</sup> Under the ICRR, the ISA has the sole authority to grant provisional releases, which have dramatically increased in recent years due to the ongoing coronavirus pandemic.<sup>35</sup> While the ISA frames these releases as a temporary public health measure to prevent the spread of COVID-19, the policy change underscores that the Bureau has less restrictive means of monitoring undocumented immigrants, which can and should be used in lieu of detention wherever possible.

## 12. Lack of due process in immigration decisions

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<sup>28</sup> A v Australia, HRC Case No. 560/1993, para. 9.4.

<sup>29</sup> Ophelia Field, "Alternatives to Detention of Asylum Seekers and Refugees", UN High Commissioner on Refugees, Apr. 2006, at 133, <https://www.refworld.org/pdfid/4472e8b84.pdf>

<sup>30</sup> Asako Kamihigashi, "The violent truth about immigration detention centers in Japan: Part 1 of 2", Mainichi, 15 Feb. 2022, <https://mainichi.jp/english/articles/20220215/p2a/00m/Ona/034000c>

<sup>31</sup> Shinichi Kawarada, "Immigration chief vows to stop detaining all visa overstayers", Asahi Shimbun, 16 June 2021, <https://www.asahi.com/ajw/articles/14374124>

<sup>32</sup> General Comment No.35 on Article 9, Liberty and security of person, UN Human Rights Committee, 31 Oct. 2014, ¶ 18; "On common standards and procedures in Member States for returning illegally staying third-country nationals", EU Directive 2008/115/EC, 16 Dec. 2008 ("EU deportation order"), Article 15(1); the UK case *Hardial Singh v. Governor of Durham Prison*, [1983] EWHC 1 (QB) ("Hardial Singh Principle"), the US Supreme Court case *Zadvydas v. Davis* (2001); the South Korea Supreme Court case ruling on 26 Oct. 2001.

<sup>33</sup> "Opinion No. 58/2020 concerning Deniz Yengin and Heydar Safari Diman (Japan)", Working Group on Arbitrary Detention, 28 Aug. 2020, [https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A\\_HRC\\_WGAD\\_2020\\_58\\_Advance\\_Edited\\_Version.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_58_Advance_Edited_Version.pdf)

<sup>34</sup> E.g., Kamihigashi, *supra*, note 30; Rodrigue Maillard-Belmonte, "Opening the 'Black Box' of Japan's immigration system", 22 May 2022, <https://www3.nhk.or.jp/nhkworld/en/news/backstories/1995/>

<sup>35</sup> Nishinippon Shimbun, "Foreign detainees let go temporarily amid pandemic have nowhere to go", 25 Dec. 2020, <https://www.japantimes.co.jp/news/2020/12/25/national/social-issues/foreign-detainees-pandemic/>



ICRRA does not require judicial review or approval for immigrant detention. Although ICRRA nominally allows immigrants to appeal the ISA's decisions to detain them, judicial review is limited to whether the agency abused its discretion.<sup>36</sup>

The waiting time inherent in the judicial process also deprives immigrants of meaningful independent review of their detention, and creates opportunities for the ISA to avoid judicial oversight. The ISA previously deported two Sri Lankan men one day after informing them that their applications for refugee status were rejected, conduct that a Tokyo High Court held violated the Sri Lankans' right to a fair trial.<sup>37</sup> Even when a court rules in a refugee status applicant's favor, the ISA has on at least one occasion reaffirmed its rejection of the application and kept the applicant in detention.<sup>38</sup> The ISA's conduct in these cases illustrate the inefficacy of judicial review as a means of relief for detained immigrants, and highlight the arbitrariness and illegality of the ISA's detention policies.

### 13. Poor conditions at detention facilities

Multiple immigrants have died in Japan's detention facilities after immigration officials denied their repeated requests for medical care.<sup>39</sup> At least five others have taken their own lives, usually following years of indefinite detention.<sup>40</sup> Recent data suggests that immigration officials are increasingly subjecting detained immigrants to physical force and solitary confinement, often for periods of a month or longer.<sup>41</sup>

In 2021, the ISA acknowledged wrongdoing in the death of Wishma Sandamali, and has pledged to take efforts to prevent the denial of medical treatment to detained immigrants going forward.<sup>42</sup> However, as of the time of this submission, a majority of detention facilities still do not have a full-time doctor on-site.<sup>43</sup>

### 14. Insufficient protection of refugees and troubling legal proposals

Under the ICRRA, the ISA retains broad discretion in setting and enforcing immigration policy. Although the ISA is considering establishing a "subsidiary protection" status to provide legal residency to individuals who do not qualify for refugee status under Japanese law but are escaping war—keeping in mind Japan's unjustifiably narrow interpretation of the criteria for refugee status—this protection is substantially less than international standards for humane refugee protection.

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<sup>36</sup> Rodrigue Maillard-Belmonte, *supra*, note 34.

<sup>37</sup> Jun Ida, "Frustration grows over deaths, ill treatment at Japan's immigration detention centers", *Mainichi*, 19 Jan. 2022, <https://mainichi.jp/english/articles/20220118/p2a/00m/0na/009000c>

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Kamihigashi, *supra*, note 30.

<sup>41</sup> *Id.*

<sup>42</sup> Kyodo News, "Japan immigration admits to mistreatment of Sri Lankan before death", 10 Aug. 2021, <https://english.kyodonews.net/news/2021/08/df059d28a7fd-probe-finds-immigration-center-mistreated-sri-lankan-before-her-death.html>

<sup>43</sup> Masakatsu Yamamoto, "Experts call for better treatment of full-time doctors at immigration facilities in Japan", *Mainichi*, 1 Mar. 2022s, <https://mainichi.jp/english/articles/20220301/p2a/00m/0na/004000c>



Furthermore, the Agency also supports legislative changes that would grant the ISA more power to deport immigrants, even those fearing persecution in their home countries, which may constitute a serious violation of the duty of non-refoulement if passed.<sup>44</sup> The majority party, the Liberal Democratic Party, withdrew a proposal for such legislation in 2021 following widespread public opposition.<sup>45</sup>

The opposition parties have proposed legislation to set up an independent expert committee to evaluate refugee applications, require an individual assessment in order to detain an immigrant, and limit the detention period to six months.<sup>46</sup> Despite efforts to reform Japan's immigration system, the ICRR has not been amended since 2008.<sup>47</sup>

## 15. Recommendations

HRN calls on the government of Japan to:

- Amend the ICRR to require an individual assessment to detain immigrants, available only upon a showing that the individual immigrant poses a *bona fide* flight risk.
- Limit the term of detentions and require a periodic review for the continuation of detentions by an independent oversight body.
- Create a prompt and independent judicial review system of substantive requirements for detained persons.
- Amend the ICRR to grant an independent body jurisdiction over asylum and refugee applications, whose focus is on the protection of applicants, separate from the ISA, which focuses on border control.

## V. Business and Human Rights Issues (Articles 2, 7, 8, 26)

### 16. Human rights abuses against technical intern trainees

In 1993, the Japanese government launched the Technical Intern Training Program (TITP) to offer foreign interns work opportunities and professional development in Japanese companies. However, migrant workers entering Japan under the program have suffered labor and human rights abuses which the government of Japan has failed to sufficiently address, and it must do more to ensure appropriate oversight of the program and to prevent and remedy human rights abuses.

### 17. Abuses under the TITP

Alleged violations under TITP include exploitation of workers, sexual harassment, disappearances, violence and death, confiscation of documents and passports, and forced labor.<sup>48</sup> Migrants often pay

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<sup>44</sup> Maillard-Belmonte, *supra*, note 34. Critics have noted that individuals fleeing conflict are already recognized as refugees in several other countries. *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> "Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951)", *supra*, note 23.

<sup>48</sup> Committee, "Concluding observations on the sixth periodic report of Japan", CCPR/C/JPN/CO/6, 20 Aug. 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/142/49/PDF/G1414249.pdf>; HRN, "Japanese Trading Companies: Measures for Human Rights Lag Far Behind International Standards", 12 Mar. 2020, <https://hrn.or.jp/eng/news/2020/03/12/report-on-japanese-trading-companies/>; US State Dept, "2021 Trafficking in Persons Report", <https://www.state.gov/reports/2021-trafficking-in-persons-report/>

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>49</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>50</sup>

#### 18. Insufficiency of government response

To date, the Japanese government has not prosecuted or convicted perpetrators of forced labor and other abuses within TITP despite numerous reports of labor trafficking and other offenses, despite repeated Committee recommendations to rectify labor standards violations.<sup>51</sup> Between 2012 and 2017, 171 trainees have died while in the program; as of 2019, 9,052 foreign trainees have disappeared from their workplaces.<sup>52</sup> Inconsistent with previous Committee 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>53</sup>

In 2017, the Japanese 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>54</sup>

#### 19. Failure to implement due diligence requirements

Despite recent development of a National Action Plan (NAP) for implementing the UN Guiding Principles on Business and Human Rights (UNGPR), the government has not established measures requiring Japanese companies to conduct effective human rights due diligence within their supply chains, and companies widely continue to fail to conduct sufficient due diligence absent any requirement.<sup>55</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>56</sup> 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

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<sup>49</sup> Kamata Satoshi, "Japan's Internship Training Program for Foreign Workers: Education or Exploitation?", Asia Pacific Journal, 2 Jul. 2008, <https://apjif.org/-Kamata-Satoshi/2820/article.html>

<sup>50</sup> HRN, "A Call for Human Rights Guarantees in Measures to Prevent the Spread of Novel Coronavirus Infections", 24 Apr. 2020, <https://hrn.or.jp/eng/news/2020/04/24/coronavirus-statement/>

<sup>51</sup> Concluding Observations, CCPR/C/JPN/CO/6, supra, note 48.

<sup>52</sup> <https://www.japantimes.co.jp/news/2019/03/29/national/probe-reveals-759-cases-suspected-abuse-foreign-trainees-japan-171-deaths/>; <https://hrn.or.jp/eng/news/2018/09/20/hrc39-tech-intern-japan-oral-statement/>

<sup>53</sup> Concluding Observations, CCPR/C/JPN/CO/6, supra, note 48.

<sup>54</sup> Ministry of Justice, "Technical Intern Training Program", <https://www.otit.go.jp/files/user/210316-5.pdf>

<sup>55</sup> HRN, "Japanese Trading Companies: Measures for Human Rights Lag Far Behind International Standards," 12 March 2020, <https://hrn.or.jp/eng/news/2020/03/12/report-on-japanese-trading-companies/>.

<sup>56</sup> MOFA, "Business and Human Rights", [https://www.mofa.go.jp/fp/hr\\_ha/page23e\\_000551.html](https://www.mofa.go.jp/fp/hr_ha/page23e_000551.html).

NHRI has compounded the problem, and the government has also failed to support companies' due diligence for heightened risk in conflict areas.<sup>57</sup>

## 20. Recommendations

HRN recommends that the Japanese government should:

- Fundamentally review the technical intern system, and establish a mechanism for preventing, mitigating, and remedying human rights violations of technical interns, in accordance with international standards.
- Ensure the investigation of companies to identify the human rights abuse risks for technical interns who they employ directly or who their supply chain companies employ, and address any risks found.
- 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.

## VI. Gender Based Discrimination and Violence (Articles 7, 17)

### 21. Background

The government has failed to take sufficient measures to prevent violence against women and girls. 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>58</sup> Amid the COVID-19 pandemic, domestic violence has hit record-high levels despite laws against spousal violence.<sup>59</sup>

### 22. Right to keep surname after marriage

Married couples are legally required to use the same surname, and the Supreme Court recently upheld the rule's constitutionality.<sup>60</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>61</sup>

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<sup>57</sup> UN Guiding Principles on Business and Human Rights (UNGPR), Principle 7,

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>58</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/Ona/024000c>.

<sup>59</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>60</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>61</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.

Despite this and the shift of public opinion against it, the government has failed to end the rule.<sup>62</sup> Abortion law

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>63</sup>

### 23. Violence against women

One out of 13 Japanese women report being forced to engage in sexual intercourse.<sup>64</sup> The legislative developments since Japan's last reporting 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>65</sup> were greatly insufficient to address sexual violence in Japan and the government's failure to meet international standards for prevention through legislation.<sup>66</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>67</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>68</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>69</sup> Moreover, the law does not explicitly address marital rape nor

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<sup>62</sup> Nanae Ito, Ko Sato, "Majority of under 40s in Japan support selective surnames for married couples: survey", Mainichi, 24 Feb. 2022, <https://mainichi.jp/english/articles/20220224/p2a/00m/0na/032000c>.

<sup>63</sup> Michelle Ye Hee Lee, Julia Mio Inuma, "In Japan, abortion is legal — but most women need their husband's consent", Washington Post, 14 June 2022, <https://www.washingtonpost.com/world/2022/06/14/japan-abortion-pill-women-reproductive-rights/>; "No Exceptions, No Exclusions: 2021 Report of the High-Level Commission on the Nairobi Summit on ICPD25 Follow-up", [https://www.nairobisummiticpd.org/sites/default/files/NairobiHLC-ENGLISH\\_0.pdf](https://www.nairobisummiticpd.org/sites/default/files/NairobiHLC-ENGLISH_0.pdf), pp. 18-19.

<sup>64</sup> Mariko Tamura, "'Flower Demo' fighting sexual violence in Japan," Kyodo News, 5 March 2020, <https://english.kyodonews.net/news/2020/03/de1a32818b0e-feature-flower-demo-fighting-sexual-violence-in-japan.html>.

<sup>65</sup> Kayoko Kitagawa, "Penal Code Amendment Pertaining to Sexual Offenses," 6 February 2018, <https://www.waseda.jp/folaw/icl/news-en/2018/02/06/6110/>.

<sup>66</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>67</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>68</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\\_Eng1\\_.pdf](https://www.comprehensivesexualityeducation.org/wp-content/uploads/20160406_UNICEF_Edades_Minima_Eng1_.pdf) (citing CRC COBs 2011, para 27 and 28).

<sup>69</sup> Miyuki Fujisawa, "Some rape victims not covered by Japanese law that disregards gender diversity," Mainichi, 3 April 2021, <https://mainichi.jp/english/articles/20210402/p2a/00m/0na/041000c>.

presume non-consent where the perpetrator exploits a power-relation (such as incest, work superiors, doctors, teachers, etc.).

#### 24. Sexual harassment

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>70</sup> In 2019, the Labor Ministry performed 7,323 workplace harassment consultations.<sup>71</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>72</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>73</sup>

#### 25. Recommendations

HRN recommends that the Japanese government should:

- 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.

### **VII. Discrimination Based on Sexual Orientation, Gender Identity (SOGI) and Expression (ARTICLES 2, 7, 17, 23 AND 26)**

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<sup>70</sup> Norton Research, "The actual situation of online harassment for Japanese women is revealed. One in three Japanese women encounters sexual harassment damage online.", <https://www.atpress.ne.jp/news/144195> (survey of women's experiences with online harassment; in Japanese language).

<sup>71</sup> Ministry of Health, Labour, Welfare, "Basic information on harassment: Harassment seen in data" <https://www.no-harassment.mhlw.go.jp/foundation/statistics/> (harassment statistics, in Japanese language).

<sup>72</sup> Yu Yoshitake, Takehiko Sawaji, Koichi Murakami, "Japan has work cut out after it OKs ILO pact on work harassment," Asahi, 22 June 2019, <https://www.asahi.com/ajw/articles/13063035>; "Joint NGO report to CEDAW on multiple forms of discrimination," 7 February 2020, <https://imadr.org/cedaw-loipr-japan-report-2020/>.

<sup>73</sup> Emma Dalton, "The Overlooked Issue of Sexual Harassment in Japanese Politics," Tokyo Review, 8 October 2021, <https://www.tokyoreview.net/2021/10/the-overlooked-issue-of-sexual-harassment-in-japanese-politics/>.

## 26. The failure to prohibit SOGI-discriminatory practices

Japan's government has failed to pass legislation prohibiting discrimination based on sexual orientation and gender identity, despite widespread national support and UN recommendations to do so before the Tokyo 2020 Olympics.<sup>74</sup> The government has failed to even prevent or censure its own officials from using homophobic and transphobic discourse against LGBT individuals. Several MPs of the ruling party have publicly discriminated against LGBT persons.<sup>75</sup> For example during a debate in 2021 on a bill to protect LGBT rights, one lawmaker described LGBT people as "morally unacceptable," while MP Kazuo Yana argued that sexual minorities are "resisting the preservation of the species that occurs naturally in biological terms."<sup>76</sup> Instead of punishing such behaviour, the Kishida administration appointed one such MP, Mio Sugita, as vice minister for Internal Affairs and Communications.<sup>77</sup>

## 27. Harms caused by SOGI discrimination

According to the Ministry of Health, Labor, and Welfare, widespread prejudice against LGBT individuals and other social factors of intolerance cause a high percentage of sexual minorities to contemplate suicide.<sup>78</sup> Without national legislation to explicitly prohibit discrimination on the basis of sexual orientation or gender identity, government action to protect sexual minorities from violence, hate speech, unfair treatment, or workplace and school harassment, is significantly limited. These legislative gaps and lack of political will further enable widespread discrimination and stigma against LGBT people.

## 28. The lack of recognition of Same Sex Unions

The government 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 under the guarantees of equality and freedom of marriage found in Article 24.<sup>79</sup> The decisions called on the Diet to pass legislation remedying the inequality; however, the government has continued to fail to pass such legislation.

In justifying its delay in recognizing same-sex marriages, the government stated in its reply to the Committee that "[t]he question of whether or not same-sex marriage or systems equivalent to that should be introduced is an issue related to the nature of families in Japan. Therefore, careful

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<sup>74</sup> Isabel Reynolds, "Promised LGBT bill to fall by wayside a month before Japan's 'diversity' Olympics", Bloomberg, 16 Jun. 2021, <https://www.japantimes.co.jp/news/2021/06/16/national/lgbt-japan-olympics-ldp-discrimination/>

<sup>75</sup> Justin McCurry, "Japanese MP calls LGBT community 'unproductive' ", Guardian, 3 Aug. 2018, <https://www.theguardian.com/world/2018/aug/03/japanese-mp-mio-sugita-calls-lgbt-community-unproductive>.

<sup>76</sup> Justin McCurry, "Japan's ruling party accused of violating Olympic charter over LGBT rights, Guardian, 24 May 2021, <https://www.theguardian.com/world/2021/may/24/japan-ruling-party-accused-of-violating-olympic-charter-over-lgbt-rights>

<sup>77</sup> Maki Nakajima, Yukako Ono, "History of sexist, anti-LGBTQ remarks by Japanese vice-minister Mio Sugita", Mainichi, 24 Aug. 2022, <https://mainichi.jp/english/articles/20220823/p2a/00m/0na/026000c>.

<sup>78</sup> JSSC, "The General Principles of Suicide Prevention Policy", 10 Sept. 2017, <https://jssc.ncnp.go.jp/file/pdf/2017-0910-GeneralPrinciples-En.pdf> and [https://jscp.or.jp/english/img/SPR2017\\_1.pdf](https://jscp.or.jp/english/img/SPR2017_1.pdf)

<sup>79</sup> Kanako Takahara, "Unpacking Japan's latest ruling on same-sex marriage", Japan Times, 29 Jun. 2022, <https://www.japantimes.co.jp/news/2022/06/29/national/social-issues/explainer-ruling-same-sex-marriage/>

consideration is required in light of national-level debates made thus far.”<sup>80</sup> However, debates about the nature of families in Japan do not justify the deprivation of the rights to family life and respect for privacy guaranteed to LGBT individuals by the Covenant, nor any delays in respecting these rights.

## 29. Disproportionately burdensome legal requirements for recognition of gender reassignment

Japan’s Gender Identity Disorder Special Cases Act (GID Special Cases Act) contains discriminatory provisions that require transgender people to undergo invasive and unnecessary medical procedures, such as sterilization and compulsive gender confirmation surgery, and be unmarried to have their gender legally recognized.<sup>81</sup> It also pathologizes gender identity as a mental disorder, providing a legal basis for their further marginalization and discrimination.

The mandatory sterilization and gender confirmation surgery required of transgender people under the Act amounts to coerced medical intervention that subjects transgender individuals to cruel, inhuman and degrading treatment, and it denies transgender individuals the right to privacy and family life. Retaining the label of “Gender Identity Disorder” despite the World Health Assembly’s recent removal of GID from the International Classification of Diseases further classifies transgender individuals’ experience as an illness, contradicting international standards and medical best practices.<sup>82</sup> The Japanese government must revise the GID Special Cases Act to ensure transgender people’s rights to equal recognition before the law without undermining their dignity.

## 30. Recommendations

HRN recommends that the Japanese government should:

- Enact legislation that explicitly prohibits discrimination based on sexual orientation and gender identity.
- Ensure the enforcement and protection of laws, including those regarding sexual or domestic violence, are applied equally to sexual and gender minorities.
- Legalize same-sex marriages, conferring on such unions all the legal rights and privileges obtained by different-sex marriages.
- End coerced sterilization of transgender people under the legal gender recognition process.
- Revise the GID Special Cases Act to abolish medical requirements, diagnoses and other restrictions that violate human rights for legal gender recognition

## VIII. Children’s Rights (Articles 2, 7, 24)

### 31. Child Pornography

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<sup>80</sup> Government Reply, at 41.

<sup>81</sup> Human Rights Watch, “ ‘A Really High Hurdle’: Japan’s Abusive Transgender Legal Recognition Process”, 19 Mar. 2019, <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>

<sup>82</sup> Fumino Sugiyama, “OPINION: The WHO says I don’t have a mental disorder, but in Japan my government says I do”, Tokyo Rainbow Pride, 28 May 2019, <https://news.trust.org/item/20190528094737-3iouw>



Child pornographic material continues to be widely produced and disseminated in Japan. A recent 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>83</sup>

### 32. Discriminatory School Rules

Many schools require students with hair that is not naturally black and straight to submit documentation corroborating their natural hair color and texture.<sup>84</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>85</sup> Such policies discriminate students of mixed or non-Japanese descent.

### 33. Recommendations

HRN recommends that the Japanese government should:

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

## IX. The Death Penalty (Article 6)

### 34. Background and the absence of action against the death penalty

There are currently 107 people on death row at the time of this writing, and the Japanese government has taken no steps towards eliminating the death penalty.<sup>86</sup> After a two-year moratorium on executions, the current Kishida administration has doubled down on its support for the death penalty by resuming executions and executing three people on death row in December 2021.<sup>87</sup> One of the inmates, Mitsunori Onogawa, had filed a request for a retrial and, at the time of his execution, the request decision was still pending.<sup>88</sup>

While more than 70% of the world's countries have abolished the death penalty in law or practice,<sup>89</sup> the Japanese government has made no effort to educate the public on international trends and norms for abolition. Also, while the government uses public support for capital punishment as

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<sup>83</sup> HRN, "Report on Child Pornography in Japan", 7 Feb. 2018, <https://hrn.or.jp/eng/wp-content/uploads/2018/02/HRN-Child-Pornography-Report-2018.02.07.pdf>

<sup>84</sup> Asako Takeuchi, "Rules on underwear color, black hair to be abolished at Tokyo public high schools in 2022", Mainichi, 12 Mar. 2022, <https://mainichi.jp/english/articles/20220311/p2a/00m/Ona/028000c>.

<sup>85</sup> Yuto Yoneda, "School's hair-color rules legal, but still must pay compensation", Asahi Shinbun, 16 Feb. 2022, <https://www.asahi.com/ajw/articles/14194606>.

<sup>86</sup> Mari Yamaguchi, "Japan hangs 3 in first use of capital punishment in 2 years", AP, 21 Dec. 2021, <https://abcnews.go.com/International/wireStory/japan-hangs-capital-punishment-years-81872245>

<sup>87</sup> Justin McCurry, "Japan hangs three men on death row in first executions since 2019", Guardian, 21 Dec. 2021, <https://www.theguardian.com/world/2021/dec/21/japan-hangs-three-men-on-death-row-in-first-executions-since-2019-reports>

<sup>88</sup> Amnesty, "Japan: Abhorrent executions crush hopes of progress under new prime minister", 21 Dec. 2021, <https://www.amnesty.org/en/latest/news/2021/12/japan-abhorrent-executions-crush-hopes-of-progress-under-new-prime-minister/>

<sup>89</sup> Death Penalty Information Center, <https://deathpenaltyinfo.org/policy-issues/international>

justification for its policy to maintain the death penalty—in its reply to the Committee it stated that it “is of the view that it is not appropriate to abolish the death penalty” based on public opinion in favor of the death penalty<sup>90</sup>— this stance is disingenuous as the government has made no effort to educate the public on international trends and norms of death penalty abolition, nor has it made any efforts at further review of the issue.

In 2016 the Japanese Federation of Bar Associations adopted a declaration calling for reform of the criminal penal system given the possibility of wrongful convictions, and the abolition of the death penalty in concert with international trends against capital punishment.<sup>91</sup>

### 35. Inhuman conditions of executions and lack of legal safeguards for defendants in capital cases

Inmates sentenced to death are only notified of their execution on the date of execution itself, which the government justified in its reply to the Committee by stating that it was “out of consideration that an advance notice before the day of the execution would disturb the inmate’s peace of mind and might cause further suffering.” However, the practice is a source of serious, constant, and long-term anguish for inmates and their families, constituting cruel, inhuman, and degrading treatment toward the inmates and their families as well as raising serious due process concerns.

The long-standing Ministry of Justice policy notifies inmates of their executions mere hours before the executions are scheduled to occur, despite the fact that executions are often scheduled within five days of the Justice Minister’s decision.<sup>92</sup> A lawsuit by death row inmates concerning the notification policy is currently pending, citing the imposition of excessive psychological distress and mental suffering experienced by inmates from living in uncertainty until the last day of their lives, as well as the impact on their families.<sup>93</sup>

The Committee Against Torture categorizes same-day executions as a clear human rights violation, causing needless psychological suffering through unnecessary secrecy and uncertainty surrounding executions. The last-minute notification policy, not stipulated by law, makes filing objections to the execution practically impossible, and raises serious due process concerns under Article 31 of the Japanese Constitution, which guarantees that criminal penalties will not be imposed unless an established legal procedure has been followed.<sup>94</sup>

Further, detention conditions of people sentenced to death are extremely restrictive and inmates are systematically placed in solitary confinement to the serious detriment of their physical and

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<sup>90</sup> Government Reply, at 67.

<sup>91</sup> Japan Federated Bar Associations, “Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty”, 7 Oct. 2016, <https://www.nichibenren.or.jp/en/document/statements/161007.html>

<sup>92</sup> Takayasu Ogura, “Inmates’ suit over 11th-hour execution notices a chance for Japan judicial system debate”, Mainichi, 7 Feb. 2022, <https://mainichi.jp/english/articles/20220205/p2a/00m/0na/022000c>

<sup>93</sup> Id.

<sup>94</sup> Id.; FIDH, “The Death Penalty in Japan: The Law of Silence”, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT\\_CCPR\\_NGO\\_JPN\\_94\\_9324\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_NGO_JPN_94_9324_E.pdf)

mental health over many years.<sup>95</sup> More than 25% of people sentenced to death are over the age of 70, and two individuals on death row have been incarcerated for over 40 years.<sup>96</sup>

### 36. Recommendations

HRN recommends that the Japanese government should:

- Introduce a moratorium and cease all executions, commuting capital sentences to terms of imprisonment.
- Ratify the Second Optional Protocol of the ICCPR and establish a study group aimed at abolishing the death penalty.
- End the practices of same-day notice of execution and the imposition of solitary confinement on death row inmates.

## X. Rights of People Affected by the Fukushima Disaster (Articles 6, 17, 19, 23)

37. 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>97</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>98</sup> Prolonged evacuation has also led to a deterioration in standards of living and higher levels of disaster-related deaths by physical and mental breakdown, even more than 10 years after the disaster.<sup>99</sup> This situation threatens affected people's right to life, their enjoyment of a safe home life guaranteed by their right to privacy, and their right to family life, undermined by prolonged evacuation and uncertain housing situations which have separated families for long periods. Although their status falls into the category of IDPs, the government has failed to conduct in depth investigations of the status of evacuees, including their rights to life, family rights, housing rights and their mental and physical health conditions, nor has it addressed their basic needs or ensured their rights under the Covenant.

38. Furthermore, the government has not conducted credible environmental impact assessments for disaster-related actions or proposals, such as decontamination methods and the discharge of ALPS

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<sup>95</sup> Prison Insider, "Japan: detention conditions of people sentenced to death", 18 Jan. 2022, <https://www.prison-insider.com/en/articles/japon-conditions-de-detention-des-condamnes-a-mort>

<sup>96</sup> Id.

<sup>97</sup> HRN, "40,000 People are Still Displaced and Radiation Levels are Still Dangerous Due to the Ongoing Fukushima Nuclear Disaster," 11 March 2020, <https://hrn.or.jp/eng/news/2020/03/11/fukushima-statement-march-2020/>.

<sup>98</sup> OHCHR, "Japan must step up efforts to solve human rights fallout from Fukushima disaster," 11 March 2021, <https://www.ohchr.org/en/press-releases/2021/03/japan-must-step-efforts-solve-human-rights-fallout-fukushima-disaster-un>; OHCHR, "Japan must not ignore human rights obligations on nuclear waste disposal," 9 June 2020, <https://www.ohchr.org/en/press-releases/2020/06/fukushima-japan-must-not-ignore-human-rights-obligations-nuclear-waste>.

<sup>99</sup> Mina Isogai, "Prolonged evacuation takes its toll in Fukushima Pref. with many disaster-related deaths", Mainichi, 13 June 2022, <https://mainichi.jp/english/articles/20220610/p2a/00m/0na/031000c>

treated water into the ocean, which violates the public's right to access important and accurate information on issues of public concern, especially involving health risks.<sup>100</sup>

### 39. Recommendations

HRN recommends that the Japanese government should:

- Implement the Special Rapporteur on Right to Health's recommendations<sup>101</sup> to ensure rights to life and health of all affected people, including medical assistance and housing support to allow affected people to have safe and secure housing and living situations.
- Conduct environmental impact assessments of decontamination and other disaster-related actions to provide the public with important and accurate information on risk and to prevent further exposure and protect the environment.

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<sup>100</sup> Greenpeace, "Comments on TEPCO Radiological Impact Assessment Report Regarding the Discharge of ALPS Treated Water into the Sea (design stage)", 16 Dec. 2021, [https://www.greenpeace.org/static/planet4-japan-stateless/2021/12/e9184b5e-summary\\_public-comment-on-fukushima-radiological-assessment.pdf](https://www.greenpeace.org/static/planet4-japan-stateless/2021/12/e9184b5e-summary_public-comment-on-fukushima-radiological-assessment.pdf)

<sup>101</sup> HRN " Fukushima: the Japanese government to protect people's right to health in accordance with recommendations by the UN Special Rapporteur Anand Grover ", 5 June 2014, <https://hrn.or.jp/eng/news/2014/06/05/hrc26-written-statements/>; HRN "Fukushima: Requests for a drastic policy change in compliance with the recommendations made by the UN Special Rapporteur Mr. Anand Grover", 11 Dec. 2021, <https://hrn.or.jp/eng/news/2012/12/11/fukushima-recommendations-press-release/>.