

United Nations
Office of the High Commissioner for Human Rights

Information for LOIPR Report on Japan

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I. Introduction

In this report, Human Rights Now (HRN), a Tokyo-based international human rights NGO, highlights six areas of concern involving ICCPR rights in Japan for the Human Rights Committee's (Committee) 121st Session, where it will adopt the list of issues prior to reporting (LOIPR) on Japan. These areas are death penalty and criminal justice issues; freedom of expression; concerns with the Conspiracy Law; hate speech; women's, children's, and LGBT rights; the situation in Fukushima; and the situation in Okinawa.

In general, the Japanese government has failed to sufficiently implement recommendations made to it from the Committee, from other UN human rights bodies and mandates, and during its second UPR cycle¹ in all of these areas. As a result, the human rights situation in Japan has been deteriorating due to its failure to meet its ICCPR obligations.

II. Death Penalty and the Criminal Justice System (Articles 6, 9, 14)

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 the death penalty in recent years.² Since 2007, Japan has had over 100 death-row inmates and over 129 in 2016.³ Since Prime Minister Abe took power in 2012, 19 people have been executed. The latest executions were in July 2017 when two inmates were executed, including one who had been seeking retrial.⁴

2 Criminal Justice Procedure

2.1 Pretrial detention and interrogation

In Japan, pretrial detention can last up to 23 days in police custody (*daiyou kangoku*) where suspects face interrogations up to 8 hours per day.⁵ Judicial control is a mere formality;

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

² 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.

³ “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/#.WNIgu4VOJm9>.

⁴ “Japan executes two inmates, including one who appealed for a retrial,” *The Japan Times*, 13 Jul. 2017, <http://www.japantimes.co.jp/news/2017/07/13/national/crime-legal/japan-hangs-two-inmates-including-one-sought-retrial/>

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

there is no pretrial bail;⁶ attorneys are not permitted in custodial interrogations; and videotaping of custodial interrogation is limited.⁷ This raises the risks of police abuse and coercive self-incrimination. The government consistently fails to implement reforms to meet ICCPR Articles 9 and 14.⁸

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” protected by ICCPR Article 14(2).⁹ 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.¹⁰ 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.¹¹ Despite this series of miscarriages of justice, the Japanese government has still failed to properly address the root causes of wrongful convictions.

2.4 Issues with Recent Reforms

In May 2016 the legislature permitted videotaping of custodial interrogations, wider disclosure of evidence, wiretapping, and plea bargaining.¹² 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.¹³

Although the discovery law was revised in 2016,¹⁴ prosecutors are not required to turn in exculpatory evidence to the defense counsel. There is also no discovery rule for convicted

⁶ HRN 2008 UPR Report, *id.*, at 2-3.

⁷ *Id.*

⁸ *See id.* at 2.

⁹ HRN 2008 UPR Report, *supra* note 5, at 3.

¹⁰ <http://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1141&context=uclr>

¹¹ 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>.

¹² *Id.*

¹³ *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.).

¹⁴ *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/#.WN1mfl95m8>.

persons in the retrial procedure, even for death penalty cases. Moreover, expanded wiretapping under the 2016 revision threatens the right to privacy.

3 Recommendations

- Introduce a moratorium on executions and encourage national debate on the death penalty;¹⁵
- 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.

III. Freedom of Expression and Threats against the Media (Article 19)

1 Overview

On 29 May 2017, the Special Rapporteur on the Right to Freedom of Opinion and Expression David Kaye released his report on his April 2016 country visit to Japan to the 35th Session of the Human Rights Council.¹⁶ It noted practices and risks of the Japanese government to chill and control media and journalism, threatening media independence, freedom of expression, and the right to information protected by ICCPR Article 19(2). The report recommended that the government reform its media regulation, including the Broadcast Act, to ensure media independence and reform the Specially Designated Secrets Act (SDA) to ensure against its chilling journalists' work. Following the report's release, the Japanese government released a response explicitly defending the Broadcast Act and SDA and rejecting Mr. Kaye's assertions and recommendations, which have not been implemented.¹⁷

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

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.¹⁸ Its broad and

¹⁵ 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>.

¹⁶ Report of [Special Rapporteur Kaye] on his mission to Japan, A/HRC/35/22/Add.1, 29 May 2017, http://hrn.or.jp/wpHN/wp-content/uploads/2017/05/A_HRC_35_22_Add.1_AUV.pdf.

¹⁷ "Report of [Special Rapporteur Kaye] on his mission to Japan: comments by the state", A/HRC/35/22/Add.5, 30 May 2017, pp. 3-5 (Broadcast Act), p. 10 (SDA), http://hrn.or.jp/wpHN/wp-content/uploads/2017/05/A_HRC_35_22_Add.5_E.pdf

¹⁸ 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

vague definition of secrecy allows authorities to withhold information even if disclosure would not harm national security,¹⁹ 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.²⁰ 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.²¹

Mr. Kaye’s report recommends that the government amend the SDA to include an exception for individuals, including journalists and government employees, disclosing information in the public interest not harming national security; as well as establishing an independent oversight board of experts.²²

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 fair.²³ Recent examples of government media pressure under the shadow of this rule include an LDP investigative committee summoning NHK and TV Asahi executives to explain the content of their reporting on April 17, 2015 and a 2016 threat by Internal Affairs and Communications Minister Sanae Takaichi to “shut down” media considered biased.²⁴

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;

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>.

¹⁹ Act on the Protection of Specially Designated Secrets, Act No. 108 of 2013.

²⁰ 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>.

²¹ 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

²² Kaye Report, *supra* note 16, paras. 73-77.

²³ Broadcast Act, Act No. 132 of 1950, www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/pdf/090204_5.pdf

²⁴ 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); 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->

Mr. Kaye's report criticizes the use of Article 4 by a non-independent government agency to determine what is fair as a type of government "watchdog" and deterrence of media freedom; and it recommends that the government review and repeal Article 4 to remove the legal basis for government media interference and that it develop an independent media regulator.²⁵

4 Media Self-Censorship

These interferences have had a significant chilling effect and led to widespread self-censorship among Japanese media.²⁶ In March 2016, three television news anchors were dismissed for criticizing the government.²⁷ Furthermore, government attempts to influence journalists through secluded conversations constitute undue media interference.²⁸

5 Recommendations

- Implement the recommendations of Mr. Kaye's report;
- Review and amend the Broadcast Act to ensure media independence;
- Cease ongoing pressure and interference with media personnel;
- Review and amend the SDA in accordance with ICCPR Article 19;

IV. The Conspiracy Law (Articles 17, 19)

1 The Conspiracy Law

On 15 June 2017, the Diet of Japan passed into law a bill amending the Act on Punishment of Organized Crimes and Control of Crime Proceeds popularly called the "Conspiracy Law". The government has explained that the purpose of the bill is to implement the United Nations Convention against Transnational Organized Crime and to prevent terrorism, especially as Japan prepares for the 2020 Summer Olympics. However, the convention was not intended to address terrorism, and Japan has already ratified 13 relevant treaties on terrorism and enacted laws as required by them, making the law unnecessary. Moreover,

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 24.

²⁵ *Id.*, paras. 20, 65.

²⁶ 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, *supra* note 24, at 4.

²⁷ The Guardian, "Japanese TV anchors lose their jobs amid claims of political pressure", 17 Feb. 2016, <https://www.theguardian.com/world/2016/feb/17/japanese-tv-anchors-lose-their-jobs-amid-claims-of-political-pressure>; Silencing Japan's Free Press, *id.*

²⁸ 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; see also "Protecting Broadcasters' Freedom," *The Japan Times*, 15 Nov. 2015, https://www.google.co.jp/search?client=safari&rls=en&q=www.japantimes.co.jp/opinion/2015/11/15/editorials/protecting-broadcasters-freedom/%23.VwUH84ORXFr&ie=UTF-8&oe=UTF-8&gfe_rd=cr&ei=MhPSWNS4FKnD8AejwJPgDw.

the language used in this law is vague and leaves room for abuse by the government against legitimate civil society activity. For instance, the definition of an “organized criminal group”, which is one of the key elements of the crime, is vague and may apply to groups other than terrorist organizations. For example, civil society, NGOs, and labor unions might be subject to investigation and punishment under the bill if authorities judge that the nature of such groups has changed.²⁹

On 18 May 2017, Special Rapporteur on the right to privacy Joseph Cannataci sent a letter to the Prime Minister of Japan highlighting concerns he had with negative impacts that the bill (at the time) would have on the right to privacy and freedom of expression.³⁰

In his letter, Mr. Cannataci expressed concern that the Conspiracy Law significantly expands the scope of persons and groups the government can arrest for conspiracy as “terrorist groups or other organized criminal groups” in ways that could target non-criminal groups.

First Cannataci was concerned that law criminalizes actions pursuing a “plan or other preparatory acts” of targeted crimes, as the terms “plan” and “preparatory acts” are overbroad, subjective, and undefined. This creates legal uncertainty which may allow officials to misuse the law to target disfavored civil society groups and their legitimate activities. Second, the law adds 277 “conspiracy” crimes through Appendix 4, many of which appear unrelated to organized crime and terrorism. This again creates uncertainty and confusion among the public and officials, inviting potential misuse. Mr. Cannataci’s letter calls for clear and precise terms to prevent uncertainty and overbroad application so that legitimate activities can never be targeted.

Mr. Cannataci also raised concerns about the right to privacy under ICCPR Article 17(1). The Conspiracy Law contains no safeguards for the right to privacy under application of the law, although its provisions invite and facilitate police requesting and conducting surveillance to establish offenses. In this context, it is important that the law contains provisions which protect the right to privacy against overbroad surveillance.

Mr. Cannataci lists example protections such as ex-ante warrants, an independent body to authorize surveillance, oversight of operations to ensure their compliance with the right to privacy, and he further cites UN General Assembly Resolution A/RES/71/199 which calls on states to ensure their obligations are met when gathering sensitive information for public security.

Unfortunately, the Japanese government’s response to Mr. Cannataci’s letter has been wholly counterproductive. On 22 May, Chief Cabinet Secretary Yoshihide Suga protested the letter denying that it would arbitrarily restrict privacy and freedom of expression. Mr.

²⁹ Human Rights Now, “Japan: Concerns with the ‘Crime of Preparation for Terrorism and Other Acts’ Bill”, A/HRC/35/NGO/X, 15 May 2017, <http://hrn.or.jp/wpHN/wp-content/uploads/2017/05/f4e232eff719afe99b762a795f47c98b.pdf>.

³⁰ Letter from Joseph Cannataci to Prime Minister Shinzo Abe, 18 May 2017, http://www.ohchr.org/Documents/Issues/Privacy/OL_JPN.pdf.

Cannataci responded to the protest as having “no substance”, and that “Unless and until corrected on any point of fact, I stand by every single word, fullstop and comma of what I wrote to Prime Minister Shinzo Abe.”³¹ On 29 May, Prime Minister Abe also dismissed Mr. Cannataci’s assessment as “extremely unbalanced” and “hardly that of an objective expert”, and on 30 May his cabinet approved three official statements condemning the letter as “based on misunderstanding”. The law passed without Mr. Cannataci’s concerns being acknowledged or addressed.

HRN remains concerned about the law’s overbroad application and threat to the right to privacy, as well as about statements from the Japanese government which are hostile to the importance and credibility of the views of UN Special Rapporteurs.

2 Recommendation

- Repeal the Conspiracy Law so that civil society organizations and activities can never be targeted for criminal prosecution by overbroad application, and the right to privacy is not threatened by overbroad surveillance.

V. Hate Speech (Articles 20(2), 27)

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.³² Hate speech in Japan is often xenophobic, with ethnically Korean and Chinese persons frequently targeted.³³ In particular, hate speech against Korean people has been escalating recently, causing serious negative impacts against the targeted people according to investigations conducted by Human Rights Now³⁴ and the Ministry of Justice.³⁵

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).³⁶ Article 2 defines “unfair discriminatory speech and behavior” as acts intending to incite the exclusion of foreign nationals from communities by harming their

³¹ Linda Sieg, “Japan protests against U.N. expert’s queries on bill to fight terrorism”, Reuters, 23 May 2017, www.reuters.com/article/us-japan-politics-conspiracy-idUSKBN18I0CG.

³² Ministry of Justice, “Heitosupichi ni kansuru jittai chosa houkokusho,” [Survey report on the actual situation of hate speech, “Survey on hate speech”], March 2016, <http://www.moj.go.jp/content/001201158.pdf> (Japanese language only)

³³ 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.

³⁴ Human Rights Now, “Fact-finding Report: The Realities of Hate Speech Against Korean Residents In Japan (‘Zainichi Koreans’),” Nov. 2014, “ <http://hrn.or.jp/eng/wp-content/uploads/2015/12/Hate-Speech-report-English-translation.pdf>

³⁵ Survey on hate speech, *supra* note 32.

³⁶ Ministry of Justice, “The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Provisional Translation)”, www.moj.go.jp/content/001199550.pdf.

body, reputation, or property. As required by Article 7, the Ministry of Justice has begun a public awareness campaign against hate speech.³⁷

3 Persisting Problems

While the Japanese government cites the 2016 Act as evidence of their compliance with international standards,³⁸ the law fails to fully comply with previous recommendations by the Working Group on Japan's second UPR,³⁹ the Committee,⁴⁰ and the Committee on the Elimination of Racial Discrimination (CERD) for the prohibition of hate speech including in rallies and online.⁴¹

The 2016 Act does not prohibit hate speech or criminalize serious hate speech. The government has also taken no measures to tackle false and xenophobic stories that proliferate online and harm the reputation of ethnic minorities. These failures place Japan in violation of its duty under ICCPR Articles 20(2) and 27 to protect people from hate speech. Related to this violation, Japan maintains a reservation to Article 4(a) and (b) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which also prohibit hate speech,⁴² such that they must be implemented consistently with the Constitution of Japan.⁴³ However, as noted by the Committee on the Elimination of All Forms of Racial Discrimination the reservation unnecessarily restricts the full enjoyment of the protection from hate speech,⁴⁴ which implicates ICCPR Article 20(2)'s prohibition as well.

4 Recommendations

- Amend the 2016 Act to prohibit hate speech, including demonstrations that incite racial discrimination, and criminalize serious forms of hate speech;⁴⁵

³⁷ Ministry of Justice, "Stop! Hate Speech," http://www.moj.go.jp/ENGLISH/m_jinken04_00001.html

³⁸ The Japanese government, "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>

³⁹ 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>. The Working Group called on the government to take legislative measures to prohibit hate speech.

⁴⁰ 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. The HRC called on the government to prohibit hate speech and racist demonstrations, and to ensure the investigation and prosecution of perpetrators.

⁴¹ 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.

⁴² 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.

⁴³ 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

⁴⁴ CERD General Recommendation No. 35, *supra* note 42.

⁴⁵ See our detailed recommendations, "Hate speech report", *supra*, note 34.

- 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.
- Remove its reservation to Article 4 of the ICERD as a means to also comply with ICCPR Article 20(2).

VI. Women’s, Children’s, and LGBT Rights (Articles 3, 7, 24, 26)

1 Discriminatory family law

Japan maintains discriminatory laws against women such as marriage laws,⁴⁶ failing to comply with CEDAW recommendations against such laws which inform ICCPR Article 26’s prohibition on discrimination.⁴⁷ 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.⁴⁸

2. LGBT discrimination

LGBT people face various forms of discrimination in Japan; however, the government has not ratified comprehensive legislation to eliminate discrimination based on sexual orientation or gender identity.

3. The issue of so-called “comfort women”

Japan has failed to address the issue of “comfort women”, women forced into sexual slavery by the military of Japan during WWII. The recent bilateral agreement between Japan and South Korea on the issue does not meet international standards of State accountability for gross human rights violations.⁴⁹ The agreement, reached without proper consultation with the survivors, has failed to provide for survivors’ right to an effective remedy (ICCPR article

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Supreme Court Decision, Case No. 1023, 16 December 2015, http://www.courts.go.jp/app/files/hanrei_jp/546/085546_hanrei.pdf (Japanese language only)

⁴⁹ “Basic Principles and Guidelines on the Right to a Remedy and Reparation”, UNGA Res. 60/147, 19 Dec. 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

2.3).⁵⁰ Further, references to the issue are almost completely eradicated from school textbooks due to persistent government efforts.⁵¹

4. Sexual exploitation of women and girls

The Japanese government has failed to take sufficient measures to protect women and girls from sexual exploitation violating its duty under ICCPR Article 7 to take measures to protect them from the inhuman and degrading treatment.⁵²

4.1 Child Pornography

Although Japan criminalized possession of child pornography in 2014, 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.⁵³

4.2 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.⁵⁴ After being scouted as non-pornographic models or actresses, they are misled into signing contracts with agents⁵⁵ who later force them to film AVs.⁵⁶ 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.⁵⁷ Although this is recognized as a grave human rights violation against women, there is no legislation adequately protecting females from these problems.

⁵⁰ “Japan / S. Korea: ‘The long awaited apology to ‘comfort women’ victims is yet to come’ – UN rights experts”, 11 Mar. 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17209>. AP, Kyodo, AFP-Jiji, Japan, South Korea reach ‘final’ deal to settle ‘comfort women’ issues, *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>

⁵¹ 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>.

⁵² The Committee confirmed this duty in General Comments No. 20, HRI/GEN/1/Rev.9, 10 Mar. 1992, para. 2, and No. 31 CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 8.

⁵³ Human Rights Now, *Nihon jido poruno kisei no jitsujo 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/2016/09/33f47e793333c9ddbfa3efcc9a977f7.pdf> (in Japanese).

⁵⁴ 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>.

⁵⁵ 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/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

4.3 Violence against women

Japanese law restrictively defines rape as the use or threat of violence to force a woman into sexual intercourse.⁵⁸ Moreover, the law falls behind international standards: marital rape is not explicitly criminalized,⁵⁹ and the age of sexual consent remains 13.⁶⁰ Recent amendment of the rape laws are insufficient and do not address the requirement of violence.⁶¹ The government has also failed to take meaningful steps to address domestic violence.⁶²

5 Discrimination in wages

The government has not taken effective measure to address the gender pay gap.⁶³

6 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.

VII. 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 risks particularly to vulnerable groups such as pregnant women, girls, and infants. However, the Japanese government has failed to protect the right to life of affected people under ICCPR Article 6 as well as failed to implement the

⁵⁸ Keihou (Penal Code), article 177.

⁵⁹ Human Rights Now, Keiho no sei hanzai kitei no kaisei-an nit suite no seimei [Statement regarding the revision proposal of the criminal law sexual offence provision], <http://hrn.or.jp/activity/10262/> (in Japanese).

⁶⁰ Id.

⁶¹ "Seihanzai wo genbatsuka - kakugikkettei", Mainichi Shinbun, 7 March 2017, <http://mainichi.jp/articles/20170307/k00/00e/040/151000c> (Japanese language only).

⁶² 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 (Japanese language only) (reporting that 23.7% of Japanese women claim to have been subjected to DV).

⁶³ 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) (reporting that the gender pay gap in Japan is 27%).

recommendations of a number of UN human rights bodies to protect residents' life and health as described below.

The risks to life and health arise out of the Japanese government's decision to issue evacuation orders and provide compensation based on a 20 millisievert-per-year standard. This standard is significantly greater than the 1mSv/year standard for public exposure recommended by the International Commission on Radiological Protection (ICRP) and Japan's own pre-disaster standard.⁶⁴ There were thus broad areas with large populations with high radiation levels who were left out of evacuation zones in Fukushima. Without sufficient support for evacuation from the government, many people who could not afford to relocate had no choice but to stay within risky areas up to 20mSv/year exposures.

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. These insufficient policies have caused negative impacts for the affected people. The latest policy, described below, only further jeopardizes the rights to life and health of the affected people.

2 Lifting evacuation orders

In March 2017, the government lifted all remaining evacuated areas under 20mSv/year.⁶⁵ However, exposure levels will remain dangerously high in these areas due to the nature of the radioactivity and environment, insufficient decontamination, and conditions which promote recontamination.⁶⁶

3. Compensation and housing support is ending

Following the lifting of evacuation orders in March 2017, TEPCO will terminate monthly compensation payments for former evacuees under the orders in March 2018.

⁶⁴ 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.

⁶⁵ The Reconstruction Agency, "Higashinippon daishinsai kara no fukkō ni muke ta michinori ni mitōshi," Jul. 2016, http://www.reconstruction.go.jp/topics/main-cat1/sub-cat1-1/160809_mitinoritomitoshi.pdf; Greenpeace, "No Return to Normal: The Fukushima Daiichi Nuclear Disaster," 3 Feb. 2017, www.greenpeace.org/japan/global/japan/pdf/nrn_finweb5.pdf (documenting exposures in evacuation-lifted areas with higher levels of exposure despite this designation).

⁶⁶ 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/.

The government also terminated free housing support in March 2017 for evacuees who lived outside of the evacuation zone. Indeed, free housing support was the only support made by the government to evacuees from outside of the zone. Many evacuees demanded the government to reconsider this policy; however, the government enforced the termination of support without proper consultation with evacuees.

Evacuees who lost the compensation or housing support on which they relied are now being pressured to return to affected areas which remain unsafe. 70% of voluntary evacuees reported being unable to find housing once their housing support ends,⁶⁷ and a majority of evacuees in Tokyo listed housing as their greatest concern, most stating that housing support was ending too early.⁶⁸

For all of these reasons, the UN Special Rapporteur for Health, Anand Grover⁶⁹, CEDAW,⁷⁰ and the Committee⁷¹ all recommended to the Japanese government to review its evacuation policy and maintain evacuations ensuring residents' safety. The Committee specifically recommended to Japan to "lift the designation of contaminated locations as evacuation areas only where the radiation level does not place the residents at risk."⁷² By maintaining its 20mSv/year evacuation standard and ending financial and housing support, the Japanese government has ignored these recommendations and placed residents' life and health at risk.

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.⁷³ As of December 2016, 189 children in Fukushima prefecture were diagnosed with or believed to have thyroid cancer since the disaster.⁷⁴ The prefectural government has nevertheless failed to acknowledge the impact of radiation on children and has not expanded its healthcare services.

⁶⁷ "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>.

⁶⁸ "Genpatsu jiko hinan sha 'jūtaku mushō teikyō no keizoku o' tonai hinan sha ni to ankēto," Tokyo Shinbun, 10 May 2016, <http://www.tokyo-np.co.jp/article/tokyo/list/201605/CK2016051002000171.html>.

⁶⁹ 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.

⁷⁰ 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, 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.

⁷¹ Human Rights Committee, "Concluding observations on the sixth periodic report of Japan", 20 Aug. 2014, CCPR/C/JPN/CO/6.

⁷² Id.

⁷³ Fukushima Health Management Survey, <http://fmu-global.jp/fukushima-health-management-survey/>

⁷⁴ Friends of the Earth, "Fact Sheet: kodomo kodomo-tachi no kōjōsen gan no jōkyō," 1 Feb. 2017, http://www.foejapan.org/energy/fukushima/pdf/factsheet_thyroid_170201.pdf.

5 Recommendations

- Use a 1mSv/year standard for lifting evacuation orders, and restore evacuation orders for areas with radiation exposures above that standard;
- Continue compensation and housing support as long as required by evacuees;
- Provide free, periodic, and comprehensive health monitoring and services for affected persons.

VIII. The Situation in Okinawa (Articles 1, 9, 19, 21)

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).⁷⁵ Despite Okinawans' demands for relief, the Japanese government is imposing further burdens without consultation. On 1 July 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.

2 Self-Determination

The Ryukyu/Okinawan people have been recognized by the Committee⁷⁶ and CERD⁷⁷ 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,⁷⁸ all of which inform the ICCPR Article 1 right to self-determination. However the Japanese government made decisions about the development and military use of Okinawan

⁷⁵Okinawa 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>.

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ 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.

ancestral land without the Okinawan people's consultation or consent which run counter to the right.

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.⁷⁹ The government has also restricted journalists from covering the story by barring or arresting them, inconsistent with ICCPR Article 19.⁸⁰

4 Arbitrary Detention

Hiroji Yamashiro, a prominent protest leader, was arbitrarily arrested three times since October 2016 for multiple offenses and kept in pretrial detention for five months before bail release.⁸¹ The details of the case, including waiting 10 months after an incident before making an arrest,⁸² indicate the 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 and unreasonably long detentions of Okinawan protesters;
- Allow protesters to assemble and journalists to report on the Okinawa situation without unjustified interference.

⁷⁹ Ryukyu Shimpo, "<Shasetsu> Karetsu na henoko keibi shimin no inochi kiken ni sarasu na," 23 Nov. 2015, <http://ryukyushimpo.jp/editorial/entry-176412.html>; Jon Mitchell, "Injuries to Okinawa anti-base protesters 'laughable,' says U.S. military spokesman," *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.

⁸⁰ 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.

⁸¹ "Anti-base Okinawa activist released after five months in detention," *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>.

⁸² *Id.*