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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 55/2018 concerning Yamashiro Hiroji (Japan)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 26 January 2018, the Working Group transmitted to the Government of Japan a communication concerning Yamashiro Hiroji. The Government replied to the communication on 27 March 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,

* The annex to the present report is being issued without formal editing, in the language of submission only.

disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Yamashiro Hiroji, born in 1952, is a Japanese citizen. He usually resides in Kaihou, Okinawa City, Okinawa. Mr. Yamashiro is the chair of the Okinawa Peace Movement Centre, an organization that promotes the peace movement in Okinawa. He also leads the civilian protest of the construction in Henoko and Takae, Okinawa, of the new military base and facilities of the United States of America. Mr. Yamashiro and other civilians have been conducting the protest in accordance with the principle of non-violent resistance.

5. Mr. Yamashiro has reportedly led the protest movement in the form of sit-ins, including in front of Camp Schwab and Camp Gonsalves Marine Corps bases. He has also continued to lead the non-violent protest to protect the forest and the sea of Yanbaru, and peace in Okinawa, while the Government sent large-scale riot police "to stamp down the people's resistance".

6. The source reports that, for instance, on 13 October 2015, although the Governor of Okinawa had revoked permission for a landfill in Henoko, the Government enforced the construction. In an attempt to stop the construction, in late January 2016, hundreds of civilians gathered to lay bricks in front of the gate of Camp Schwab. This was done in front of police officers but none of them stopped it.

Arrest and detention

7. According to the source, Mr. Yamashiro was initially arrested on 17 October 2016 for a minor offence. While anger among the Okinawan people grew as the Government promoted the construction in Okinawa of the United States military base, the police repeatedly arrested Mr. Yamashiro. Each time, the public prosecutor's office requested pretrial detention, which was granted by the court. Mr. Yamashiro remained in detention for five months until his release on bail on 18 March 2017.

8. First arrest and detention: On 17 October 2016, Mr. Yamashiro was arrested and charged with damage to property (article 261 of the Penal Code) for the minor offence of cutting barbed wire, with the damage amounting to 2,000 yen. Initially arrested without a warrant as a quasi-flagrant offender, he was detained in connection with this incident until 4 November 2016.

9. Second arrest and detention: On 20 October 2016, while already in detention, Mr. Yamashiro was arrested for obstruction of performance of public duty (article 95 of the Penal Code) and causation of injury (article 204 of the Penal Code), which allegedly occurred on 25 August 2016. His subsequent detention for this incident continued until 18 March 2017. During his detention, Mr. Yamashiro was banned from any contact with the outside world, except for contact with his lawyers. While the police reportedly stated that there was a risk of destruction of evidence, the source asserts that this was unlikely since the detainee was accompanied by detention facility officers whenever he saw anyone other than his lawyer. Furthermore, the source notes that the situation was extremely unusual for two reasons: (a) the blanket ban on outside contact continued even after the investigation that necessitated the ban was completed; and (b) Mr. Yamashiro's wife and other family members, who are unrelated to the incident, were also prohibited from seeing him.

10. Third arrest and detention: On 29 November 2016, while already in detention, Mr. Yamashiro was arrested for forcible obstruction of business (article 234 of the Penal Code), which allegedly occurred on 28–30 January 2016. He was subsequently detained until 7 March 2017, when he was granted bail.

11. The source maintains that it is also unusual that "retroactive" arrests have been made since the first arrest for the minor offence. In this context, the source notes in particular that the arrest concerning the forcible obstruction of business was made on 29 November 2016, that is, 10 months after the actual event. The detainee and other civilians had openly laid

bricks in front of Okinawa Prefectural Police officers and Okinawa Defense Bureau officers. The police officers could have stopped the act or arrested the individuals if they had found this action to be against the law. Furthermore, Mr. Yamashiro had not tried to escape or to hide for 10 months, and the police could therefore have investigated the incident with his cooperation and without detaining him. According to the source, regardless of the fact that there was no risk of destruction of evidence since the act of laying bricks took place right in front of police officers, the judge admitted such risk as the grounds for detention. The source asserts that this arrest, which occurred 10 months after the actual event and despite the fact that Mr. Yamashiro was in custody for another charge at that time, was made in order to prolong the detention of Mr. Yamashiro and it is therefore considered to be unjustifiable. It is believed that the arrest and detention occurred in order to suppress the non-violent protests by Mr. Yamashiro and other individuals, and were based on political reasons.

12. The source notes that Mr. Yamashiro's defence team made requests to seek the revocation of his detention and of the ban on contact with the outside world, and to seek his release on bail. As of the time of the original submission by the source to the Working Group in January 2017, all such actions had been dismissed (see also paras. 15–17 below concerning bail).

13. The source reports that, while Mr. Yamashiro was in detention, the Government completed the construction of the helipads at Camp Gonsalves and was attempting to resume the construction in Henoko of the United States military base.

Schedule of the trial

14. The source reports that, on 13 June 2017, the court, public prosecutor and defence counsel confirmed the schedule of the trial, according to which the trial would take place twice a month, concluding in December 2017. According to the source, in December 2017, the public prosecutor's office demanded that Mr. Yamashiro be sentenced to two years and six months' imprisonment for instructing and leading a criminal act. The court was expected to rule in March 2018.

Bail

15. According to the source, detention and bail are determined for each incident. As noted above, Mr. Yamashiro was held in custody for two incidents: (a) forcible obstruction of business; and (b) obstruction of performance of public duty and causation of injury.

16. Regarding the incident of forcible obstruction of business, on 7 March 2017 the Naha District Court granted bail. On 23 March 2017, the Naha District Court granted a change to the bail conditions.

17. Regarding the incident of obstruction of performance of public duty and causation of injury, on 17 March 2017 the Naha District Court granted bail. On 18 March 2017, the appeal filed by the public prosecutor was rejected by the Fukuoka High Court, Naha Branch. On the evening of 18 March 2017, Mr. Yamashiro was released from custody on bail.

Conditions of bail

18. The source reports that there are five conditions of bail: (a) to remain at home and, in the case of changing residence, to receive the permission of the court; (b) to appear when requested by the court; (c) to refrain from any conduct that would cause suspicion of escape or destruction of criminal evidence; (d) to obtain the court's approval in the case of international travel or any travel exceeding a period of three days; and (e) to cease any contact with individuals related to the incident. The source notes that, while the first four conditions are relatively standard restrictions applied when bail is granted by a court in Japan, the fifth condition is decided upon in relation to each incident.

19. Regarding the fifth bail condition for the incident of obstruction of performance of public duty and causation of injury, Mr. Yamashiro is prohibited from having contact with the following: the two other individuals being prosecuted in connection with the incident; the three individuals charged as accomplices; the alleged victim, who is a staff member of

the Okinawa Defense Bureau; the doctor who diagnosed the injury; and the three police officers who took part in the investigation.

20. Regarding the incident of forcible obstruction of business, the initial bail conditions prohibited Mr. Yamashiro from having contact with the individual prosecuted in the same incident, the two individuals charged as accomplices and all other individuals involved in the incident. The source notes that, as the range of individuals with whom any contact was prohibited was so extensive and vague, it was not possible to specify whom the accused was or was not permitted to contact. The defence counsel therefore requested a change in the approved bail conditions. On 23 March 2017, the court released a decision, specifying the prohibited contact list as follows: the individual prosecuted in the same incident, the two individuals charged as accomplices, the Okinawa Defense Bureau staff member who was an eyewitness to the incident, the police officer involved in the investigation, and the constitutional law expert, whom the defence counsel had requested as a witness.

Influence on Mr. Yamashiro's actions

21. The source maintains that, if the bail conditions are violated, the bail will be revoked and the bond payment confiscated. Regarding the incident of obstruction of performance of public duty and causation of injury and the incident of forcible obstruction of business, there are many individuals with whom any contact is prohibited.

22. The individuals with whom any contact is prohibited include individuals who took part alongside Mr. Yamashiro in the movement opposing the new base construction. Mr. Yamashiro and his defence counsel are concerned that, if Mr. Yamashiro goes to the physical location of the opposition movement he will encounter, even without the intent to do so, individuals with whom contact is prohibited, which could be used as an excuse to revoke the bail. For this reason, Mr. Yamashiro was advised to refrain from going to the physical location of the opposition movement in Henoko if his defence counsel was unable to accompany him, etc.

Restrictions on protesters

23. The source reports that, since Mr. Yamashiro was released on bail, the police officers and the riot police have regulated the participants of the opposition in front of the gate of Camp Schwab much more strictly.

24. First, the range of acts for which the riot police have removed protesters has reportedly widened, and the method of removal has become more violent. Previously, the riot police had forcibly removed only those protesters who had directly or physically obstructed construction vehicles from entering the gate. However, as of June 2017, the riot police were forcibly removing not only those protesters, but also, for example, those who were only assembling on the road opposite the gate. According to the source, the protesters who were removed in this manner were temporarily confined in an area surrounded by the Camp Schwab fence, riot police vehicles and the riot police.

25. Second, the police have been arresting protesters for increasingly smaller incidents. A striking case is one in which article 76 (4) (ii) of the Road Traffic Act is used as a grounds for arrest. Prior to this, there had been no prior incidents of individuals being arrested on this basis. Furthermore, the punishment for this violation is stipulated as a fine not exceeding 50,000 yen, and it cannot be interpreted as a situation involving the risk of flight or destruction of incriminating evidence. According to the source, the fact that the police have been arresting individuals on the spot, one after another, means that such arrests can only be considered as arbitrary.

26. Furthermore, Mr. Yamashiro and four individuals were arrested on the spot by the police, sent to the public prosecutor's office the next day, and then released by the public prosecutor. The source notes that it is thus abundantly clear that physical restraint was not necessary.

27. The source maintains that, because the police have been taking such significantly stricter measures, the protesters are fearful of arrest if they continue to act in the same manner. This has forced the protesters to take more cautious actions.

Medical condition

28. At the time of its initial submission, the source also expressed concern that, as Mr. Yamashiro had suffered from a serious illness in 2015, his detention might cause irreversible damage to his health and well-being, and that the judge had not appropriately considered that risk. The source notes that, because Mr. Yamashiro's act does not amount to a crime, his detention could not be justified as having "adequate cause" according to article 34 of the Constitution of Japan. Furthermore, such long-term pretrial detention amounts to inhuman treatment, which is prohibited under articles 7 and 10 of the International Covenant on Civil and Political Rights, and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Analysis of violations

29. In the light of the above, the source maintains that Mr. Yamashiro's arrests and detention constitute an infringement of the freedom of political expression and of due process of law, thus violating article 9 (1) (prohibition of arbitrary arrest and detention), article 9 (3) (pretrial detention as an exceptional measure), article 19 (freedom of expression) and article 21 (right to peaceful assembly) of the Covenant, as well as the Universal Declaration of Human Rights.

Joint communications by special procedures

30. Mr. Yamashiro was the subject of a joint urgent appeal (see https://spcommreports.ohchr.org/) sent on 28 February 2017 and a joint urgent appeal (A/HRC/31/79, p. 23) sent on 15 June 2015. The Working Group acknowledges the reply from the Government of Japan to both communications.

Response from the Government

31. On 26 January 2018, the Working Group transmitted the allegations from the source to the Government through its regular communication procedure, requesting the Government to provide detailed information before 27 March 2018 about the current situation of Mr. Yamashiro and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his continued detention and how that was compatible with the obligations of Japan under international human rights law, including with regard to the Covenant and other treaties that it has ratified. Moreover, the Working Group called upon the Government to ensure Mr. Yamashiro's physical and mental integrity.

32. In its response of 27 March 2018, the Government relays its view that Mr. Yamashiro's arrest and detention were not due to his non-violent resistance but his violent criminal acts, in accordance with the Constitution, which guarantees the freedom of expression and due process of law, and with the Code of Criminal Procedure, which puts into practice the spirit of the Constitution of Japan in criminal proceedings. Nor was there any violation of his human rights from the procedural perspective. Therefore, Mr. Yamashiro's arrest and detention, as well as other attendant measures, do not contradict the domestic laws of Japan or its international obligations under the treaties to which it is a party, including the Covenant and the Convention against Torture. The Government has provided the Working Group with the information below.

33. First, the Government provides its version of events regarding Mr. Yamashiro's three sets of arrests and detention:

(a) On 17 October 2016 at around 3 p.m., Mr. Yamashiro cut barbed wire, which was managed by the Okinawa Defense Bureau, inside the construction site for the helicopter landing zones in the Northern Training Area of the United States armed forces. The Okinawa Prefectural Police arrested him in flagrante delicto for damage to property (article 261 of the Penal Code);

(b) On 25 August 2016 at around 8 a.m., Mr. Yamashiro assaulted an Okinawa Defense Bureau officer on a construction road used for relocating the helicopter landing zones in the Northern Training Area of the United States armed forces, injuring the

officer's right arm, which required two weeks' treatment. After conducting an investigation based on the victim's report, the Okinawa Prefectural Police arrested Mr. Yamashiro on 20 October 2016 for obstruction of performance of public duty (article 95 of the Penal Code) and causation of injury (article 204 of the Penal Code);

(c) Between 28 and 30 January 2016, Mr. Yamashiro piled up approximately 1,500 concrete blocks in front of the construction gates of Camp Schwab to block access to the base. Around 30 January 2016, he also had some individuals sit on the blocks and stand in front of moving construction vehicles. Mr. Yamashiro's actions made it difficult for contractors to carry equipment and materials onto Camp Schwab's premises and obstructed the work of the Okinawa Defense Bureau, which leads the construction work. The Okinawa Prefectural Police therefore arrested Mr. Yamashiro on 29 November 2016 for forcible obstruction of business (article 234 of the Penal Code).

34. The Government disputes the source's characterization of Mr. Yamashiro's protest activities as non-violent resistance. According to the Government, on all three occasions Mr. Yamashiro was arrested in flagrante delicto or with warrants issued by judges who determined that there was sufficient probable cause to suspect that he had committed crimes and that it was necessary to arrest him in accordance with due process of law. Mr. Yamashiro's subsequent detention was based on detention warrants issued by the courts, and the restrictions of contact during the detention were authorized by judges also in accordance with due process of law.

35. Regarding the source's allegation that Mr. Yamashiro's arrest and detention for forcible obstruction of business 10 months after the event was intended to prolong his initial detention for damage to property, and for obstructing public duty and causing injury, the Government states that Japan's criminal proceedings are conducted based on crimes stipulated under the law and that judges determine whether arrest and detention are necessary for each individual crime. The fact that Mr. Yamashiro has already been prosecuted for certain crimes does not mean that the requirements for arrest and detention for other crimes cannot be met. In other words, Mr. Yamashiro's arrest and detention for the 10-month-old case of forcible obstruction of business, while he was already under detention, was based on the court's determination that there was sufficient probable cause to suspect that he had committed that crime and that it was necessary to arrest him for that crime.

36. The Government also dismisses as groundless the source's claim that the Okinawa Prefectural Police at the scene could have stopped the forcible obstruction of business by arresting Mr. Yamashiro and other protesters but chose not to do so, contending that the police could take necessary measures such as giving warnings when illegal activities have occurred or there is a risk that they could occur.

37. As for the source's objection to the unusually strict restriction of contact imposed on Mr. Yamashiro, namely (a) the blanket ban on outside contacts that continued even after the investigation requiring the ban was completed, and (b) the ban on contact with his wife, who had nothing to do with the crime for which he was prosecuted, the Government insists that, if and when there is sufficient probable cause to suspect that a criminal suspect or defendant under detention may flee or conceal or destroy evidence, the court may, in accordance with the Code of Criminal Procedure, decide to legally restrict contact, whether before or after the indictment. Restriction of contact after the indictment is therefore not in itself unusual at all.

38. According to the Government, in Mr. Yamashiro's case, his contact was restricted even after the indictment because he had been indicted for obstruction of performance of public duty and causation of injury, involving multiple accomplices, including those unidentified, and victims. Before the first hearing and examination of evidence, it was not illegal, illegitimate or unusual for the court to restrict contact with other individuals, including Mr. Yamashiro's wife, on the grounds that there was sufficient probable cause to suspect that he may flee or conceal or destroy evidence. Since the court granted a motion by Mr. Yamashiro's lawyer to permit him to contact his wife and exchange documents and items on 10 March 2017 before the first hearing, the source wrongly stated that the blanket restriction of contact continued until 17 March 2017.

39. The Government adds that, until Mr. Yamashiro's release on 18 March 2017 in accordance with the court's decision to grant him bail, his prior bail motions to the court, as well as his quasi-appeals and special appeals to the Supreme Court, guaranteed under the Code of Criminal Procedure, had been rejected as groundless. The Government also questions the source's reliance on the police statement that there was a risk of destruction of evidence, as the police are in no position to make such a statement.

40. In the light of the foregoing, the Government submits that Mr. Yamashiro's arrest, detention and restriction of contact during detention were in accordance with the provisions of the Code of Criminal Procedure and article 34 of the Constitution, the highest law of the land, and therefore were not arbitrary.

41. Second, the Government also dismisses the source's complaints about the bail conditions as predicated on an inaccurate understanding of facts in the light of the version of events it offered above. Regarding the source's claim that the ban on contact with "all other individuals involved in the incident", as part of Mr. Yamashiro's conditions of bail relating to the charge of forcible obstruction of business, was so extensive and vague as to force him and his colleagues to refrain from taking part in activities opposing the new military base construction, the Government first emphasizes that Mr. Yamashiro was not prohibited from contacting any person through his defence counsel. The Government also disputes the source's claim that the phrase "all other individuals involved in the incident" is vague and extensive, as the range of individuals with whom any contact is prohibited is clear given that the names of several individuals involved in the incident were listed before the phrase. The bail conditions merely prohibited acts that could make a proper criminal trial difficult, such as destruction of evidence and flight, in accordance with the Code of Criminal Procedure, and they did not prohibit Mr. Yamashiro from peacefully exercising his freedom of expression with regard to the United States military facilities and areas.

42. Third, the Government rejects other complaints about the measures taken against Mr. Yamashiro or other participants in the anti-base protest. Contrary to the source's claims about the arbitrary application of the Road Traffic Act to arrest the protesters, the police were merely acting under the Act in order to prevent road hazards and to ensure the smooth and safe flow of traffic by arresting protesters who were committing violations that could not be legitimized as freedom of expression. The Government notes that the protesters in Henoko and Takae employed dangerous and illegal acts of obstructing traffic such as lying underneath vehicles, rushing in front of moving vehicles and parking vehicles irregularly to impede traffic, as well as violence against the police officers tasked with maintaining order. The police did not exercise excessive force but took the minimum security measures necessary and appropriate to ensure the safety of the sites, maintain order, prevent traffic accidents and allow the smooth flow of traffic. The arrests were made in accordance with due process of law provided for in the Code of Criminal Procedure.

43. According to the Government, the dispatch of the riot police was in accordance with the decision of the Okinawa Prefectural Public Safety Commission and the public safety commissions of the relevant prefectures to secure the safety of the sites and to deter illegal activities, not "to stamp down the people's resistance" as alleged by the source.

44. Regarding the source's assertion that, on 13 October 2015, even though the Governor of Okinawa had revoked the permission for a landfill to be built in Henoko, the Government enforced the construction, the Government maintains that, after the revocation of permission to construct the landfill, the Okinawa Defense Bureau first suspended the construction work but then resumed it on 29 October 2015, following the decision of the Minister of Land, Infrastructure, Transport and Tourism under the Administrative Complaint Review Act to suspend the implementation of the Governor's revocation. In March 2016, the central Government and the Okinawa Prefecture agreed to temporarily suspend the construction work and begin consultations to resolve the problems and initiate a procedure to seek a legal judgment in parallel. On 20 December 2016, the Supreme Court confirmed that the permission for the landfill given by the former Governor was valid and that the current Governor's revocation was illegal. Consequently, the Governor cancelled the revocation on 26 December 2016, and the construction work resumed. The Government notes that the source's contention that the central Government enforced the construction work is thus groundless.

45. The Government states that there is a lack of clarity regarding the source's reference to the arrest of "Mr. Yamashiro and the other four individuals" (see para. 26 above). The Government adds that, not only were Mr. Yamashiro's arrest and detention described above executed legally in accordance with due process of law provided for in the Code of Criminal Procedure, but so were his previous arrest and detention by the Okinawa Prefectural Police for illegal entry into United States military facilities. There is no basis to conclude that the arrests and detention were arbitrary since they were made as a result of Mr. Yamashiro's commission of criminal acts, which cannot be legitimized as the exercise of freedom of expression.

46. Fourth, the Government contends that it violated none of its international obligations under the Universal Declaration of Human Rights, the Covenant or the Convention against Torture. Japan adheres to international agreements in accordance with article 98 of the Constitution, which stipulates that the treaties concluded by Japan and established laws of nations shall be faithfully observed.

47. According to the Government, "the right to hold opinions without interference" and "the right to freedom of expression" in article 19 (1) and (2) of the Covenant are guaranteed under articles 19, 21 and 23 of the Constitution. In addition, "the right to peaceful assembly" in article 21 of the Covenant is guaranteed under article 21 of the Constitution. Article 21 of the Covenant protects the right to assemble peacefully, but not the right to assemble to use violence. This is why the word "peaceful" is used in article 21 of the Covenant.

48. In the Government's view, article 9 (1) of the Covenant prohibits arbitrary arrest or detention but not arrest or detention made in accordance with appropriate procedures stipulated in the law. With regard to article 9 (3) of the Covenant, the Code of Criminal Procedure stipulates that, if a public prosecutor does not institute a prosecution or request the court for detention within 72 hours from the time of arrest (when the public prosecutor receives in custody a person who has been arrested by a judicial police official), or within 48 hours from the time of arrest (when the public prosecutor has arrested a suspect himself or herself), the arrested person must be released immediately. The Code of Criminal Procedure further stipulates that, as in Mr. Yamashiro's case, a criminal suspect or defendant is given the opportunity to make a statement before a judge without delay when an indictment or a request for detention is made so that a decision is taken on whether he is detained or released. The facts of the case, as explained above by the Government, reveal no violation of article 9 (1) and (3) of the Covenant.

49. Furthermore, the Government considers groundless, in the light of these provisions of the Code of Criminal Procedure, the source's allegation that Mr. Yamashiro's case violates article 7 of the Covenant, which prohibits torture, and article 10 of the Covenant, which stipulates the humane treatment of persons deprived of their liberty, as well as the Convention against Torture and the Universal Declaration of Human Rights.

Further comments from the source

50. On 28 March 2018, the response from the Government was sent to the source for further comment. In its response of 16 April 2018, the source contends that Mr. Yamashiro's detention showcases the problem of "hostage justice"[1] in Japan. According to the source, the Japanese courts, under the influence of the investigative authorities, provide little institutional check on the issuance of warrants. The investigative authorities arrest and detain a criminal suspect or defendant with ease by citing probable cause to believe that the person to be arrested and detained may flee or destroy or conceal evidence, in order to have the courts rubber stamp warrants. If a criminal suspect or defendant denies the allegations against him or her, the investigative authorities detain him or her for a significant amount of time without bail, on the grounds that he or she may destroy or conceal evidence. Contact with persons other than his or her attorney will be restricted on the suspicion of collusion with an accomplice to conceal or destroy evidence.

[1] Japan Federation of Bar Associations, "Efforts to improve criminal procedures", available at www.nichibenren.or.jp/en/about/activities/criminal.html.

51. The source notes that this bleak criminal scenario, which is at odds with international standards, is not unique to Mr. Yamashiro's case but rather common in Japan. The source adds that it is certain that the procedure is performed based on warrants issued by the court in accordance with the Code of Criminal Procedure.

52. In Mr. Yamashiro's case, the source contends that contact with, among others, his spouse was restricted for a long time in what was considered as one of the most unreasonable measures taken in the history of Japanese criminal justice. In many cases, even if there is an accomplice, at least the family members are usually allowed to see the defendant after indictment.

53. Regarding Mr. Yamashiro's belated arrest and detention for forcible obstruction of business, the source states that it is not enough, as the Government claims, that there is a suspicion of a crime but there must also be a risk of flight or concealment or destruction of evidence. There was obviously no probable cause to suspect that Mr. Yamashiro may conceal or destroy incriminating evidence for the forcible obstruction of business, as the alleged acts were witnessed by the police.

54. Lastly, the source considers that the Government's explanation for the arrests under the Road Traffic Act is not reasonable. Detention is not permissible without suspicion of a crime or probable cause to believe that the criminal suspect or defendant may flee or conceal or destroy incriminating evidence. It is obvious that Mr. Yamashiro was arrested at the scene of the alleged crime when there was no such probable cause. In fact, he was released in relation to most of the charges just after he was referred to the public prosecutor. The case of Mr. Yamashiro did not even involve a warrant to be examined by the court. Therefore, his arrest at the scene by the police was arbitrary.

Recent developments

55. It has come to the Working Group's attention that, on 14 March 2018, the Naha District Court convicted and sentenced Mr. Yamashiro to two years in prison with hard labour but suspended the sentence for three years. Mr. Yamashiro appealed the decision to the high court.[2]

Request for further information

56. The Working Group considered the submissions from the source and the Government, and noted the serious factual conflict between the parties as to whether Mr. Yamashiro's deprivation of liberty was arbitrary, as well as the many questions that remained unanswered. The Working Group therefore decided to seek further submissions from the parties in order to ensure that they both had an equal opportunity to expand upon their respective arguments. The Working Group has considered all the additional submissions made by the source and the Government (see annex).

Discussion

57. The Working Group thanks the source and the Government for their timely and extensive engagement and submissions in relation to Mr. Yamashiro's detention.

58. At the outset, the Working Group welcomes Mr. Yamashiro's release on 18 March 2017, when a three-judge panel of the criminal division of the Fukuoka High Court, Naha Branch, dismissed the public prosecutor's appeal against the Naha District Court's grant of conditional bail. At that time, Mr. Yamashiro had been deprived of liberty for five months. If the person concerned is released following the referral of the case, the Working Group reserves the right to render an opinion, rather than filing the case, on a case-by-case basis as to whether the deprivation of liberty was arbitrary, in conformity with paragraph 17 (a) of its methods of work.

[2] Hana Kusumoto, "Okinawa protest leader found guilty of anti-base demonstration offenses", *Stars and Stripes*, 14 March 2018. Available at www.stripes.com/news/okinawa-protest-leader-found-guilty-of-anti-base-demonstration-offenses-1.516879.

59. In this particular case, the Working Group has decided to render the present opinion. In making this decision, despite Mr. Yamashiro's release, the Working Group takes into account and gives particular weight to the following factors: (a) the circumstances in which he was deprived of liberty were serious and warrant further attention[3] as he was initially detained for cutting barbed wire and then held in pretrial detention for two previous unrelated charges; (b) he was deprived of liberty for five months for three charges, which resulted in a suspended sentence that the public prosecutor chose not to appeal; (c) the bail conditions include not only a 4 million yen bail bond but also residence restriction and a contact ban whose violation would cause the revocation of bail; and (d) he may yet again be deprived of his liberty depending on the outcome of the ongoing appellate proceedings.

60. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[4] A similar approach has been adopted by the Human Rights Committee, according to which the burden of proof cannot rest upon the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.[5]

61. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.[6] Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant rules and standards of international human rights law.[7]

62. The Working Group also wishes to reiterate that it applies a heightened standard of review in cases where the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, are restricted or where human rights defenders are involved.[8] Mr.

[3] Opinion No. 50/2017, para. 53 (c).

[4] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, para. 55; and opinions No. 41/2013, para. 27; and No. 59/2016, para. 61.

[5] See, for instance, *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2005), para. 7.3; *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3; *Conteris v. Uruguay*, communication No. 139/1983, para. 7.2; *Bleier Lewenhoff and Valiño de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3. See also opinions No. 41/2013, para. 28; No. 48/2013, para. 13; No. 51/2013, para. 16; No. 53/2013, para. 27; No. 57/2013, para. 49; No. 5/2014, para. 15; No. 52/2014, para. 16, footnote 1; No. 2/2015, para. 16; and No. 40/2015, para. 35.

[6] General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); opinions No. 38/2018, para. 60; No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, paras. 51 and 70; No. 76/2017, para. 62; No. 28/2015, para. 41; and No. 41/2014, para. 24.

[7] Opinions No. 38/2018, para. 60; No. 94/2017, paras. 47 and 48; No. 33/2015, para. 80; No. 1/2003, para. 17; No. 5/1999, para. 15; and No. 1/1998, para. 13.

[8] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 9 (3). See also

Yamashiro's role as a prominent pacifist and environmentalist with a lifelong history of activism in Okinawa requires the Working Group to undertake this kind of intense and strict scrutiny.[9]

Category II

63. The Working Group recalls that the right to hold and express opinions, including opinions that are not in accordance with official government policy, as well as the right to assemble peacefully, are protected by articles 19 and 20 of the Universal Declaration of Human Rights and article 19 and 21 of the Covenant. The Government must respect, protect and uphold the right to freedom of opinion and expression as well as peaceful assembly, even where opinions have been expressed in peaceful assemblies which are not to its liking.[10]

64. The Working Group notes that the Human Rights Committee, in paragraph 34 of its general comment No. 34 (2011) on the freedoms of opinion and expression, states that restrictions on the freedom of expression must not be overbroad and recalls that such restrictions must conform to the principle of proportionality, be appropriate to achieve their protective function, be the least intrusive instrument among those which might achieve their protective function and be proportionate to the interest to be protected.[11] Moreover, the Committee, in paragraph 38 of that general comment, emphasizes that States parties should not prohibit criticism of institutions, such as the army or the administration.

65. In the same vein, the Working Group notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reiterated that the right to freedom of expression includes the expression of views and opinions that offend, shock or disturb.[12] Even the statements considered unacceptable, disrespectful and in very bad taste by the authorities are entitled to protection. In addition, the Human Rights Council, in its resolution No. 12/16, paragraph 5 (p) (i), stated that restrictions on discussion of government policies and political debate are not consistent with article 19 (3) of the Covenant.

66. According to the Government, Mr. Yamashiro's three concurrent sets of arrests and detentions were merely the result of the impartial administration of justice for violations of the Penal Code in accordance with due process of law. The Government, however, did not explain why Mr. Yamashiro was arrested on 20 October 2016 for the alleged assault of an Okinawa Defense Bureau officer on 25 August 2016. It does not appear entirely coincidental that the arrest for the incident on 25 August 2016 was made on the same day, when the public prosecutor's request for Mr. Yamashiro's detention for the incident on 17 October 2016 was initially dismissed by the court.

67. A plausible explanation is even more wanting for the 10-month lapse of time between Mr. Yamashiro's third arrest on 29 November 2016 and the alleged brick-laying and sit-in in front of the construction site between 28 and 30 January 2016. In this respect, the Working Group is persuaded by the source's contention that Mr. Yamashiro's second arrest and detention (20 October 2016 to 18 March 2017) was intended to prolong his first

opinions No. 13/2018, para. 22; No. 3/2018, para. 40; No. 94/2017, para. 49; No. 57/2017, para. 46; No. 41/2017, para. 95; No. 67/2012, paras. 56 and 57; No. 65/2012, paras. 39 and 40; No. 64/2011, para. 20; No. 62/2012, para. 39; No. 54/2012, para. 29; and No. 21/2011, para. 29. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (opinion No. 39/2012, para. 45).

[9] Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters (see Declaration on Human Rights Defenders, art. 6 (c)). See also opinion No. 8/2009, para. 18.

[10] Opinions No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, para. 80; and No. 76/2017, para. 62.

[11] Opinion No. 3/2018, para. 49.

[12] A/HRC/17/27, para. 37.

detention (17 October 2016 to 4 November 2016), and his third arrest and detention (29 November 2016 to 7 March 2017) was to prolong his second detention.

68. Furthermore, it is difficult for the Working Group to acknowledge that there were plausible grounds for Mr. Yamashiro's pretrial detention from 17 October 2016 to 7 March 2017. The Working Group notes that the Government continues to cite probable cause to suspect concealment or destruction of evidence under articles 60 (1) (ii) and 89 (iv) of the Code of Criminal Procedure. The Working Group, however, is less than fully convinced by such justification drawing from mere assertions on the legitimate application of law. The Working Group notes that the public prosecutor even lodged an unsuccessful appeal against the bail, ultimately granted by a court on 17 March 2017 under various strict conditions.

69. While it is not unusual to impose the restriction of contact to prevent the intimidation of key witnesses or tampering with evidence, the Working Group finds some of the restrictions imposed on Mr. Yamashiro during his pretrial detention and while on bail puzzling. It is difficult, for instance, to accept the reasonableness or necessity of initially prohibiting Mr. Yamashiro's contact with his wife. The Government offers no justification other than vague assertions of sufficient probable cause. In fact, the Working Group has no choice but to consider the possibility that this was meant to have a chilling effect on Mr. Yamashiro and his fellow Okinawan protesters for their vocal opposition to the construction of United States military bases in Okinawa.

70. The Working Group notes that, in his report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression explicitly referred to Mr. Yamashiro's five-month detention without trial, which is disproportionate to his alleged actions, to express his concern that "such government action could quell expression, in particular public protest and dissent" in Okinawa (A/HRC/35/22/Add.1, paras. 59 and 60). In the Working Group's view, the Government appears to be targeting Mr. Yamashiro not for his specific alleged offences but for his lifelong exercise of the rights and freedoms as an Okinawan pacifist and environmentalist. The Working Group, which shares the Special Rapporteur's concern about a possible chilling effect on public expression, also notes in this regard that Mr. Yamashiro neither resorted to violent means nor incited others and that he has no prior criminal record.

71. In the light of the above observations, the Working Group expresses its particular concern that the contact restriction as part of his bail conditions has forced Mr. Yamashiro to avoid attending anti-base rallies without his lawyer for fear of violating bail conditions that could result in the revocation of bail and the seizure of the bond payment. While the Government argued that Mr. Yamashiro was not prohibited from contacting any person through his defence counsel, it did not address the source's concern that he had to rely upon his lawyer's physical presence to participate in demonstrations. The contact restriction therefore cannot be considered necessary or proportionate.

72. The Working Group further expresses its concern at the Government's increased use of article 76 (4) (ii) of the Road Traffic Act to arrest protesters, which it did not dispute. The Working Group recalls that public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).[13]

73. For these reasons, the Working Group is of the opinion that Mr. Yamashiro's deprivation of liberty violates articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant, falling within category II.

[13] Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on Freedom of Peaceful Assembly* (ODIHR, Warsaw and Strasbourg, 2010), para. 20.

Category V

74. The Working Group will now examine whether Mr. Yamashiro's deprivation of liberty constitutes illegal discrimination under international law and whether it therefore falls under category V.

75. First and foremost, the Working Group notes Mr. Yamashiro's status as a long-time Okinawan activist at odds with the central Government's policies. The Working Group concurs with the Human Rights Committee, which has reiterated its concern regarding the lack of recognition of the Ryukyu and Okinawa, and of the rights of those groups to their traditional land and resources in terms of article 27 of the Covenant, and the need for the Government to ensure respect for the Okinawan community's right to engage in free, prior and informed participation in policies that affect them (CCPR/C/JPN/CO/6, para. 26). The Working Group also notes that the concentration of 70.4 per cent of United States military facilities in Japan in Okinawa, which comprises 0.6 per cent of the land area of Japan, and the attendant social and environmental burden, have long been a source of conflict.[14] The Working Group further notes that Mr. Yamashiro is entitled to protection as a human rights defender.[15]

76. While the Government claims that Mr. Yamashiro was arrested and detained for his individual criminal acts, the Working Group has already found that his arrests and detention resulted from his exercise of the rights to freedom of expression and assembly. When it is confirmed that a deprivation of liberty resulted from the active exercise of civil and political rights, the Working Group considers that there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.

77. The Working Group has already expressed its doubts about Mr. Yamashiro's belated arrests and prosecution for acts that had occurred months earlier without criminal proceedings, and about the grounds for his pretrial detention despite little risk of flight or evidence tampering, as well as the unusual restriction on Mr. Yamashiro's contact with his wife for months. The Working Group also notes that the source has highlighted another example of different treatment towards Mr. Yamashiro (see para. 26 above). The Working Group is thus of the view that Mr. Yamashiro's political views are clearly at the centre of the present case and that the authorities have displayed an attitude towards Mr. Yamashiro that can only be characterized as discriminatory.

78. In this context, the Working Group also expresses its concern about the phenomenon of "hostage justice" alleged by the source in the Japanese criminal justice system.[16] Even the official figures provided by the Government demonstrate that arrest and detention warrants are issued upon request by the public prosecutor in over 98 per cent of the cases. The public prosecutors would no doubt exercise great caution and professionalism in making such requests, but too much prosecutorial discretion with insufficient judicial oversight may result in an environment conducive to the discriminatory application of law.[17]

79. It has also not escaped the Working Group's attention that the Government has recently resorted to harsher tactics against the anti-base protesters in Okinawa, including through the use of article 76 (4) (ii) of the Road Traffic Act to arrest them. Mr. Yamashiro's role as the leader of this movement also deserves consideration.

80. For these reasons, the Working Group considers that Mr. Yamashiro's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1), 26 and 27 of the Covenant, on the grounds of discrimination

[14] Okinawa Prefectural Government, Washington D.C. Office, *What Okinawa Wants You to Understand about the U.S. Military Bases* (March 2018). Available at http://dc-office.org/wp-content/uploads/2018/03/E-all.pdf.

[15] Declaration on Human Rights Defenders, arts. 9 and 12.

[16] Opinion No. 42/2006, paras. 13–16.

[17] In its opinion No. 9/2009, the Working Group found the detention and prosecution of two anti-whaling Greenpeace activists in Japan arbitrary for this reason.

against a civic activist aimed at and resulting in ignoring the equality of human beings, and that it therefore falls within category V.

81. The Working Group would welcome the opportunity to work constructively with the Government of Japan to address its serious concerns relating to the arbitrary deprivation of liberty. On 30 November 2016, the Working Group sent a request to the Government to undertake a country visit and welcomes the engagement of the Government through the meetings the Working Group has held with the Permanent Mission of Japan to the United Nations Office and other international organizations in Geneva, to discuss further the possibility of such a visit. On 2 February 2018, the Working Group sent a further request to the Government to undertake a country visit and hopes that it will receive a positive response from the Government as a sign of its willingness to enhance its cooperation with the special procedures of the Human Rights Council.

Disposition

82. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Yamashiro Hiroji, being in contravention of articles 2, 5, 7, 9, 19, 20 and 25 of the Universal Declaration of Human Rights and of articles 2, 7, 9, 10, 19, 21, 26 and 27 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and V.

83. The Working Group requests the Government of Japan to take the steps necessary to remedy the situation of Mr. Yamashiro without delay and bring it into conformity with the international norms, including those set out the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Yamashiro unconditionally and accord him an enforceable right to compensation and other reparations, in accordance with international law.

85. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Yamashiro and to take appropriate measures against those responsible for the violation of his rights.

86. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

87. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

88. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Yamashiro has been unconditionally released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Yamashiro;

(c) Whether an investigation has been conducted into the violation of Mr. Yamashiro's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Japan with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

89. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

90. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

91. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[18]

[*Adopted on 23 August 2018*]

[18] Human Rights Council resolution 33/30, paras. 3 and 7.

Annex

Additional information submitted by the parties

Request for further information

1. The Working Group first asked both parties to provide copies of the arrest/detention warrants, court decisions on bail requests, the Naha District Court's judgment of 14 March 2018 and the application for appeal of the said judgment. The source submitted the requested copies at its disposal, and it explains that Mr. Yamashiro appealed the judgment of 14 March 2018, which found him guilty of forcible obstruction of business, obstruction of performance of public duty, causation of injury and damage to property, and sentenced him to two years' imprisonment, but suspended it for three years, with the reasoning that the appeal is under preparation. There has been no appeal from the prosecution.

2. According to the Government, it "cannot provide a copy of the requested documents because it is not the Government of Japan but the court where the appeal by Mr. Hiroji Yamashiro is pending that keeps such documents". The Government confirms Mr. Yamashiro's conviction and two-year sentence with a three-year suspension by the court on 14 March 2018, as well as the prosecution's non-appeal and Mr. Yamashiro's filing of an appeal.

3. The Working Group then enquired if Japanese law requires anyone arrested or detained on a criminal charge to be brought promptly before the judge in person in accordance with article 9 (3) of the Covenant, and its specific application in Mr. Yamashiro's case. According to the source, articles 61 and 207 (1) of the Code of Criminal Procedure stipulate that there be "detention questions" by a judge to ascertain the need for detention, and Mr. Yamashiro also received the detention questions before a judge, who announced his detention *sur place*. The source adds that the detention warrant is issued directly to the public defender after the detention, but only upon request to the detained suspect and the private defence counsel. The Government also confirms that a suspect requested for detention is promptly brought before the judge, including in Mr. Yamashiro's case.

4. In response to the Working Group's inquiry about the date of Mr. Yamashiro's formal indictment by the public prosecutor, the source and the Government note that he was prosecuted for damage to property, obstruction of performance of public duty and causation of injury on 11 November 2016, and for forcible obstruction of business on 20 December 2016. As for the date of the formal commencement of Mr. Yamashiro's trial, the source states that his first trial commenced on 27 March 2017, after seven scheduling/pretrial conferences since 29 November 2016, while the Government maintains that the first trial in a public court was on 17 March 2017.

5. In the light of article 9 (4) of the Covenant, the Working Group further asked both parties about the period of detention for each detention warrant, and the availability of a periodic review of Mr. Yamashiro's detention by a court while he was held in custody for five months between 17 October 2016 and 18 March 2017. The source provided a timeline of Mr. Yamashiro's arrest and detention, as edited and reproduced below.

Table 1
Timeline of Mr. Yamashiro's arrests, detention and prosecution

Dates relating to alleged offences	*Alleged case of destruction of property on 17 Oct 2016*	*Alleged case of obstruction of performance of public duty/causation of injury on 25 Aug 2016*	*Alleged case of forcible obstruction of business on 28–30 Jan 2016*
2016-10-17	**Arrested as quasi-flagrant offender**		
2016-10-20	Request for detention by prosecutor dismissed by Naha Summary Court; Quasi-appeal filed by prosecutor; **Detained pursuant to warrant issued by Naha District Court, First Criminal Division judge on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 60 (1) (2) of Code of Criminal Procedure)	**Arrested pursuant to warrant issued by Naha Summary Court**	
2016-10-23		**Detained pursuant to warrant issued by Naha Summary Court judge** (probable cause to suspect concealment or destruction of evidence per art. 60 (1) (2) of Code of Criminal Procedure	
2016-10-28	**Detention extended to 2016-11-08 by Naha Summary Court judge** (examination of evidence incomplete; for many related persons; interrogation of suspect incomplete)		
2016-11-01	**Extension of detention shortened to 2016-11-04 on quasi-appeal**	**Detention extended to 2016-11-11 by Naha Summary Court judge** (need for further interrogation of victims and accomplices; need for detailed investigation of video and other evidence)	
2016-11-02		**Quasi-appeal against extension of detention dismissed**	
2016-11-04	**Released from detention**		
2016-11-11	**Prosecution initiated by prosecutor**		
2016-11-11	Request for bail filed by defence		
2016-11-12	**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		
2016-11-14	Quasi-appeal filed by defence		

Dates relating to alleged offences	*Alleged case of destruction of property on 17 Oct 2016*	*Alleged case of obstruction of performance of public duty/causation of injury on 25 Aug 2016*	*Alleged case of forcible obstruction of business on 28–30 Jan 2016*
2016-11-15	**Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		
2016-11-29			**Arrested pursuant to warrant issued by Naha Summary Court**
2016-12-01			**Detained pursuant to warrant issued by Naha Summary Court** (probable cause to suspect concealment or destruction of evidence per art. 60 (1) (2) of Code of Criminal Procedure)
2016-12-09			**Detention extended to 2016-12-20 by Naha Summary Court** (interrogation of accomplice incomplete; interrogation of related persons incomplete; analysis, detailed investigation, etc., of seized items incomplete)
2016-12-13			**Quasi-appeal against extension of detention dismissed**
2016-12-15			**Request for rescindment of detention dismissed**
2016-12-16			**Quasi-appeal dismissed**
2016-12-20			**Prosecution initiated by prosecutor**
2016-12-26	Request for bail filed by defence		Request for bail filed by defence
2016-12-27	**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2016-12-28	Quasi-appeal filed by defence;		Quasi-appeal filed by defence;
	Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-01-18	Request for bail filed by defence		Request for bail filed by defence
2017-01-19	**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)

Dates relating to alleged offences	*Alleged case of destruction of property on 17 Oct 2016*	*Alleged case of obstruction of performance of public duty/causation of injury on 25 Aug 2016*	*Alleged case of forcible obstruction of business on 28–30 Jan 2016*
2017-01-20	Quasi-appeal filed by defence;		Quasi-appeal filed by defence;
	Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-01-27	Request for bail filed by defence;		Request for bail filed by defence;
	Request for bail dismissed by Naha District Court judge (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-01-30	Quasi-appeal filed by defence;		Quasi-appeal filed by defence;
	Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-02-08	Request for bail filed by defence;		Request for bail filed by defence;
	Request for bail dismissed by Naha District Court judge (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-02-09	Quasi-appeal filed by defence;		Quasi-appeal filed by defence;
	Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)
2017-02-13	Special appeal against dismissal of quasi-appeal by Naha District Court on 2017-02-09 filed by defence		Special appeal against dismissal of quasi-appeal by Naha District Court on 2017-02-09 filed by defence
2017-02-20	**Special appeal dismissed by Supreme Court, Third Petty Bench**		**Special appeal dismissed by Supreme Court, Third Petty Bench**

Dates relating to alleged offences	*Alleged case of destruction of property on 17 Oct 2016*	*Alleged case of obstruction of performance of public duty/causation of injury on 25 Aug 2016*	*Alleged case of forcible obstruction of business on 28–30 Jan 2016*
2017-03-07	Request for bail filed by defence; **Request for bail dismissed by Naha District Court judge** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		**Bail granted by Naha District Court**
2017-03-08	Quasi-appeal filed by defence; **Request for bail dismissed by Naha District Court, First Criminal Division three-judge panel on quasi-appeal** (probable cause to suspect concealment or destruction of evidence per art. 89 (iv) of Code of Criminal Procedure)		
2017-03-10	Special appeal against dismissal of quasi-appeal by Naha District Court on 2017-03-08 filed by defence		
2017-03-13	**Special appeal dismissed by Supreme Court, Second Petty Bench**		
2017-03-17	**Bail granted by Naha District Court conditional on payment of 4 million yen bail bond, residence restriction, and prohibition of contact with the victim, accomplices, doctor and three police officers except through counsel**		
2017-03-18	**Appeal against grant of bail filed by prosecutor dismissed by Fukuoka High Court, Naha Branch, Criminal Division three-judge panel**		

6. According to the source, a request for detention is made to a judge within 72 hours of an arrest and, after 10 days of detention, a judge can grant 10-day extensions in accordance with articles 203–208 of the Code of Criminal Procedure. From the date of institution of prosecution, the accused can be detained for two months, after which detention can be extended every month as stipulated in article 60 (2) of the Code of Criminal Procedure. The source adds, however, that such extensions are in fact "done almost mechanically".

7. According to the Government, Mr. Yamashiro was detained for 108 days for forcible obstruction of business, 147 days for obstruction of performance of public duty and causation of injury, and 16 days for damage to property. The Government adds that "[t]he court judge determined detention of Mr. Yamashiro both before and after the prosecution, in light of the requirements stipulated in the Code of Criminal Procedure, whenever necessary, and by setting the periods".

8. Regarding the frequency of restrictions on contact with the spouse or other family members during pretrial detention, the source states that there are many cases where contact with ordinary people, including family members, and exchange of letters are restricted if a suspect denies the allegations, especially when there is an accomplice. However, restrictions for such a long period as in Mr. Yamashiro's case are not common because they are often lifted following a quasi-appeal or application for their partial cancellation. The source acknowledges that the restriction on Mr. Yamashiro's contact with his wife and exchange of letters was lifted on 10 March 2017 as the Government had maintained (para. 38).

9. The Government expressed its understanding that, under the Code of Criminal Procedure, the court may prohibit the accused's interview with anyone other than the current or prospective counsel, including the spouse or other family members, if there is probable cause to suspect flight or concealment or destruction of evidence by the accused. According to the Government, it "cannot respond to the presence or absence of other similar cases because the judge should determine [the interview ban or bail conditions]

depending on the evidence and circumstances involved in each individual specific criminal case".

10. With regard to the alleged obstruction of performance of public duty and causation of injury on 25 August 2016, the Working Group posed questions about the actions taken to investigate or prosecute Mr. Yamashiro prior to his arrest on 17 October 2016, as well as the seriousness of the victim's injury. The source states that, while the authorities did not investigate Mr. Yamashiro himself, they interviewed the victim and other related persons. According to the medical certificate, the doctor prescribed a two-week treatment for the victim "based on the person's request" for the post-traumatic cervical syndrome, without objective findings, and the bruise on his upper right arm which left a recognizable mark, as seen in the picture taken five days after the incident on 30 August 2016, but there was no numbness in his limbs and the tests showed no abnormalities.

11. The Government states that it arrested Mr. Yamashiro upon receipt of an arrest warrant from the court judge on 20 October 2016 because it "deemed that there was probable cause to suspect Mr. Yamashiro had committed" the said crimes and "it was necessary to arrest him as a result of the required investigation". The Government adds that it "would like to refrain from answering a question concerning investigation because it relates to the details of the activities of an individual [sic] specific investigation authorities". Because of the assault by Mr. Yamashiro, such as violent shaking, the victim suffered traumatic cervical syndrome as well as a right-arm bruise that resulted in about two weeks of treatment.

12. With regard to the alleged forcible obstruction of business on 28–30 January 2016, the Working Group asked both parties about the actions taken to investigate or prosecute Mr. Yamashiro prior to his arrest on 17 October 2016. The source states that, while the authorities did not investigate Mr. Yamashiro himself, they interviewed the related persons and analysed the video footage.

13. According to the Government, it arrested Mr. Yamashiro upon receipt of an arrest warrant from the court judge on 29 November 2016 because it "deemed that there was probable cause to suspect Mr. Yamashiro had committed" the said crime and "it was necessary to arrest him as a result of the required investigation". The Government adds that it "would like to refrain from answering a question concerning investigation because it relates to the details of the activities of an individual [sic] specific investigation authorities".

14. The Working Group also asked if there were any arrests prior to mid-2017 of protestors in Okinawa or other regions for the violation of article 76 (4) (ii), read in conjunction with article 120 (1) (ix), of the Road Traffic Law. The source states that arrests prior to mid-2017 had "not been uncommon" because the protesters in Henoko had always blocked the entry of construction vehicles by sit-ins or delaying tactics while it cannot confirm the situation in other prefectures. The Government responds that it has no relevant statistics or information on arrests made under the said legal provision.

15. Concerning Mr. Yamashiro's prior arrests and prosecution under article 2 of the Special Criminal Act Attendant upon the Enforcement of the "Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America regarding Facilities and Areas and the Status of United States Armed Forces in Japan", the source states that the public prosecutor dropped the charges against him.

16. According to the Government, Mr. Yamashiro was arrested twice by the police under the said Act in 2015. In both incidents, the first on 22 February 2015 at around 9 a.m. and the second on 5 December 2015 at around 10 a.m., he trespassed on the restricted areas of Camp Schwab without justifiable ground, was brought into custody by the military police, and was arrested by the Okinawa Prefectural Police, which took over his custody. The public prosecutors acknowledged Mr. Yamashiro's violation of the said Act but suspended the prosecution in the end.

17. In response to the Working Group's questions about the power of the Minister of Land, Infrastructure, Transport and Tourism to overrule the Governor of Okinawa's disposition under the Administrative Complaint Review Act, as well as the decision-making process in light of the right of self-determination under international law, the source

states that the purpose of the said Act is to establish a procedure for citizens to file a complaint against government offices and, accordingly, it cannot empower the Minister to overrule the Governor of Okinawa's disposition. The source adds that it "will subsequently complete the explanation about the decision-making process", but the Working Group did not receive a further submission from the source on this matter.

18. According to the Government, the said Act allows filing of a request for a review of an administrative disposition with a reviewing agency as set forth in law (the Minister of Land, Infrastructure, Transport and Tourism in this case) and vests in the reviewing agency the power to revoke an illegal or unreasonable disposition.

19. As requested by the Working Group, both parties provided relevant statistics and elaborated upon the alleged "hostage justice' in Japan. In the source's view, prolonged detention with little chance of bail induces the suspect or the accused to make false confessions.

20. In the Government's view, the description of the Japanese justice system as "hostage justice" is not appropriate. In principle, the police and public prosecutors may arrest suspects in the course of an investigation only when there exists sufficient probable cause to suspect that an offence has been committed by them and it is believed to be necessary to arrest them. Likewise, the public prosecutor may request detention only if it is believed to be necessary because of the risk of flight or concealment/destruction of evidence. The court makes appropriate determination of arrest, detention and bail requests in accordance with the relevant laws. The table below shows the statistics prepared by the General Secretariat of the Supreme Court, with the percentage computed and added by the Working Group.

Table 2
Numbers and percentages of requests for arrest and detention warrants, 2014–2016

	Outcome	*2014*	*2015*	*2016*
Request for arrest warrants	Issued	99 569 (98.653%)	100 880 (98.597%)	96 431 (98.527%)
	Dismissed	57 (0.056%)	62 (0.061%)	54 (0.055%)
	Revoked	1 302 (1.290%)	1 373 (1.342%)	1 388 (1.418%)
	Total	**100 928**	**102 315**	**97 873**
Request for detention warrants	Issued	112 204 (97.279%)	111 988 (96.627%)	106 995 (96.054%)
	Dismissed	3 127 (2.711%)	3 891 (3.357%)	4 394 (3.945%)
	Revoked	12 (0.010%)	18 (0.016%)	2 (0.002%)
	Total	**115 343**	**115 897**	**111 391**

21. In response to the Working Group's question about the status of the Universal Declaration of Human Rights and international human rights treaties within the Japanese legal system, the source states that the Universal Declaration of Human Rights is "basically considered not to have legal binding force", but some consider that it will be recognized as customary international law in Japan in the future. The courts apply the International Covenants on Human Rights, which Japan ratified in 1979 with reservations on workers' rights, and customary international law, which do not have a direct effect in many cases but are occasionally used for interpretation of domestic laws or rights.

22. The Government again cites article 98 (2) of the Constitution, which stipulates that "the treaties concluded by Japan and established laws of nations shall be faithfully observed" and states that "treaties and other international acts concluded and promulgated by Japan are effective as domestic laws".[1] It adds its understanding that human rights treaties were referred to in several domestic court cases.

[1] The Working Group notes that "Japan for its part declare[d] its intention … in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights; to seek to create within Japan conditions of stability and

23. Lastly, regarding Mr. Yamashiro's state of health, the source explains that "his health is good", with a blood test conducted every three months since 2018, while the Government states that it "is not in a position to be aware of the state of health of a person whose bail has already been granted".

well-being as defined in Articles 55 and 56 of the Charter of the United Nations" in the preamble to the Treaty of Peace with Japan, signed at San Francisco on 8 September 1951.