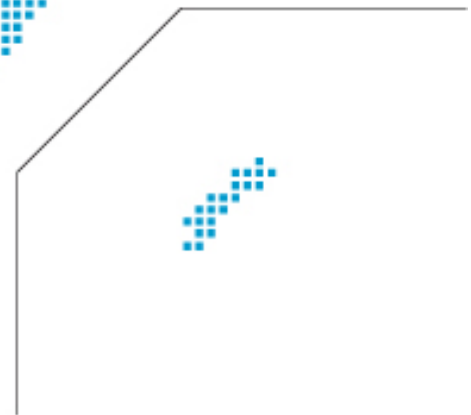




## Joint NGO Follow-up Report:

Country visit report on Japan by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression



19 February 2019

## **Introduction**

This report is jointly prepared by All Okinawa Council for Human Rights (AOCHR) and the International Movement Against All Forms of Discrimination and Racism (IMADR). This report seeks to supplement the information on the Government of Japan's implementation of the recommendations contained in the country visit report on Japan by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/35/22/Add.1). The authors of the report welcome this opportunity to contribute to the Special Rapporteur's upcoming follow-up report which is to be presented at the 41st session of the Human Rights Council in June 2019.

## **Table of contents**

1. Adoption of a broad anti-discrimination law.....	Page 2
2. Enjoyment of the right to freedom of assembly.....	Page 4
3. Additional information (the case of Mr. Hiroji Yamashiro).....	Page 5

## **Annex**

1. Photo of police measure against protesters in Henoko, Okinawa.....	Page 6
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**Have any legislative steps been taken towards the adoption of a broad anti-discrimination law? If so, at what stage is this process? (See: A/HRC/35/22/Add.1 para 78)**

Since the submission of the country visit report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, there has been no legislative development in Japan to adopt a broad anti-discrimination law.

Shortly after receiving the Special Rapporteur's report in June 2017, the Government of Japan was given over ten recommendations to adopt a comprehensive anti-discrimination law during the third cycle of the Universal Periodic Review (UPR) in November 2017.<sup>1</sup> Yet, the Government failed to support these UPR recommendations while it referred to the principle of equality before the law guaranteed by Article 14 of the Constitution.<sup>2</sup>

In August 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) examined the 10<sup>th</sup>-11<sup>th</sup> periodic reports of Japan. In its combined reports, the Government reported that "*the Government of Japan [...] does not recognize that it must adopt comprehensive legislation prohibiting racial discrimination*" and it referred to the Constitution.<sup>3</sup> Nevertheless, the Ministry of Justice published the Analytical Report of the Foreign Residents Survey in 2017 which revealed the respondents' experiences of discrimination in housing and employment in the past five years as well as the presence of racist hate speech in both offline and online.<sup>4</sup> While the adoption of 'Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Hate Speech Elimination Act)' in 2016 has had certain positive impacts to discourage incitements to hatred and violence, civil society organisations reported the prevalence of racist hate speech, especially in the internet.<sup>5</sup> These reports suggest that the existing legal framework including the Constitution falls short in providing effective protection from discrimination.

In its concluding observations, the Committee recommended the Government of Japan to "*adopt specific comprehensive legislation prohibiting direct and indirect racial discrimination, in line with articles 1 and 2 of the Convention*" and "*[a]dopt comprehensive legislation on the prohibition of racial discrimination covering crimes not covered by the Hate Speech Elimination Act, in order to strengthen the legal framework and access to remedies by victims*".<sup>6</sup> In February 2019, the Committee on the Rights of the Child (CRC) also urged the Government to "*[e]nact comprehensive anti-discrimination legislation*".<sup>7</sup>

The Government of Japan enacted a series of acts to individually address issues relating to hate speech, Buraku discrimination and the Technical Intern Training Program in 2016, and a bill on the indigenous

<sup>1</sup> A/HRC/37/15

<sup>2</sup> A/HRC/37/15/Add.1

<sup>3</sup> CERD/C/JPN/10-11, page 15

<sup>4</sup> Ministry of Justice (2017), *Analytical Report of the Foreign Residents Survey*, available at: [www.moj.go.jp/content/001249011.pdf](http://www.moj.go.jp/content/001249011.pdf)

<sup>5</sup> Japan NGO Network for the Elimination of Racial Discrimination (ERD Net) (2018), *Joint Civil Society Report on Racial Discrimination in Japan*, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT\\_CERD\\_NGO\\_JPN\\_31918\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_31918_E.pdf)

<sup>6</sup> CERD/C/JPN/CO/10-11

<sup>7</sup> CRC/C/JPN/CO/4-5

Ainu people is currently under consideration for the adoption in the 198<sup>th</sup> Diet session. While the Government insists that it addresses discrimination against specific communities with these separate legislations, their effects remain limited in combatting discrimination as described above.

(437/ 500 words)

**Have any efforts been made by public authorities, including law enforcement authorities, to enable the enjoyment of the right to freedom of assembly? (See: A/HRC/35/22/Add.1 para 72)**

While All Okinawa Council for Human Rights (AOCHR) translated the ‘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’<sup>8</sup> into Japanese and published it as a booklet<sup>9</sup> in order to raise awareness on the right to freedom of assembly and ‘freedom to express their opposition to public policies’,<sup>10</sup> the Government of Japan has not provided the civil society with any information nor measures to implement the recommendations made by the Special Rapporteur.<sup>11</sup> Moreover, there is no available public information on the Government’s measures to raise awareness of those rights among the law enforcements authorities in order to ensure the enjoyment of those rights in accordance with the international human rights standards.

Rather, the right to freedom of assembly of people protesting the government-led construction of the new U.S. military base in Henoko, Okinawa, has been continuously threatened both in the form of physical removal of the protesters from the site,<sup>12</sup> and in the form of strengthening surveillance over the protesters.

The Mainichi Shimbun Newspaper reported on 28 January 2019 that a private security company had made a list of 60 protesters in Okinawa with photos and personal information, on the request by the Okinawa Defense Bureau of the Ministry of Defense.<sup>13</sup> The existence of such a list has been known since the Okinawa Times, a local newspaper, reported it in 2016, but the Government denied its involvement in its Cabinet decision on August 8, 2016. Recent report by the Mainichi Shimbun revealed the Government’s instruction on surveillance over the protesters which creates a chilling effect not only among protesters but widely among people in Okinawa.

In August 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) also expressed concerns on human rights violations in Okinawa in relation to U.S. military bases and issued recommendations to the Government of Japan.<sup>14</sup>

(325/500 words)

<sup>8</sup> A/HRC/31/66

<sup>9</sup> All Okinawa Council for Human Rights (2018), *Shukai no tekisetu na kanri ni kansuru kokuren no kankoku*, available at: <http://okinawahumanrights.blogspot.com/2018/04/blog-post.html>

<sup>10</sup> A/HRC/35/22/Add.1, para 72

<sup>11</sup> *ibid.*

<sup>12</sup> See annex

<sup>13</sup> The Mainichi (28 Jan 2019), *Japan gov't ordered security firm to list Okinawa base demonstrators: records*, available at: <https://mainichi.jp/english/articles/20190128/p2a/00m/0na/003000c>

<sup>14</sup> CERD/C/JPN/CO/10-11, para 17

**Is there any relevant additional information you would wish to add?**

Mr. Yamashiro, the Chairperson of the Okinawa Peace Movement Center, was arrested during his protest against the construction of U.S. military facility in Higashi village, Okinawa and had been detained for five months without trial. He was found guilty and sentenced to two years in prison with hard labour suspended for three years by the Naha District Court on 14 March 2018. He then appealed to the Fukuoka High Court Naha Branch, but the court upheld the verdict of the first trial and dismissed Mr. Yamashiro's appeal on 13 December 2018. He made an appeal to the Supreme Court on 19 December 2018.

Concerning the case of Mr. Yamashiro, the UN working Group on Arbitrary Detention adopted the Opinion No.55/2018<sup>15</sup> on 27 December 2018. In its Opinion, the UN Working Group on Arbitrary Detention concluded that the deprivation of liberty of Mr. Yamashiro was arbitrary and requested the Government to remedy the situation by releasing him unconditionally and according him an enforceable right to compensation and reparations.<sup>16</sup> The Working Group also urged the Government of Japan to conduct a full and independent investigation on this case and take measures against those responsible for the violation of his rights.<sup>17</sup> Nevertheless, Mr. Yamashiro has not received any information on changes in the condition of his bail, compensation nor the investigation. Mr. Yamashiro and his lawyers received the information on this Opinion only through the authors of this report, and no information was provided by the Government of Japan.

(246/500 words)

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<sup>15</sup> A/HRC/WGAD/2018/55

<sup>16</sup> *ibid.*, para 84

<sup>17</sup> *ibid.*, para 85

## Annex

This photo shows the common treatment of protesters by police officers in Henoko, Okinawa. Police officers and/or riot police remove protesters from the entry area to the construction site, and keep them in the “cage” like spot. The cage is enclosed by fences, police officers, or sometimes police vehicles with an engine running. Police officers do not provide protesters with legal grounds for this treatment. Moreover, some female protesters claim that they often experience sexual harassment by police officers and/or riot police during this treatment.



Photo taken on 17 January 2018