

United Nations
Office of the High Commissioner for Human Rights

Universal Periodic Review

Stakeholder Submission

Human Rights Now



Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN dedicates to protection and promotion of human rights of people worldwide.

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I Background and institutional framework

1. The summary of the first Universal Periodic Review (UPR)

In June 2008, the Human Rights Council adopted the outcome of the UPR on Japan, which included 26 recommendations to the Japanese government. The Japanese government agreed to follow up on 13 recommendations and made positive remarks on four others, though the government did not accept or promise to consider nine recommendations.ⁱ

2. Status of Implementation

In March 2011, in the 16th Session of Human Rights Council, Japan submitted the “Mid-term progress report on its implementation of recommendations.” In the same session, Japan extended an official Standing Invitation to all thematic mandate-holders of the Special Procedures.ⁱⁱ In reality, however, the implementation status of UPR is poor. The Japanese government has failed to establish an action plan to implement UPR recommendations. Although Japan acknowledged the recommendation to “fully involve civil society in the follow-up to the UPR process at the national level” (subparagraph 26), the government has yet to convey a consultation with civil society regarding the follow up. In March 2012, the government consulted with civil society regarding the reporting of 2nd UPR report, though the nominal meeting was far from genuine dialogue.

3. Culture of non compliance with obligation under International Human Rights Treaties

Japan has ratified the major human rights treaties, such as the ICCPR, ICESCR, CAT, CERD, CEDAW and CRC, but few of the concerns and recommendations made by human rights treaty bodies have been implemented. Before the new administration headed by the Democratic Party of Japan (DPJ) took office in 2009, the DPJ pledged various positive reforms of human rights policies, such as, 1) establishment of National Human Rights Institution (NHRI), 2) acceptance of an individual complaint system, and 3) introduction of video recording of entire custodial interrogation. However, little progress has been made since the new administration took office.

4. Lack of institutional framework

Japan has not yet established the NHRI in accordance with the Paris Principles. To date, Japan has never established the National Action Plan for the protection and promotion of human rights. There are no special Ministry in charge of human rights, no special committees in charge of human rights in the parliament, and no reporting and review system of government’s practice of human rights in the parliament.

5. Problem in judiciary

Moreover, Japanese courts are reluctant to apply international human rights treaties as judicial norms and disregard the general comments of treaty bodies in their interpretations of various treaty obligations. Consequently, the human rights situation in Japan is far behind international human rights standards and norms.

II. Implementation of the recommendations the Japanese government accepted and promised to consider

1. National Human Rights Institution (subparagraph 2)

The NHRI has not yet been established in Japan. In December 2011, the Ministry of Justice (MOJ) released the “Summary of the Draft Legislation,” proposing an institution established under the MOJ as an external bureau, its budget to be included within the MOJ’s budget. Such structure casts serious doubt on institutional and budgetary independence and thus compliance with the Paris Principles is highly questionable.

2. Individual Complaints Procedure (subparagraph 1)

Japan has yet to ratify or even sign any of the optional protocols for individual complaint procedures. By doing so, Japan avoids international scrutiny of its human rights practices and neglects implementing treaty obligations.

3. Legislations for gender equality (subparagraph 7)

Discriminatory legal provisions in the Civil Code still exist and have yet to be repealed. In 2009, CEDAW urged Japan again to take immediate action to amend the Civil Code aiming to set the minimum age for marriage at 18 for both women and men, abolish the six-month waiting period required for women before remarriage and adopt a system to allow for the choice of surnames for married couples. Although the Cabinet approved the Third Basic Plan for Gender Equality in December 2010, it merely pledged to “consider” abovementioned legal reform. In January 2010, the MOJ tried to submit a draft law to amend parts of the Civil Code to the 174th Session of the Diet which was not submitted due to lack of consensus within the Cabinet.

III. Human rights situation regarding the fact that the Japanese government refused to accept or did not follow the first UPR recommendations

1. Death Penalty (subparagraph 12)

The government has not taken any measure to either abolish or introduce a moratorium on the death penalty. In fact, 17 executions have been carried out since the first UPR in August 2008.ⁱⁱⁱ Most recently, three death row inmates were executed on 29 March 2012. It was the first execution since 28 July 2010. Although the former Minister of Justice planned to establish an independent expert committee to review the death penalty system including abolition, the current Minister decided not to establish this committee. Moreover, he even terminated the MOJ’s internal study group on the death penalty.

Furthermore, the number of death row inmates doubled from 2003 to 2007. As of 12 January 2012, the number of death row inmates is 130, the largest number since World War II.^{iv} The Government fails to inform or educate its own citizens on the world trend of abolition as well as the UN General Assembly resolution on the moratorium on execution. Since the “Saiban-in” (lay judge) system

started in May 2009, ordinary citizens participate in sentencing decisions including the death sentence without any proper instruction regarding the human rights problems of the death penalty.

2. Recommendation regarding criminal justice (subparagraph 13)

2-1 Interrogation

In Japan, pre-trial detention usually continues for 23 days in a police facility, called *daiyou kangoku*. Suspects under custody are legally obliged to face interrogation in a locked room without the right to the presence of a lawyer. Police interrogations often last very long and are very aggressive, often entailing serious misconduct to force confession. While judges in Japan tend to rely heavily on confession, custodial interrogation and false confession are leading causes of wrongful conviction. Indeed, serious wrongful conviction cases such as Ashikaga case and Fukawa case have recently been revealed and former defendants who were sentenced to life in prison were exonerated after long struggles. Also, recent DNA tests cast serious doubt on the conviction against death row inmate Mr. Iwao Hakamada (78) who has been on death row since 1968. In 2005, a High Court ordered a retrial for a death row inmate Mr. Masaru Okunishi (84) who has been on death row since 1969 based on scientific evidence (the case is still pending before the court). These convictions relied heavily on the defendants' confessions under custodial interrogation. Despite the UPR recommendation, the video recording of entire custodial interrogation has not yet been introduced. Although the Public Prosecutor's Office has started a trial of video recording on custodial interrogations, this trial covers limited cases. The Police also started a trial of video recording and has expanded the scope of recording scene since April 2012: however, only some parts of the interrogation are recorded. Such incomplete monitoring is not only ineffective but also misleading since the prosecutor can select best parts of the interrogation for their case.

2-2 Right of defence to have access to all relevant materials

Another important cause of wrongful conviction is insufficient pre-trial disclosure of evidence to the defence. Although the current Code of Criminal Procedure has a provision of disclosure, it is not full disclosure and contains no rules for the discovery of exculpatory evidence.^v In September 2010, a fabrication of evidence in a high profile criminal case (Muraki Case) by the chief prosecutor in Osaka District Prosecutor's Office was revealed followed by the arrest and conviction of chief prosecutor as well as chief and vice chief of the Special Investigations Department. In order to prevent prosecutor's misconduct and review the criminal justice system, the Ministry of Justice established expert committees, though no proposal has been made regarding the disclosure of evidence.

3. Japanese Military Sexual Slavery (subparagraphs 5 and 18)

There has been no progress in this matter since 2008. The Japanese government stresses that the Asian Women's Fund served as compensation for former Military Sexual Slaves. However, the Fund was dissolved in 2007. In September 2011, when the government was asked by the government of

Republic of Korea to take action to compensate victims^{vi}, the Japanese government stated that issue had already been solved by the law.

4. Discrimination against non-citizens

Of particular concern is increasing systematic violence and harassment against Korean and Chinese nationals by the private sector. The government fails to take adequate measures to prohibit the dissemination of ideas based upon racial superiority or hatred and racist and xenophobic statements.^{vii}

Resident Korean students at Korean schools experience various kind of discrimination. In April 2010, the act on free tuition fees at public high schools as well as a high school enrolment support fund came into force, though it has not yet applied for Korean schools.^{viii}

IV. Human rights concerns not addressed in the first session

1. Human rights situation after the Great East Japan Earthquake

The Great East Japan Earthquake on March 11 threatened affected people's rights; in particular, the right to health, right to adequate housing, and right to food. The Government, however, failed to take sufficient measures and thus endangered the affected people's fundamental human rights.

1-2 Victims of the Earthquake

1-2-1 Right to adequate housing

Most of the evacuation centers were set up at school gymnasiums and spaces just enough to sleep were allocated to the evacuees without measures to protect privacy. The Government failed to give due consideration to the various needs of residents, especially vulnerable children, women, people with disabilities and the elderly.^{ix} Moreover, it was not until the summer of 2011 that the evacuees were able to move to temporary housing. The government terminated food, transportation and medical services for evacuees moved to temporary shelters. The condition of the shelters is poor, some located in mountainous areas or even in designated hazardous risk areas. The housing was not equipped for winter and the Government did not provide sufficient measures to prepare for a cold winter season.^{xi} Residents are allowed to live in the temporary housing for two years, but the Government has not informed the residents about their prospects for housing afterward.

1-2-2 Right to adequate food

Food provided at evacuation centres was not adequately nutritious and remained as such even two months after the Earthquake. Moreover, no food supply was provided for those who chose to move to temporary housing, endangering those who were in a difficult economic situation and those with disabilities.

1-2-3 Right to health and life

The lack of adequate health services has resulted in a significant number of "disaster-related deaths" as an indirect result of the Earthquake and the evacuation. The number of "disaster-related

deaths” surpassed 1,300 instances in three prefectures,^{xii} higher than that of the Hanshin Earthquake in 1995. The number of suicides caused by the Earthquake from June to November of 2011 reached 49,^{xiii} and as of the end of 2011 a total of 573 deaths were recognized as resulting from indirect effects of the disaster in 13 municipalities in Fukushima Prefecture.^{xiv} Moreover, those who died solitary deaths in temporary housings amount to six in Iwate Prefecture (1 February 2011), eight in Miyagi (end of December 2011), and four in Fukushima (27 January 2012).^{xv}

1-3 Victims of Fukushima Daiichi Nuclear Power Plant Disaster

1-3-1 Right to health

It has been estimated that the amount of radioactive contamination released from TEPCO’s Fukushima Daiichi power plant is over 168 times that released by the atomic bomb in Hiroshima,^{xvi} and this creates serious health risks to the population, in particular to expecting mothers, infants, children and the young most vulnerable to radiation.^{xvii} The measures taken by the government are inadequate and, as a result, serious violations of economic social rights exist.

i) Evacuation

In response to the meltdown of Fukushima Daiichi Nuclear Station, the Government designated an evacuation zone with a three kilometer radius (on 11 March), and expanded the area to a 20 kilometer radius (on 12 March). Although the area between 20 to 30 kilometer radius was designated as evacuation preparatory area, this was lifted in September.^{xix} Further, areas such as Iitate village were categorized as “Deliberate Evacuation Areas.”^{xx} The 20mSv per year standard used to direct evacuation is problematic in that only a small number of areas are applicable^{xxi} and it is much higher than the international standard of 1mSv per year.^{xxii} Consequently, those living outside the designated evacuation zone had to leave their houses with almost no compensation from the Government and those who could not afford evacuation had to stay in their houses, running the risk of high-level nuclear exposure.^{xxiv}

ii) Insufficient support for self evacuation

TEPCO declared that the standard of compensation for people living in the contaminated area outside of evacuation zone, which includes children and expectant mothers who voluntarily evacuated, will amount to 600,000 yen: children and expecting mothers staying in the contaminated area will receive a compensation amount of 400,000 yen, and others, regardless of their status, will receive only 80,000 yen. These amounts are not sufficient as in most cases they do not reach the amount of money the evacuees actually paid for the evacuation.^{xxv}

iii) Problem of information dissemination

Following the accident, the Government received information on how the radiation would spread (in which direction and to what extent) through a high level computer system named the System for Prediction of Environment Emergency Dose Information (SPEEDI). However, the data and information was not effectively disclosed to the affected public in timely manner. Without

warning, many people fled in the direction that the radiation spread or stayed outside and exposed themselves to high radiation levels.

Moreover, the Government distributes leaflets with misleading information such as “in areas where the radiation is less than 3.8 mSv per hour, there is no threat to ordinary life”^{xxvi} and “in areas which is not designated as an evacuation zone, the nuclear radiation has no effects on fetuses and it is safe to drink water.” The Fukushima Prefectural Government has been conducting campaigns among residents to disseminate the idea that radiation exposure is not significant. This kind of “Safety Campaign” isolates concerned citizens from others in their communities and keeps them from requesting further safety measures.^{xxvii}

iv) Insufficient health services

The health examination services provided by the Government have been insufficient. The examination of internal exposure has been conducted only for a small number of people. The number of whole body counters in Fukushima is strikingly small.^{xxviii} The Fukushima residents who wish to receive the health check-up service are presently put in a long waiting list^{xxix} and urine and blood testing has yet to be conducted.

1-3-2 Right to adequate food

Particular concern in relation to the right to food is the safety of food and products in the contaminated area. The consumption of food and products exposed to nuclear radiation leads to a serious internal nuclear exposure issue. The tentative standard the Government used to test food and products after the accident was unusually low compared to standards set by WHO or other countries.^{xxx} The Government announced a stricter standard would be adopted in April 2012.^{xxxi} However, it remains unclear whether the new standard will be substantially and effectively implemented so as to guarantee safety. Although a food examination system is established in Fukushima, methods for sampling are very loose since only a very small portion of the food is subject to the examination.^{xxxii} In some areas of Fukushima, local food is used for the school lunches. Although most schools permit students to bring their own lunches, many students are hesitant for concern that they will be isolated from their peers and many reluctantly eat them anyway. In February 2012, the Fukushima Prefectural Government announced that food safety testing for all school lunches would be introduced at the school lunch center in Fukushima Prefecture. Whether it would be effectively implemented still remains unclear.

2. Freedom of thoughts and conscience

It is a concern that freedom of thoughts and conscience^{xxxiii} is threatened in public schools as a substantial number of local governments order teachers to sing the national anthem Kimigayo under the Hinomaru flag during public ceremonies, both highly controversial symbols of Japanese Imperialism before and during World War II. In particular, Tokyo and Osaka prefectures took disciplinary punishment against teachers who did not follow the order. In May 2011, the Supreme

Court ruled that a principal's order requiring teachers stand and sing Kimigayo under the Hinomaru flag does not violate article 19 of constitution which guarantees thoughts and conscience.^{xxxivxxxv} The Supreme Court ruling on January 2012 as well as February 9 of 2012 took same position in this regard. Where this is imposed on teachers, children also are indirectly compelled to sing, which endangers the right of children to hold opinions without interference.^{xxxvi}

ⁱ Human Rights Council, "Report of the Working Group on the Universal Periodic Review – Japan – Addendum- Conclusions and /or recommendations" A/HRC/8/44/Add.1 (2008).

ⁱⁱ Universal Periodic Review, Mid-term progress report by Japan, The Government of Japan, Human Rights Council 16th Session, <http://www.mofa.go.jp/announce/ps/pdfs/state110301.pdf> (March 2011).

ⁱⁱⁱ The following is the number of executions carried out since the first UPR: 5 (September and October 2008), 7 (2009), 2 (2010), 0 (2011), 3 (2012)

^{iv} Yomiuri Shinbun, January 14, 2011, Morning edition, p.2.

^v Kazuko Ito, "Rule of Law and the Criminal Justice Reform in Japan", National Taiwan University Law Review (2011), pp. 380-381.

^{vi} On 30 August 2011, the Constitutional Court of the ROK passed a judgement that the neglect of the government of the ROK to engage in diplomatic negotiation with the Japanese government about the rights of former comfort women to ask for state compensation from the Japanese government is unconstitutional. (Asahi Shinbun, 31 August 2011, Morning edition, p.1.)

^{vii} HRN is especially concerned about violent activities by an organization called "Zainichi Tokken o Yurusanai Shimin no Kai," (meaning Citizens against Special Privilege of Zainichi, shortened to "Zaitokukai") which conducts hate campaigns against non-citizens, particularly North Korean residents, in Japan. Zaitokukai calls for participation in its activities on the Internet, meets regularly to plan hate campaigns, and releases reports of its activities on its website. The number of its members amounts to 11,181 as of 10 February 2012. For more information refer to its website at <http://www.zaitokukai.info/>

^{viii} So far, students of over 30 schools for foreigners have received the support fund under the Act. In response to a decision to exclude Korean schools from the Act on the ground that Japan has no diplomatic relation with Democratic People's Republic of Korea (DPRK), the Ministry of Education, Culture, Sports, Science & Technology announced a standard on the application of the Act on November 5, 2010. However, following the shelling of Yeonpyeong Island by the DPRK on November 24, the application process was put on hold. Although the process was resumed, it has not shown any development until now.

^{ix} Human Rights Now, "STATEMENT REGARDING THE ESTABLISHMENT OF EVACUATION CENTRES WITH DUE CONSIDERATION OF THE VARIOUS NEEDS OF RESIDENTS INCLUDING THOSE OF WOMEN"(2011), available at: <http://hm.or.jp/eng/activity/area/japan/regarding-the-establishment-of-evacuation-centres-with-due-consideration-of-the-various-needs-of-res/>

^x For instance, there were no partitions between men and women. Changing rooms or nursing rooms for women were not provided. Accordingly little privacy was protected. It was also difficult to do laundry as little safe space was secured to hang out female laundry. Women had no choice but to use their underwear once and throw it away, and the supply of underwear was limited. The government also failed to provide safe and separate toilets for women and men. Toilets were dirty. Further, they were set up outside and therefore unsafe. Counselling by female doctors, public health nurses, and female counsellors were not provided in most cases. There were few evacuation centres where the civil sector provided consultations for women. In some evacuation centres, the distribution of fliers publicizing telephone consultations for women was even rejected.

Also, people with disabilities, especially mental disabilities, could not move to evacuation centres out of fear of discrimination. Although many chose to stay at their own houses due to the lack of shelters designed for people with disabilities, the government has not provided support measures for those staying in their houses.

^{xii} Asahi Shinbun Digital, "DISASTER-RELATED DEATH' EXCEEDS 1300 IN 3 PREFECTURES" (27 February 2012), available at: <http://www.asahi.com/national/update/0227/TKY201202270461.html>

See also Asahi Shinbun Digital, "DISASTERS TAKE HEAVY TOLL ON NURSING HOME RESIDENTS" (20 July 2011), available at: <http://www.asahi.com/english/TKY201107190358.htm>

^{xiii} Cabinet Office, Government of Japan, "THE NUMBER OF SUICIDES IN RELATION TO THE GREAT EAST JAPAN EARTHQUAKE" (22 December 2011), available at:

http://www.esri.go.jp/jp/archive/jisatsu/monthly/2011nov/h2311_s10_1.pdf

^{xiv} Yomiuri Shinbun, "573 DEATHS RELATED TO NUCLEAR CRISIS" (5 February 2012), available at:

<http://www.yomiuri.co.jp/dy/national/T120204003191.htm>

^{xv} Asahi Shinbun, Morning edition (February 9, 2012), p.1.

^{xvi} <http://sankei.jp.msn.com/science/news/110826/scn11082619220001-n1.htm>

^{xvii} The right to health is stipulated in Article 25 of the Constitution of Japan and in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESR).

^{xviii} The right to life is stipulated in Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR).

^{xix} Nuclear Emergency Response Headquarters, Ministry of Economy, Trade and Industry, "LIFTING THE EVACUATION-PREPARED AREA IN CASE OF EMERGENCY DESIGNATION"(2011), available at: http://www.meti.go.jp/english/press/2011/pdf/0930_09a.pdf

^{xx} For the map of the designation see, Government of Japan, "DELIBERATE EVACUATION AREAS AND SPECIFIC RECOMMENDED FOR EVACUATION"(2011), available at: http://www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/evacuation_map_b.pdf

^{xxi} Human Rights Now, OPINION ON THE MEASURES TO BE TAKEN BY JAPAN AND TOKYO ELECTRIC POWER COMPANY TO ADDRESS THE DESTRUCTION OF HEALTH, ENVIRONMENT AND LIFE CAUSED BY THE FUKUSHIMA DAIICHI NUCLEAR POWER PLANT DISASTER (2011), p. 2. (obtainable at: http://hm.or.jp/eng/activity/20110912_ikensho.pdf)

^{xxii} *ibid*, pp. 4-9.

^{xxiii} The International Commission on Radiological Protection, for instance, suggested that 1 millisievert per year is the limit of effective dose for public nuclear exposure. See International Commission on Radiological Protection, NEW ICRP RECOMMENDATION(2007), p. 165, available at: http://iopscience.iop.org/0952-4746/28/2/R02/pdf/0952-4746_28_2_R02.pdf

^{xxiv} Human Rights Now, "INVESTIGATIVE REPORT ON FUKUSHIMA CITY AND KORIYAMA CITY"(December 2011)[hereinafter "Fukushima Report].

^{xxv} For the map of the designation see Government of Japan, DELIBERATE EVACUATION AREAS AND SPECIFIC RECOMMENDED FOR EVACUATION (2011), available at: http://www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/evacuation_map_b.pdf

^{xxvi} Such statements can be found in a series of documents entitled "To Properly Understand Nuclear Radiation" distributed by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) since April 2011. See MEXT, "TO PROPERLY UNDERSTAND NUCLEAR RADIATION"(2011), pp. 1 ff. (in Japanese).

^{xxvii} For example, Professor Shunichi Yamashita, a risk advisor charged with research on health effects of radiation appointed by the Fukushima prefecture, takes a stance of underestimating the risk of radiation and declaring that radiation levels under 100 mSv are safe, instead of promoting protection against the dangers of radiation.

^{xxviii} Merely two machines are established in the prefecture as of January 2012. Although it was announced that another 5 machines would be purchased, this is still insufficient, for one machine could provide services only for ten persons per day.

^{xxix} According to the survey of Human Rights Now, residents outside the evacuation zone have had to wait for several months. See Fukushima Report, pp11-19.

^{xxx} See e.g., The New York Times, "JAPAN STRUGGLES TO PROTECT THEIR FOOD SUPPLY (22 January 2012), available at: <http://www.nytimes.com/2012/01/22/world/asia/wary-japanese-take-food-safety-into-their-own-hands.html?pagewanted=all>

^{xxxi} Safety Division, Pharmaceutical and Food Safety Bureau, Ministry of Health, Labour and Welfare, "DOCUMENTS FOR 2011 RELEVANT DIRECTORS CONFERENCE NATIONAL FOOD SANITATION"(February 2012), available at: http://www.mhlw.go.jp/topics/bukyoku/iyaku/syoku-anzen/gyousei/dl/h23_katyoukaigi_02_01.pdf

^{xxxii} Fukushima Report, p. 18.

^{xxxiii} Freedom of thought and conscience is protected by the Article 18(2) and Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR).

^{xxxiv} Asahi Shimbun (10 February 2012), Morning Edition.

^{xxxv} On February 9, 2011, the First Petty Bench of the Supreme Court ruled against teachers who filed against Tokyo Metropolitan Board of Education's instruction to give a reprimand to teachers who refused to sing Kimigayo under the Hinomaru flag.

^{xxxvi} Childrens' rights to freedom of thought and conscience is protected by Article 19 (1) of ICCPR and Article 14 of the Convention on the Rights of the Child.