



JAPAN

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
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INTRODUCTION

Amnesty International is making this submission in advance of the Human Rights Committee's (the Committee) examination of Japan's seventh periodic report (CCPR/C/JPN/7) on the measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant).

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

- The national human rights framework, in particular the lack of progress in establishing a national human rights institution (NHRI);
- The death penalty, including the lack of political will and progress to abolish the death penalty, the secrecy around executions, and the use of death penalty for individuals who suffer from psychosocial and intellectual disabilities;
- Discrimination against LGBTI people, including the failure to fully recognize same-sex unions and the gender identity of transgender people;
- Discrimination against ethnic minorities, including advocacy of hatred that constitutes incitement to discrimination, hostility or violence and the degrading treatment of ethnic Koreans, especially with regard to education;
- The rights of refugees, asylum-seekers and migrants, including the ill-treatment of individuals in migration-related detention, and workers under the intern trainee system;
- The right to privacy, including the blanket surveillance of Muslims;
- The military sexual slavery system before and during World War II;
- The rights to freedom of peaceful assembly and freedom of expression, in relation to the peace movement in Okinawa and to artistic expression.

This document is based on Amnesty International's research over the past six years but should not be considered an exhaustive list of concerns.

THE NATIONAL HUMAN RIGHTS FRAMEWORK (ARTICLE 2)

Following from the previous review of Japan by the Committee in 2014, Amnesty International remains concerned that the Japanese government has taken no clear steps towards the establishment of a NHRI. As noted by the Committee, NHRIs can contribute to the prompt, thorough and effective investigation of allegations of violations if endowed with appropriate powers.¹ During the most recent Universal Periodic Review (UPR) of Japan in 2017, more than 20 States made recommendations for Japan to establish an NHRI.² These recommendations were accepted by Japan in 2018, but no visible progress has been made since then.³

The Japan Federation of Bar Associations (JFBA) reiterated in its 2019 statement the importance of a NHRI that complies with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (The Paris Principles).⁴ Also, Japan has neither signed nor ratified the Optional Protocol to the Covenant, nor has it accepted any other procedures for individual communications under the core treaties.

Amnesty International, in agreement with the JFBA, believes that the establishment of a NHRI and the recognition of individual complaints procedures are important in ensuring the enjoyment of rights by people in Japan, regardless of their nationality, and in reducing various forms of discrimination, including the advocacy of hatred.⁵

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Take immediate steps to establish a fully independent, impartial, credible and empowered national human rights institution in line with the Paris Principles, with competence to consider and act on complaints of human rights violations committed by public authorities and provide redress to victims, and with adequate financial and human resources;
- Ratify the Optional Protocol to the ICCPR, which enables the Human Rights Committee to receive and consider communications from individuals who claim to be victims of violations by Japan of rights set forth in the Covenant.

¹ Human Rights Committee, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*. UN Doc. CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 15.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review. A/HRC/37/15*, 4 January 2018, recommendations 161.37 (Georgia, Malaysia, Qatar, Venezuela), 161.38 (Australia, Philippines), 161.39 (Republic of Moldova), 161.40 (Costa Rica), 161.41 (Rwanda), 161.42 (Uganda), 161.42 (Ukraine, Azerbaijan, Ethiopia, India, Afghanistan, Panama), 161.44 (Chile, Colombia, Croatia, Finland, Sierra Leone, France, Guatemala, Nepal), 161.45 (Liechtenstein), 161.46 (Indonesia), 161.47 (Kazakhstan).

³ Human Rights Council, *Addendum to the Report of the Working Group on the Universal Periodic Review. A/HRC/37/15/Add.1*, 1 March 2018.

⁴ UN General Assembly, *National institutions for the promotion and protection of human rights*. UN Doc. A/RES/48/134, 4 March 1994.

⁵ Japan Federation of Bar Associations, *Resolution requesting the implementation of an individual complaint procedure and the establishment of a national human rights institution*, 4 October 2019. https://www.nichibenren.or.jp/en/document/statements/2019_2.html

THE DEATH PENALTY (ARTICLE 6)

The Japanese government has taken no concrete steps towards abolishing the death penalty since the previous review. Between January 2014 and July 2020, Japan executed 31 people. As of the end of July 2020, a total of 110 people were under sentence of death.⁶ The Second Optional Protocol to the Covenant remains neither signed nor ratified, and the government has not accepted recommendations to introduce a moratorium on executions, including during the most recent UPR in 2017.⁷

In October 2016, the JFBA adopted the “Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty” – which explicitly opposes the death penalty – citing both the possibility of wrongful convictions and international trends against capital punishment.⁸

Executions in Japan continue to be shrouded in secrecy. Prior to execution, prisoners on death row remain detained in solitary confinement and have very limited contact with the outside world, with visits only limited to infrequent and supervised visits from family, lawyers or other approved visitors. They are typically given only a few hours’ notice before the execution, but some may be given no warning at all. Their families and legal representatives are usually notified about the execution only after it has taken place.⁹

Among those executed in 2018, 13 people were members of the Aum Shinrikyo, a religious cult responsible for the deadly 1995 sarin gas attacks on the Tokyo subway. The individuals were sentenced to death for their roles in the attacks and other illegal activities. Ten out of the 13 who were hanged had been executed while their requests for retrials were still pending, in violation of international safeguards protecting the rights of those facing the death penalty.¹⁰ Three people out of four executed in 2017 had also applied for a retrial. The Committee has recommended, since as early as 2008, that the Japanese government introduce a mandatory system of review in capital cases and ensure that executions be suspended when there are outstanding requests for retrial or pardon, but this has failed to materialize.¹¹

In the absence of effective safeguards or regular psychiatric evaluations, persons with psychosocial and intellectual disabilities continue to be subjected to the death penalty, in violation of international law and standards.¹² These persons include Chizuo Matsumoto, leader of the Aum Shinrikyo religious cult. Six psychiatrists hired by his lawyers raised concerns about the deterioration of his mental health caused by detention on death row. Matsumoto’s daughter also reported that no external visitors, including his family and lawyers, had been able to meet him, which made it even harder to evaluate his mental state prior to his execution.¹³

⁶ Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

⁷ Human Rights Council, *Addendum to the Report of the Working Group on the Universal Periodic Review*. A/HRC/37/15/Add.1, 1 March 2018.

⁸ Japan Federation of Bar Associations, *Declaration calling for reform of the penal system including abolition of the death penalty*. 7 October 2016. <https://www.nichibenren.or.jp/en/document/statements/161007.html>

⁹ Amnesty International, *Japan: Execution a shameful stain on human rights record of Olympic hosts* (*News Story*, 29 December 2019).

¹⁰ Safeguard No. 8 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council Resolution 1984/50 of 25 May 1984; Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc. CCPR/C/GC/36, para. 46. See also Amnesty International, *Japan: Unprecedented spate of executions continues as six more Aum cult members hanged* (*News Story*, 26 July 2018).

¹¹ 朝日新聞 (The Asahi Shimbun), 松本智津夫死刑囚ら7人の死刑執行 オウム真理教 (7 from Aum Shinrikyo including Matsumoto Executed). 6 July 2018. <https://www.asahi.com/articles/ASL4S04M5L4RUTIL04W.html>

¹² Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36, para. 49.

¹³ Amnesty International, *Is the Japanese government executing members of the Aum cult for convenience?* (*News Story*, 15 March 2018).

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Introduce a formal moratorium on executions as a first step toward the abolition of the death penalty, and commute all death sentences to terms of imprisonment;
- Ratify, without reservations, the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty;
- Initiate an immediate independent review of all cases to identify people accused or convicted of capital crimes who may have psychosocial or intellectual disabilities and could fall within the scope of Article 479 of the Code of Criminal Procedure with a view to commuting the death sentence and diverting the cases away from the criminal justice system into a health management framework;
- Ensure that all safeguards guaranteeing protection of the rights of those facing the death penalty are respected and that proceedings meet international law and standards at all times, including the right to prompt access to a lawyer, to regular family visits, not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, not to be compelled to testify against themselves or to confess guilt and to have statements extracted under such treatment excluded from evidence, and that no executions are carried out until all legal or other review procedures have been completed.

DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION (ARTICLES 2, 7, 17, 23 AND 26)

Japan currently lacks comprehensive anti-discrimination legislation to protect individuals and groups from discrimination on all grounds, including sexual orientation, gender identity and expression (SOGIE). In December 2018, four opposition political parties introduced a bill to ban discrimination based on SOGIE and it is currently under examination at the House of Representatives.¹⁴ The ruling Liberal Democratic Party (LDP) announced it would also introduce a bill, but it aims not to prohibit discrimination and only to promote a “tolerant society”. In October 2018, the Tokyo Metropolitan Government adopted an ordinance that explicitly bans discrimination based on SOGIE.¹⁵

“OUTING” AND THE RIGHT TO PRIVACY

In August 2015, a gay student at the Graduate School of Law at the Hitotsubashi University in Tokyo committed suicide after he was “outed” and bullied by his schoolmates.¹⁶ According to the Ministry of Health, Labour and Welfare, LGBTI people are among those identified as being at high risk for suicide in Japan, and among this group being outed is one of the major causes of suicide.¹⁷ The prevalence of homophobic and transphobic views result in many LGBTI people feeling compelled to conceal their SOGIE from employers, public officials and even their families.

¹⁴ Democratic Party For the People, LGBT 差別解消法案を衆院に提出 (*Bill on elimination of discrimination against LGBT submitted to House of Representatives*), 5 December 2018. <https://www.dfp.or.jp/article/200892>

¹⁵ The Japan Times, *Tokyo adopts ordinance banning discrimination against LGBT community*, 5 October 2018. <https://www.japantimes.co.jp/news/2018/10/05/national/tokyo-adopts-ordinance-banning-discrimination-lgbt-community/#.XztfC25uJei>

¹⁶ Kyodo News, *Alarm bells sound over "outings" in Japan's LGBT community*, 12 April 2019. <https://english.kyodonews.net/news/2019/04/677717754ff7-focus-alarm-bells-sound-over-outings-in-japans-lgbt-community.html>

¹⁷ Ministry of Health, Labour and Welfare, *自殺総合対策大綱～誰も自殺に追い込まれることのない社会の実現を目指して～* (*The General Principles of Suicide Prevention Policy: Realizing a Society in Which No One Is Driven to Take Their Own Life*), 25 July 2017. English Translation available at <https://jssc.ncnp.go.jp/file/pdf/2017-0910-GeneralPrinciples-En.pdf> (hereinafter: Ministry of Health, Labour and Welfare, *The General Principles of Suicide Prevention Policy*)

Action by the government to combat homophobic and transphobic discourse by politicians and discrimination and stigma against LGBTI people has been noticeably limited. In 2018, a member of the House of Representatives from the LPD contributed a magazine article in which she argued against state and municipal efforts to invest taxpayers' money into policies supporting same-sex couples because "these men and women don't bear children — in other words, they are 'unproductive'".¹⁸ In addition, in January 2019, another member of the House of Representatives from the LDP commented at an event that "a nation would collapse if everyone became LGBT".¹⁹

Japan continues to lack comprehensive legislation to protect LGBTI people from arbitrary or unlawful interference with their privacy or effective remedies in case of such interference. Amid a national debate on failure to protect LGBTI students from school bullying, however, the Cabinet Office revised the Comprehensive Guidelines for the Prevention of Suicide in 2017 to include enhancement of support for "sexual minorities" as one of the most important measures.²⁰

SAME-SEX UNIONS

Japan does not officially recognize same-sex marriage at the national level, which results in violations of the right of same-sex partners to marry and to found a family articulated under Article 23 of the Covenant, and the right to respect for private and family life under Article 17. According to the Equal Marriage Alliance Japan, the current practice of prohibiting marriage of same-sex couples results in the inability to access a partner's health insurance or to request family care leave when taking care of a partner; to give consent to a partner's medical treatment or to request the partner's medical record disclosure at the hospital; to claim tax exemption for spouses; and to have joint custody of an adopted child.²¹ Despite the lack of protection of same-sex partners, the Japanese government has been reluctant to recognize same-sex marriage and insists that the recognition of same-sex marriage is not provided for under Article 24 of the Constitution.²²

Although no major steps have been taken at the national level, there has been progress towards recognizing same-sex unions among local municipalities. In 2015, Tokyo's Shibuya Ward Assembly introduced an ordinance issuing a certificate to those who applied recognizing same-sex unions as "equivalent to marriage". While not legally binding, the certificate allows local same-sex couples to rent apartments together and grants them hospital visitation rights as family members. Beyond that, if hospitals, real estate firms and other businesses are found to be in breach of the ordinance by discriminating against same-sex couples, their names will be publicized on the ward's website.²³ Following Shibuya ward, an increasing number of other local municipalities around Japan introduced ordinances or guidelines that acknowledge same-sex unions. There are 57 such municipalities including two prefectures as of the end of August 2020.

GENDER-IDENTITY RECOGNITION INCLUDING IN DETENTION FACILITIES

While individuals whose gender identity differs from the sex they were assigned at birth are allowed to officially change their sex under the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (Act on GID), the recognition depends upon a number of criteria including

¹⁸ The Japan Times, *LDP lawmaker Mio Sugita faces backlash after describing LGBT people as 'unproductive'*, 24 July 2018. <https://www.japantimes.co.jp/news/2018/07/24/national/politics-diplomacy/ldp-lawmaker-mio-sugita-faces-backlash-describing-lgbt-people-unproductive/>

¹⁹ 西日本新聞 (The Nishinippon Shimbun), LGBTばかりは「国つぶれる」 自民・平沢勝栄議員、集会で発言 (*Nation would collapse" if everyone became LGBT – MP Katsuei Hirasawa from LDP commented at an event*), 6 January 2019. <https://www.nishinippon.co.jp/item/o/477391/>

²⁰ Ministry of Health, Labour and Welfare, *The General Principles of Suicide Prevention Policy*.

²¹ Equal Marriage Alliance Japan, *Various Problems Faced by a Same-Sex Couple Unable to Marry*, 13 August 2015. <http://emajapan.org/news/1072>

²² Record at the House of Representatives, 11 May 2018. http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b196257.htm

²³ Article 15(4), 渋谷区男女平等及び多様性を尊重する社会を推進する条例 (*Ordinance for Promoting Respect of Gender Equality and Diversity in the Ward*), entered into force 31 March 2015. https://www.city.shibuya.tokyo.jp/reiki_int/reiki_honbun/g114RG00000779.html#e000000149

undergoing gender reassignment surgery. Other criteria include requiring the individual to be sterilized or otherwise rendered unable to reproduce, and to be unmarried. By making these criteria requirements for attaining legal gender recognition and getting access to official documents that reflect their gender identity, the government is discriminating against transgender people, including their rights to be free from inhuman and degrading treatment, to the highest attainable standard of health, and to private or family life. Their rights to equality and to be recognized before the law are also violated.²⁴

LGBTI people in detention are frequently at particular risk of violence, harassment and other abuses. Transgender detainees are routinely subjected to a host of abusive practices which constitute violations of the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment under Article 7 of the Covenant. Between 2014 and 2016, there were two cases of transgender women being placed in a male detention facility in Kobe city, where they faced physical and mental abuse and had their hair shaved off because their gender identity was not recognized.²⁵ In addition, the Solidarity Network with Migrants Japan reported a case where a Filipino transgender woman in a detention facility of the Tokyo Regional Immigration Services Bureau had not been allowed to continue hormone treatment after she was detained in July 2019. She had also been kept in solitary confinement for six months without a reasonable explanation.²⁶

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Provide equal protection against discrimination for all persons and on all grounds, including sexual orientation, gender identity and expression, as well as ethnic or national origin, through adoption of a comprehensive anti-discrimination law, or a combination of other legislation;
- Ensure by legislation the protection of LGBTI people against arbitrary or unlawful interference with their privacy, including unauthorized disclosure of their sexual orientation and gender identity by third parties;
- Officially recognize marriages between couples of the same sex, on the same basis and conferring all the same rights, as marriages between different-sex couples;
- Ensure that transgender people are placed in detention or correctional facilities appropriate for their gender identity, taking safety into account, and that they are not further marginalized while in detention;
- Abolish requirements to undergo a psychiatric assessment and receive a diagnosis, other medical requirements, any requirement of single status, and other restrictions that violate human rights, for obtaining legal gender recognition.

²⁴ Amnesty International, *Human Rights Law and Discrimination against LGBT People in Japan* (Index: ASA 22/5955/2017)

²⁵ 朝日新聞 (The Asahi Shimbun), 性同一性障害、刑務所はどちらに？受刑者が見直し訴え (*Where to place detainees with Gender Identity Disorder in prison? Detainees requests condition review*), 4 August 2016. <https://www.asahi.com/articles/ASJ7P4H1FJ7PPTIL00L.html>

²⁶ Solidarity Network with Migrants Japan, “「トランスジェンダーも人間だ」-東京入管被収容者パトさんからの訴え (*Transgenderers are human beings, too*)” Appeal made by Pato, a detainee in the Tokyo Regional Immigration Services Bureau), 13 April 2020. <https://migrants.jp/news/blog/20200413.html>.

DISCRIMINATION AGAINST ETHNIC MINORITIES (ARTICLES 2, 17, 18, 20, 26 AND 27)

The absence of a comprehensive anti-discrimination law in particular affects ethnic minorities, whether foreign or Japanese nationals, by putting them at risk of unequal or degrading treatment. Such treatment includes the advocacy of hatred (“hate speech”), as well as other forms of discrimination in various aspects of daily life, including education.

Authorities failed to effectively address the problem of advocacy of hatred that amounts to incitement to discrimination, hostility or violence (“hate speech”) against ethnic minorities, especially Koreans and Japanese nationals of Korean descent, who are reportedly targets of verbal attacks for example whenever negative issues related to North Korea emerge.²⁷ Recent gubernatorial elections in the Tokyo metropolitan area (2016 and 2020) saw one candidate running on a platform that includes the slogan “abolish welfare for foreigners”. He was found making hate-filled speeches against ethnic Koreans and Chinese in public places, without any effective action taken by the authorities to stop him from doing so during his campaign.²⁸

Although a national law against “hate speech” (known as the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan) was enacted in May 2016, its effectiveness has been called into question, as it merely states that “unfair discriminatory speech and behavior” is “not permissible”, and fails to ban advocacy of hatred or set any penalties for such speech and behaviour.²⁹ Some local municipalities are nonetheless working to develop their own ordinances to take more effective steps against advocacy of national, racial or religious hatred or on any discriminatory basis. In July 2020, Kawasaki city became the first municipality to enact a local ordinance that makes “hate speech” in public places punishable by fines.³⁰

EXCLUSION OF KOREAN SCHOOLS FROM TUITION WAIVER SCHEMES

Schools in Japan attended by ethnic Korean children continue to be excluded from tuition waiver programmes introduced by the state. Japan introduced a high school tuition waiver programme in 2010, but three years later it removed the eligibility of “Korean high schools” to benefit from the programme.³¹ The exclusion is largely due to the financial and political links between the North Korean government and Chosen Soren, the organization running the schools. More recently, “Korean” kindergartens and nurseries have also been left out of a tuition waiver scheme for pre-school education, which started in October 2019.³²

In August 2019, the Supreme Court made two rulings in favour of the government’s position of excluding “Korean high schools” from tuition waiver schemes. The court upheld decisions of the Tokyo High Court to dismiss damage claims by alumni of these schools who were not able to benefit from the schemes, and of the Osaka High Court, which overturned a 2017 district court ruling that such exclusion was illegal.³³ These are the first rulings by the Supreme Court in such lawsuits, which have also been filed in other cities around the country.³⁴

²⁷ Korea Times, *Hate speech against Koreans still active in Japan*, 24 March 2019.

https://www.koreatimes.co.kr/www/nation/2019/03/120_265876.html

²⁸ 47 News, 防げぬ「選挙ヘイト」都知事選でも (*Hate campaigns” go unchecked in Tokyo governor election*),

<https://www.47news.jp/5072175.html>

²⁹ Amnesty International, *Amnesty International Report 2016/17* (Index: POL 10/4800/2017)

³⁰ Mainichi Japan, *Japan’s 1st ordinance making hate speech punishable with fines enacted in Kawasaki*, 2 July 2020.

<https://mainichi.jp/english/articles/20200702/p2a/00m/0na/020000c>

³¹ Japan Times, *Pro-Pyongyang schools barred from tuition waiver*, 21 March 2013.

<https://www.japantimes.co.jp/news/2013/02/21/national/pro-pyongyang-schools-barred-from-tuition-waiver/>

³² The Asahi Shimbun, *International schools left out of free preschool education start*, 27 September 2020.

<http://www.asahi.com/ajw/articles/13059132>

³³ Amnesty International, *Human Rights of Asia Pacific: Review of 2019* (Index: ASA 01/1354/2020)

³⁴ The Asahi Shimbun, *Top court rules to exclude Korean schools from free tuition program*, 29 August 2019.

<http://www.asahi.com/ajw/articles/AJ201908290063.html>

DISCRIMINATION DURING COVID-19 RESPONSE

During the COVID-19 pandemic, the authorities' assistance provided to schools or students also left some ethnic Koreans at a disadvantage compared to the general population. In March 2020, an ethnic Korean kindergarten in Saitama City was excluded from a local government initiative to provide face masks for staff working in institutions that provide education or care to preschool children.³⁵ Students from the Korea University in Tokyo were unable to receive government payments designed to help university students facing financial difficulties caused by the COVID-19 pandemic. The university is a tertiary educational institution primarily attended by ethnic Koreans, some of whom are Japanese citizens, but the Ministry of Education, Culture, Sports, Science and Technology claimed that it "could not directly confirm that the university was an institution of higher learning".³⁶

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Consider amending the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility or violence, with appropriate sanctions in a way that meets the requirements of Article 19(3) of the ICCPR;
- Condemn discrimination as a matter of policy, speak out against discriminatory rhetoric, and take concrete measures to counter stereotypes, combat and eradicate discrimination, and foster equality and effective protection and social inclusion of marginalized groups;
- Provide effective training to public services personnel in the application of non-discrimination laws and standards and, where relevant, in inter-cultural understanding, in order to combat prejudice and discriminatory behaviour or language by public officials;
- End discrimination against members of ethnic minorities, including by ceasing policies that discriminate against "Korean schools" of all levels;
- Refrain from actions that discriminate against ethnic minorities or other marginalized groups in future responses to the COVID-19 pandemic or other public health emergencies.

REFUGEES, ASYLUM-SEEKERS AND MIGRANTS (ARTICLES 2, 7, 8, 9, 10 AND 14)

ILL-TREATMENT OF DETAINEES IN IMMIGRATION DETENTION FACILITIES

Detained irregular migrants and asylum-seekers continue to be subjected to ill-treatment in immigration detention facilities, including inadequate medical care and indefinite detention. As of the end of September 2019, 198 asylum-seekers or irregular migrants had taken part in hunger strikes to protest against their extended and indeterminate detention and inadequate conditions in immigration detention facilities.³⁷ A total of seven deaths and 222 incidents of self-inflicted injury were recorded in immigration detention facilities between 2015 and 2019.³⁸

³⁵ 朝日新聞 (The Asahi Shimbun), 朝鮮学校の幼稚園、マスク配布対象外に さいたま市 (*Korean kindergartens excluded for mask distributions in Saitama city*), 11 March 2020.

<https://www.asahi.com/articles/ASN3C7RH3N3CUTNB00C.html>

³⁶ The Asahi Shimbun, *Top court rules to exclude Korean schools from free tuition program*, 29 August 2020.

<http://www.asahi.com/ajw/articles/13629826>

³⁷ Amnesty International, *198 joined hunger strike in protest of prolonged detention at immigration facilities* (Index: ASA 22/1149/2019)

³⁸ Solidarity Network with Migrants Japan, *Migrants Network Journal*, No.208 (February 2020), p.25.

On 24 June 2019, a Nigerian man who had been detained since November 2015 died from starvation after a hunger strike in an immigration detention facility in Nagasaki. Within a few days after his death, at least four detainees who had been on hunger strike were granted a provisional release for two weeks, but the Immigration Services Agency again detained them after rejecting their applications for extension of the release. The state has a duty to protect the detainees' right to freedom of expression, and still needs to protect life by providing hunger strikers with the necessary medical care and adequate access to qualified health professionals.

During the COVID-19 pandemic in 2020, 28 detainees at the immigration detention facility in Ibaraki requested to be treated humanely while detained, claiming that there were inadequate measures to prevent the spread of infection within the facility.³⁹ Amnesty International believes that during such a global public health crisis, detention solely for migration-related reasons may endanger the health of the detainees, and generally constitutes an unnecessary or disproportionate restriction on the right to liberty.

PROLONGED DETENTION AT IMMIGRATION FACILITIES

Japan's Immigration Control and Refugee Recognition Act allows the authorities to detain undocumented foreigners including asylum-seekers indefinitely, until such time as their deportation takes place. No maximum period of detention under a deportation order is set out in the Act, and in practice, irregular migrants and asylum-seekers whose deportation is not yet scheduled can remain detained for years. As of June 2019, there were 1,253 foreigners detained in immigration facilities, of which 679 (54.2%) had been detained for more than six months, and 251 (20%) for more than two years.⁴⁰

The Committee has stated that the detention of asylum-seekers is only allowable for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. Further detention while their claims are being resolved, or because of the inability of the state to carry out the deportation, would constitute arbitrary detention prohibited under Article 9 in the absence of particular reasons specific to the individual.⁴¹

Amnesty International believes that immigration detention may only be justified in relation to a transfer or deportation procedure that has been initiated; is in progress and has a reasonable prospect of being executed within a short timeframe; and only for the few hours necessary to immediately enforce the procedure – that is, the physical transfer of the migrant on a bus, boat or plane outside the territory of the country.

PROTECTION AGAINST REFOULEMENT

Japan's refugee recognition rate has remained below 1% since 2012. For instance, Japan only accepted 44 out of 10,375 asylum applications in 2019.⁴² Despite the very low asylum recognition rate, the government suggested an amendment to Article 61(2)6 of the Immigration Control and Refugee Recognition Act in June 2020. The Act currently prohibits deportations of asylum-seekers applying for refugee status, but a government panel of experts recommended in its proposal to the Ministry of Justice that certain asylum-seekers, such as those who repeatedly apply for asylum with the same claim, be excluded from deportation

³⁹ 東京新聞 (*The Chunichi Shimbun*), 入管の3密解消を 「部屋を分けて」 17カ国の収容者が要望書 (*Free up the 3 C's in immigration detention – detainees from 17 different countries requested to "separate our room"*), 27 April 2020. <https://www.tokyo-np.co.jp/article/17017>

⁴⁰ Ministry of Justice, 各収容施設における収容期間別総被収容者数 (*Detention period and number of detainees in each detention facility*), as of June 2019. <http://mizuhoto.org/wp/wp-content/uploads/2019/08/d71b290ae7f1f00355844a40b0deabdc.pdf>

⁴¹ Human Rights Committee, *General Comment No. 35 (2014), Article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/36, para. 18.

⁴² Ministry of Justice, 我が国における難民庇護の状況等 (*Refugee recognition in Japan*), 27 March 2020. <http://www.moj.go.jp/content/001317679.pdf>

relief. The panel asserted that irregular migrants have been abusing the system to avoid deportations.⁴³ Without an effective, independent and impartial review mechanism in the decision-making process to deport individuals, the proposed revision to the Act would be in violation of the rights of these asylum-seekers and could lead to violations of the principle of non-refoulement.⁴⁴

ABUSE OF TECHNICAL INTERN TRAINEES

Japan failed to protect the rights of migrant workers employed under the state-sponsored Technical Internship Training Program (TITP) from unfair or exploitative treatment.⁴⁵ The Ministry of Health, Labour and Welfare announced in its report of 2018 that it had carried out inspections into 7,334 business facilities employing foreign technical intern trainees and found that 5,160 (70%) of them violated laws and regulations related to labour standards, including illegal overtime work, infringement of safety standards, and non-payment of overtime wages. Only 19 of these businesses were referred to the Prosecutor's office for further action.⁴⁶

The Ministry also revealed that 22 deaths among intern trainees between 2014 and 2016 were certified as work-related, which converts to a much higher incidence rate of work-related deaths among intern trainees (3.7 per 100,000 workers) compared to the general working population (1.7 per 100,000 workers).⁴⁷ Furthermore, workplace accidents were concealed from the government by the employers and only some cases were discovered when intern trainees consulted with civil society organizations such as labour unions.⁴⁸

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Ensure that the Immigration Control and Refugee Recognition Act maintains that no one should be transferred to another country or jurisdiction where they would face a real risk of serious human rights violations or abuses as provided for in Article 61(2)6, and ensure an opportunity for effective, independent and impartial review of any decision to deport individuals especially if there appear to be substantial grounds for believing that the individual would face a real risk of serious human rights violations or abuses on return;
- Ensure that no asylum-seekers or migrants are kept in detention except in situations that are deemed lawful, necessary and proportionate, and that they are free from any inhuman or degrading treatment;
- Specify in the Immigration Control and Refugee Recognition Act a maximum allowable duration of necessary and proportionate detention in the course of migration proceedings, and ensure that such detention be permissible only for the shortest period of time;
- Release detained migrants and asylum-seekers when deportations cannot be carried out promptly due to the COVID-19 pandemic;

⁴³ 収容・送還に関する専門部会 (Panel of experts on detention and deportation), 送還忌避・長期収容問題の解決に向けた提言 (*Proposal to solve issues of deportation evaders and prolonged detention*), July 2020.

<http://www.moi.go.jp/content/001322460.pdf>, pp.34-6

⁴⁴ Non-refoulement is an international legal principle that prohibits the transfer of individuals to another country or jurisdiction where they would face a real risk of serious human rights violations or abuses. Under international human rights law this principle applies to everyone without exception, including all migrants irrespective of migration status.

⁴⁵ The Japanese government started the TITP in 1993, aiming to contribute to developing countries by accepting people from these countries and transferring skills through on-the-job training.

⁴⁶ Ministry of Health, Labour and Welfare, 技能実習生の実習実施者に対する監督指導、送検等の状況 (*Situation of supervising, instructing and inspecting trainees of technical interns*), 8 August 2018.

<https://www.mhlw.go.jp/content/11202000/000536124.pdf>

⁴⁷ 日本経済新聞 (The Nikkei), 外国人実習生3年で22人労災死 国全体より高い比率 (*22 foreigner trainees died in 3 years, higher ratio than the whole country*), 14 January 2018.

<https://www.nikkei.com/article/DGXMZ025669590U8A110C1CR8000/>

⁴⁸ 労働新聞社 (Rodo Shimbunsha), 外国人技能実習生の労災隠し送検 支援団体の通報で発覚 (*Hidden labour accident of foreign technical interns discovered by support group and sent prosecutors*), 28 October 2019.

<https://www.rodo.co.jp/column/81235/>

- Effectively investigate and prosecute suspected perpetrators of labour rights violations and abuses of the human rights of migrant workers, and ensure the perpetrators' accountability.

THE RIGHT TO PRIVACY INCLUDING THE SURVEILLANCE OF MUSLIMS (ARTICLE 17, 18 AND 27)

In May 2016 the Supreme Court dismissed a case brought against the police practice of blanket surveillance of Japan's Muslim community, including of people perceived to be Muslim.⁴⁹ Already in 2010, it had come to light through leaked internal documents that the Japanese police were engaging in sweeping, blanket surveillance of Muslim foreign nationals in the country. The documents included personal information, such as the names, personal relationships and place of worship of individuals labelled as suspected "terrorists" in Japan. Seventeen people sued the Public Prosecutor's Office and the Tokyo Metropolitan Government for violating their rights to privacy, equal treatment and religious freedom under the Japanese Constitution. Japanese and foreign national Muslims also reported to the media that they were followed by law enforcement officials, and being watched at places of worship.⁵⁰

In 2014 the Tokyo District Court acknowledged the illegality and negligence of the leak, amounting to a violation of the right to privacy, and ordered the Tokyo Metropolitan Police Department to pay compensation. It concluded, however, that such surveillance and information-gathering activities were permissible as they were necessary for national security. The Tokyo High Court upheld this decision in 2015, and by dismissing the case in 2016, the Supreme Court in effect gave a green light to such surveillance.⁵¹

In June 2017 the Japanese legislature, the Diet, adopted the Act on Punishment of the Preparation of Acts of Terrorism and Other Organized Crimes, an overly broad law targeting alleged conspiracies to commit "terrorism" and other serious crimes. Although no person or entities have been charged under the law as of August 2020, it gives authorities broad surveillance powers that could be misused to curtail the rights to freedom of expression and association and to privacy, without sufficient safeguards. The law also presented a threat to the legitimate work of independent NGOs, as the definition of "organized crime groups" was vague and the range of crimes covered under the law was overly broad and not limited to activities that clearly constitute organized crime or are related to terrorism.⁵²

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Ensure the right of all persons to be free from discriminatory or otherwise arbitrary or unlawful surveillance, allowing only for distinctions and differences in treatment that are reasonable, objective and based on legitimate and overriding grounds, while avoiding blanket distinctions and differences in treatment such as between citizens and non-citizens, or singling out specific religious communities as a whole;
- Consider amending the Act on Punishment of the Preparation of Acts of Terrorism and Other Organized Crimes to include sufficient safeguards against punishment in the absence of any crimes committed, and to provide a clearer definition of "organized crime groups" to prevent unnecessary

⁴⁹ 朝日新聞 (The Asahi Shimbun), 警視庁のテロ捜査情報流出、賠償確定 (*Compensation granted, regarding the case of leaked information on terrorism investigation by Tokyo Metropolitan Police Department*), 2 June 2016.

<https://digital.asahi.com/articles/DA3S12388377.html>

⁵⁰ Al Jazeera, *Top court green-lights surveillance of Japan's Muslims*, 29 June 2016.

<https://www.aljazeera.com/news/2016/06/top-court-green-lights-surveillance-japan-muslims-160629040956466.html> (hereinafter: Al Jazeera, *Top court green-lights surveillance*.)

⁵¹ Al Jazeera, *Top court green-lights surveillance*.

⁵² "A structured group of three or more persons existing for a long period of time and acting in concert with the aim of committing one or more serious crimes or offenses . . . in order to obtain . . . material benefit." In Act on Punishment of the Preparation of Acts of Terrorism and Other Organized crime, Article 2(a).

or disproportionate interference in otherwise lawful activities of civil society, and to reduce the range of crimes covered under the law to those directly related to terrorism.

MILITARY SEXUAL SLAVERY SYSTEM BEFORE AND DURING WORLD WAR II (ARTICLES 2, 3, 7 AND 8)

Survivors of the Japanese military sexual slavery system before and during the World War II continue to be denied the right to full reparation and an effective remedy by the Japanese government. The government continues to assert its legal position that any obligation to provide reparation for military sexual slavery was settled at the state level in the 1951 San Francisco Peace Treaty and other bilateral peace treaties and arrangements.⁵³ Amnesty International considers the government's position untenable, because those treaties and agreements did not cover acts of sexual slavery, nor did they preclude individuals from seeking full reparation.⁵⁴

Between 1932 and the end of World War II, the Japanese Imperial Army forced up to 200,000 women and girls from across the Asia-Pacific region into sexual slavery. Some senior Japanese government officials and public figures continue to deny the existence of the military sexual slavery system or they attempt to justify its existence.⁵⁵ The continued attempts to deny state responsibility for the mass human rights violations committed, including war crimes and crimes against humanity against the women and girls who were forced into sexual slavery, prolongs the humiliation and suffering of the survivors and does not respect their rights to full reparations.

On 28 December 2015, Japan and the Republic of Korea (South Korea) reached a bilateral agreement to "resolve" the issue of Japan's military sexual slavery system before and during World War II.⁵⁶ The agreement provided that the South Korean government would never again raise the issue and that a peace monument in Seoul commemorating the survivors of the military sexual slavery system would be removed. These provisions ran counter to the principle of transparency and the need to fulfil the victims' rights to truth, justice and reparations.

The agreement between Japan and South Korea has not been welcomed by the majority of survivors of the sexual slavery system (euphemistically referred to as "comfort women"), their families and the organizations that support them, because they see the agreement as failing to acknowledge violations of international human rights law committed by Japan and to accept the legal responsibility of Japan. In their view, the agreement also lacked a genuine apology and was negotiated without full participation of the victims.

In 2016, two groups of South Korean survivors of the sexual slavery system filed lawsuits in their own country against the Japanese government demanding compensation. The Japanese government sought dismissal of the case, claiming state immunity. Judicial procedures are ongoing as of August 2020.⁵⁷

In addition, although women from across the Asia-Pacific region were affected, Japan has not started negotiations with any other countries as of the time of this submission.

⁵³ Ministry of Foreign Affairs, *Japan's Efforts on the Issue of Comfort Women*, 20 February 2020. <https://www.mofa.go.jp/files/000473133.pdf>

⁵⁴ Amnesty International, *Japan: Still Waiting for Justice After 60 Years – Justice for Survivors of Japan's Military Sexual Slavery System* (Index: ASA 22/012/2005).

⁵⁵ For instance on 14 January 2016, Yoshitaka Sakurada of the LDP, a former state Minister of Education, made remarks that "comfort women" were "prostitutes by occupation". The Japan Times, *Politicians react to LDP legislator's remark that 'comfort women' were prostitutes*. 15 January 2016. <https://mainichi.jp/english/articles/20160115/p2a/00m/0na/009000c>

⁵⁶ Ministry of Foreign Affairs, *Japan-Republic of Korea Relations Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion*, 28 December 2016. https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html

⁵⁷ Amnesty International, *South Korea: Lawsuits against Japanese government last chance for justice for 'comfort women'*, (News Story, 12 August 2020).

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Provide, without further delay, full and effective reparations to any individual who has suffered harm as the direct result of the military sexual slavery system, including survivors, non-surviving victims and their families, regardless of their nationality;
- Offer, in addition to financial compensation, other forms of reparation identified by survivors, including measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition, an acceptance of full responsibility, public acknowledgment of the harm suffered, and an unreserved apology;
- Reject and refute measures or statements by government authorities and public figures, which may undermine the rights of survivors, including their ability to seek reparation and access justice before the courts;
- Work with the government of South Korea and other affected countries to ensure that effective systems are put in place to implement reparation measures for survivors that take into account the views and needs of survivors;
- Cease to deny the victims an effective remedy, including by refraining from using procedural hurdles such as state immunity with the aim of hampering efforts of survivors and their families to obtain full and effective reparations through justice procedures in other countries;
- Ensure non-repetition by including accurate reporting of Japan's military sexual slavery system in history accounts, public documents and textbooks used in the Japanese educational system.

RIGHTS TO FREEDOM OF EXPRESSION AND FREEDOM OF PEACEFUL ASSEMBLY (ARTICLES 19 AND 21)

The plan of the Japanese and United States governments to relocate a military base from one site to another on the island of Okinawa has for years met strong opposition from the local community, who claim that it will merely redirect the noise, environmental degradation and dangers of militarization to another part of the island. On 20 August 2016, during a peaceful protest at a US military construction site, two journalists from local Okinawa newspapers who tried to cover the assembly were forcibly removed by riot police, temporarily detained and prevented from reporting. The police claimed that they did not realize that the two people were journalists, in its response to a statement made by an association of journalists in Okinawa after the incident.⁵⁸ The indiscriminate use of force by police on journalists who are carrying out legitimate activities violates the freedom of the press, which is also guaranteed under the Japanese constitution, as well as everyone's right to receive information and ideas.

In 17 October 2016, peace activist Hiroji Yamashiro was arrested on suspicion of cutting barbed wire near a US military construction site. He was subsequently detained for five months before his first court hearing took place, repeatedly denied bail without sufficient legal justification, and charged with new offences while extensions to his detention were requested. Access to lawyers was restricted, the receipt of all external communications banned, and he was not allowed to see his family, except a meeting with his wife for 20 minutes on 13 March 2017, five days before he was finally and suddenly released on bail.⁵⁹ The detention of Hiroji Yamashiro sent a chilling message to others who were peacefully exercising their rights to freedom of expression and assembly.

⁵⁸ 世界日報 (The Sekainippo) 沖縄 2 紙記者の一時拘束 (Arrest of reporters from two Okinawa newspapers)", 31 August 2016. <https://www.worldtimes.co.jp/okinawa/71709.html>

⁵⁹ Amnesty International, *Japan: Further information: Okinawa activist released on bail after five months (Urgent Action Update)*, 21 March 2017)

On 3 August 2019, an exhibit on political taboos that was part of the Aichi Triennale international art festival in Nagoya was closed after the organizers had received complaints from the authorities and anonymous threats. The criticism was made in particular about two works of art – one that included an image of Emperor Hirohito being incinerated with a blowtorch and the other a statue of a “comfort woman”. The national Agency for Cultural Affairs decided to withhold subsidies set aside for the festival, while LDP lawmakers criticized the exhibition as an act of “political propaganda”. The mayor of Nagoya also protested to the Aichi prefectural government in writing, asking for the exhibition to be closed.⁶⁰ Such actions of the authorities were seen not only by the public as an unjustified restriction on freedom of expression, but also by Hideaki Ohmura, governor of the Aichi Prefecture.⁶¹ The right to freedom of expression applies to information and ideas of all kinds including those that shock or disturb, or may be deeply offensive.⁶² Widespread criticism eventually generated pressure for the exhibit to be reopened, but only for one week, in October.

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF JAPAN TO:

- Ensure that any use of force by law enforcement officials during assemblies, and especially any decision to disperse an assembly, is only made if this measure is strictly unavoidable and is in line with the principles of legality, necessity, proportionality and non-discrimination;
- Ensure that law enforcement officials do not unjustifiably interfere when journalists or others are observing an assembly, but instead respect, facilitate and protect such monitoring and reporting;
- Ensure protection of all legitimate exercises of the right to freedom of expression, such as objects of art and their means of dissemination, including by reviewing critically any legislation, policies and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions and input from civil society stakeholders.

⁶⁰ Amnesty International Japan, 日本: あいちトリエンナーレ「表現の不自由展・その後」の中止に深刻な懸念 (*Japan: Serious concerns over closure of the ‘After ‘Freedom of Expression?’ exhibition in Aichi Triennale, [Public Statement](#)*, 8 August 2019)

⁶¹ NHK World, *Aichi Triennale exhibition may trigger legal battle*, 1 October 2019. <https://www3.nhk.or.jp/nhkworld/en/news/backstories/699/>

⁶² Human Rights Committee, *General comment No. 34 (2018) Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, para. 11.

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JAPAN

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE

130TH SESSION, 12 OCTOBER - 6 NOVEMBER 2020

Amnesty International is making this submission in advance of the Human Rights Committee's (the Committee) examination of Japan's seventh periodic report (CCPR/C/JPN/7) on the measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant). This submission provides an overview of the organization's main concerns about the Japanese government's compliance with its obligations under the Covenant, including, the lack of progress in establishing a national human rights institution (NHRI) and towards the abolition of the death penalty. It also highlights discrimination against LGBTI people and ethnic minorities, violations of the rights of refugees, asylum-seekers and migrants, violations of the right to privacy, lack of justice and reparation for victims of the military sexual slavery system before and during World War II and violations of the rights to freedom of peaceful assembly and freedom of expression.