

MISSION PERMANENTE DU JAPON
AUPRÈS DES ORGANISATIONS INTERNATIONALES
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The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Note Verbal ref. UA JPN 1/2017, dated 28 February 2017, has the honour to transmit herewith the reply of the Government of Japan to the Joint Urgent Appeal from the Special Procedures of the United Nations Human Rights Council.

The Permanent Mission of Japan to the International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 10 April 2017

Enclosure mentioned



Reply of the Government of Japan to the Joint Urgent Appeal from Special
Procedures of the United Nations Human Rights Council

Regarding the request for information dated 28 February 2017 concerning the arrest and detention of Mr. Hiroji Yamashiro sent to the Permanent Mission of Japan to the United Nations and Other International Organizations in Geneva, while it is not clear what information the appeal was based on, the appeal clearly contains inaccurate understanding of the facts. The Government's handling has no contradiction at all with Japan's international obligations, including those under Article 9, Article 14, Article 19, and Article 21 of the International Covenant on Civil and Political Rights (ICCPR), as well as the Constitution of Japan which ensures virtually the same rights and freedom as the ICCPR. On March 18, 2017, the authorities released Mr. Yamashiro in accordance with the court decision to release him on bail. The Government of Japan provides responses as follows regarding the matters pointed out in the appeal concerning the arrest and detention of Mr. Yamashiro from the on-the-spot arrest on October 17, 2016 to his release on March 18, 2017. (Refer to articles of relevant laws provided at the end of this document)

First, concerning the arrest and detention of Mr. Yamashiro described in the urgent joint appeal, the factual background is as follows. All the concerned authorities responded to Mr. Yamashiro's illegal activities appropriately and in accordance with relevant laws, fully respecting the due process.

- At around 3 p.m. on October 17, 2016, Mr. Yamashiro cut barbed wire, which was under the management of the Okinawa Defense Bureau, inside the helicopter landing zones construction site in the Northern Training Area of the U.S. forces. This constitutes destruction of the property of others, and as a result, the Okinawa Prefectural Police arrested him on the spot on a charge of destruction of property.
- In addition, at around 8 a.m. on August 25, 2016, Mr. Yamashiro assaulted an official of the Okinawa Defense Bureau on a construction road used for relocation of the helicopter landing zones in the Northern Training Area of the U.S. forces. During the assault, Mr. Yamashiro violently shook the official and injured his right arm, causing a bruise that required two weeks' treatment. (This fact is not fully pointed out in the appeal.) The Okinawa Prefectural Police arrested Mr. Yamashiro on October 20, 2016, on a charge of obstruction of public duty and inflicting injury.
- Furthermore, between January 28 and 30, 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. On around January 30, he also had some persons sit down on the blocks and stand in front of moving construction vehicles. Those actions taken by Mr. Yamashiro made it difficult for contractors to carry equipment and materials into Camp Schwab's premises and forcibly obstructed duties of the Okinawa Defense Bureau, which is in a position to lead the construction work. The Okinawa Prefectural Police arrested him on November 29, 2016 on a charge of forcible obstruction of business.
- Other facts contained in the urgent joint appeal include clear errors in articulating basic information, including the location of Mr. Yamashiro's arrest, the date of his

detention, and articles of the Penal Code.

As described above, the Japanese authorities have arrested Mr. Yamashiro three times since October 17, 2016. Apart from the on-the-spot arrest, the other two arrests were conducted with the arrest warrants issued by a court judge who determined that there was sufficient probable cause to suspect that he had committed crimes and that it was necessary to arrest him.

The detentions following the three arrests were conducted with detention warrants issued by a court judge, and the restrictions of contact under the detention were also conducted according to the decisions of a court judge.

As described earlier, Mr. Yamashiro was released on March 18, 2017, in accordance with the court decision to release him on bail. Mr. Yamashiro's applications for release on bail prior to this were rejected by the court due to the fact that they were deemed to be without grounds. Furthermore, Mr. Yamashiro's quasi-appeals and special appeals (which are appeal procedures guaranteed to defendants under the Code of Criminal Procedure) against these decisions were also rejected by the Supreme Court, as they were also deemed to be without grounds.

As such, the urgent joint appeal has clear errors in articulating facts to serve as the basis for the appeal. Mr. Yamashiro's arrest, detention, and restrictions of contact under the detention were carried out appropriately in accordance with the provisions of the Code of Criminal Procedure. Therefore, the appeal's arguments that there was an "arbitrary detention" is completely incorrect. On that basis, we provide the following response to matters of inquiry.

[Legal grounds for Mr. Yamashiro's arrest, detention, and prosecution]

1. Arrest

The authorities arrested Mr. Yamashiro three times since October 17, 2016. Apart from the on-the-spot arrest, the other two arrests were conducted with arrest warrants issued by the court.

The on-the-spot arrest was conducted in accordance with Article 213 of the Code of Criminal Procedure.

Paragraph 1, Article 212 of the Code of Criminal Procedure defines a flagrant offender as "A person who is in the very act of committing or has just committed an offense." Paragraph 2 of the same Article also specifies that a person is considered a flagrant offender when he/she meets certain requirements, such as "A person being engaged in fresh pursuit" and is clearly deemed to have committed an offense a short time before.

The arrests carried out with arrest warrants were conducted in accordance with Article 199 of the Code of Criminal Procedure.

2. Detention

Following each of the three arrests, a court judge issued a detention warrant for Mr. Yamashiro's detention. The detentions were conducted in accordance with Article 60 and Article 207 of the Code of Criminal Procedure.

3. Prosecution

Prosecutors have indicted Mr. Yamashiro twice since October 17, 2016. These indictments were made in accordance with Article 247 of the Code of Criminal Procedure.

4. Crimes resulting in arrest, detention, and request for trial

Mr. Yamashiro was arrested, detained, and indicted for committing crimes of obstruction of public duty, injury infliction, forcible obstruction of business, and destruction of property. These crimes are stipulated in Article 95, Article 204, Article 234, and Article 261 of the Penal Code.

[Legal grounds on why visits to Mr. Yamashiro by family members and individuals other than lawyers were not permitted]

Due to the court's decision, Mr. Yamashiro was not allowed to have interviews with anyone but his defense counsel or persons who wished to be his defense counsel. This decision was made in accordance with Article 81 and Article 207 of the Code of Criminal Procedure.

[Relationship with the International Covenant on Civil and Political Rights (ICCPR)]

The factual background concerning the incidents is described above, and the actions taken by the authorities did not infringe on "the right to freedom of opinion and expression" nor "the rights to freedom of peaceful assembly" provided in Article 19 and Article 21 of the ICCPR. Therefore, there is no ground for the concerns raised by the Working Group on Arbitrary Detention and the three Special Rapporteurs in the appeal.

Paragraph 2, Article 98 of the Constitution of Japan stipulates that "The treaties concluded by Japan and established laws of nations shall be faithfully observed." In accordance with this article, Japan has observed international agreements, including the ICCPR.

Specifically, "the right to hold opinions without interference" and "the right to freedom of expression" provided in Article 19 of the ICCPR are guaranteed under Article 19, paragraph 1, Article 21, and Article 23 of the Constitution of Japan.

In addition, "the right of peaceful assembly" provided for in Article 21 of the ICCPR, is guaranteed under Article 21 of the Constitution of Japan. Article 21 of the ICCPR is to guarantee the right to assemble peacefully, but not to guarantee the right to assemble with violent activities. The Government of Japan considers that this is why Article 21 of the ICCPR uses the word "peaceful" in referring to the right of assembly.

Furthermore, the authorities carried out Mr. Yamashiro's arrest, detention, and restriction of interviews appropriately in accordance with the provisions of the Code of Criminal Procedure. Paragraph 1, Article 9 of the ICCPR prohibits arbitrary arrest or detention and does not prohibit arrest or detention executed based on appropriate procedures stipulated in the law. Therefore, this case does not raise an issue in relation to such provisions in the ICCPR. The authorities' actions were all in accordance with the provisions of the Code of Criminal Procedure and do not fall under arbitrary detention.

In addition to the provisions above, Paragraph 1, Article 14 of the ICCPR stipulates that "All persons shall be equal before the courts and tribunals," and all persons shall be treated equally before the courts and tribunals "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Paragraph 1, Article 2 of the ICCPR). In Japan, the guarantee of such provisions is covered under Paragraph 1, Article 14 (equal under the law) and Article 32 (the right of access to the courts) of the Constitution of Japan.

[Consultation process on "construction and expansion of military bases" in Okinawa]

Although the intent of the inquiry is not entirely clear, Okinawa had been placed under the administration of the United States over a period of many years until it was reverted to Japan, and today, 71 years after the end of WWII, it still has a concentration of facilities and areas of the U.S. forces, which continue to cause a great impact on Okinawa. Such circumstances in Okinawa are not acceptable. The Government of Japan believes mitigating the impact on Okinawa to be our responsibility.

Based on such belief, the Japanese and the U.S. governments established the Special Action Committee on Okinawa (SACO) in November 1995 and launched SACO process for mitigating the impact on residents in Okinawa. SACO produced a final report on specific plans and measures to organize, integrate, and reduce facilities and areas of the U.S. forces in Okinawa and to coordinate methods for the operations of the U.S. forces in Okinawa. The report was approved by the foreign ministers and defense ministers of the Japanese and the U.S. governments in December 1996. In addition, in order to realize the realignment plan of the U.S. forces laid out in the U.S.-Japan Roadmap for Realignment Implementation in 2006, the Japanese government developed a "Consolidation Plan" in 2013 to return the facilities and areas of the U.S. forces to Japan. The plan specifies the period of return for the first time between U.S. and Japan. In addition to the Futenma Air Station, approximately 70% of the U.S. forces facilities and areas in the south of Kadena located in a highly populated area in the south-central part of Okinawa's main island are subject to the plan. The population in this area accounts for approximately 80% of the population of Okinawa. The government brought about the return of the Nishi-Futenma housing area in Camp Zukeran in March 2015. In this way, the Government has been steadily reducing the impact on Okinawa.

Among the initiatives to mitigate the impact on Okinawa, those to return more than

half of the Northern Training Area, consisting of approximately 4,000 hectares, were successfully carried out in December 2016. The returned area accounts for approximately 20% of the facilities and areas used solely for the U.S. forces in Okinawa and is the largest to be returned since Okinawa's reversion to Japan. With that return, the total area of the facilities and areas of the U.S. forces in Okinawa was reduced to approximately half of those in place just before Okinawa's reversion to Japan. As a condition of the return, the helicopter landing zones were relocated inside the training area. We consider that the return was made according to the request of local municipalities, as we had received requests from Higashi village and Kunigami village for the early return of the area concerned.

Concerning the Futenma Air Station, the national and local governments share a common understanding that the risk posed by the station must be eliminated immediately, as the station is located in the central part of Ginowan City and is surrounded by houses and schools. Based on this understanding, we have implemented a plan to relocate the station off the coast of Henoko, Nago City through a five-year process of environmental impact assessment and approval of the Governor of Okinawa Prefecture, Mr. Hirokazu Nakaima, in December 2013 on the reclamation necessary for relocation. Futenma Air Station has three functions with regard to the aviation capacity of the U.S. Marines in Okinawa: (1) Operation of Ospreys, (2) Operation of air refueling tankers, and (3) Operation as a base to accept aircraft in case of emergency. Of the three functions, only "(1) Operation of Ospreys" will be transferred to Henoko. In addition, the reclamation area necessary for the construction of alternative facilities will be less than one-third of the area of the current station, and the runway will be significantly shortened. Furthermore, based on the requests by local governments, two V-shaped runways will be constructed in the alternative facilities so that both takeoff and landing paths will be on the sea. The Futenma Air Station has its flight paths above the urban district, whereas the alternative facilities will have them above the sea, which will reduce noise and risk. With regard to the revocation of the approval of reclamation in the coastal areas of Henoko made by Mr. Takeshi Onaga, Governor of Okinawa Prefecture, on October 13, 2015, the national government and Okinawa Prefecture mutually agreed in March 2016 to suspend the construction and concurrently commence consultation for resolution and procedures for seeking a legal judgment. Through the mutual agreement, it was determined in the Supreme Court ruling on December 20, 2016 that the revocation of the approval made by the Governor was illegal.

From the above description, it is concluded that the point made in the appeal that the project implemented in the Northern Training Area and Henoko falls under the "construction and expansion of military bases" is inaccurate. Based on the approach of "doing everything we can," the Japanese government will continuously make every effort to reduce the impact on Okinawa.

[Reference Articles]

Penal Code

Article 95

A person who commits an act of assault or intimidation against a public officer in the

performance of public duty shall be punished by imprisonment with or without work for not more than 3 years or a fine of not more than 500,000 yen.

2. The same shall apply to a person who commits an act of assault or intimidation against a public officer in order to cause the official to perform or not to perform the act as an official or in order to cause the official to resign.

Article 204

A person who causes another to suffer injury shall be punished by imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen.

Article 234

A person who obstructs the business of another by force shall be dealt with in the same manner as prescribed under the preceding Article.

*"In the same manner as prescribed under the preceding Article" means "imprisonment with work for not more than 3 years or a fine of not more than 500,000 yen" as provided in Article 233.

Article 261

A person who damages or injures property not prescribed under the preceding three Articles shall be punished by imprisonment with work for not more than 3 years, a fine of not more than 300,000 yen or a petty fine.

Code of Criminal Procedure

Article 60

The court may detain the accused when there is probable cause to suspect that he/she has committed a crime and when:

- (i) The accused has no fixed residence;
- (ii) There is probable cause to suspect that he/she may conceal or destroy evidence;
- (iii) The accused has fled or there is probable cause to suspect that he/she may flee.

2. (omitted)

3. (omitted)

Article 81

The court may, when there is probable cause to suspect that the accused under detention may flee or conceal or destroy evidence, upon the request of a public prosecutor or ex officio, prohibit the accused from having an interview with persons other than those prescribed in paragraph (1) of Article 39, or censor the documents or articles sent or received by the accused, prohibit the sending or receiving of them, or seize them; provided, however, that food may not be subject to the prohibition on sending or receiving or seizure.

Article 199

When there exists sufficient probable cause to suspect that an offense has been committed by a suspect, a public prosecutor, public prosecutor's assistant officer, or judicial police official may arrest him/her upon an arrest warrant issued in advance by a judge; provided, however, that with respect to offenses punishable with a fine not

exceeding 300,000 yen (20,000 yen as a temporary measure for offenses other than those prescribed in the Penal Code, the Act on Punishment of Physical Violence and Others and the Act on Penal Provisions related to Economic Activities), misdemeanor imprisonment without work or a petty fine, the suspect may only be arrested in cases where the suspect has no fixed dwelling or where he/she fails, without justifiable grounds, to make the appearance provided for in the preceding Article.

2. In cases where a judge deems that there exists sufficient probable cause to suspect that the suspect has committed an offense, he/she shall issue the arrest warrant set forth in the preceding paragraph, upon the request of a public prosecutor or a judicial police officer (in the case of a judicial police officer who is a police official, only a person designated by the National Public Safety Commission or the Prefectural Public Safety Commission and who ranks as equal to or above chief inspector; the same shall apply hereinafter in this Article); provided, however, that this shall not apply in cases where the judge deems that there is clearly no necessity to arrest the suspect.

3. (omitted)

Article 207

The judge who has been requested detention pursuant to the provision of the preceding three Articles shall have the same authority as a court or a presiding judge regarding the disposition thereof; provided, however, that this shall not apply to bail.

2. (omitted)

3. (omitted)

4. (omitted)

5. When a judge has received the request for detention set forth in paragraph (1), he/she shall promptly issue a detention warrant; provided, however, that when the judge deems that there are no grounds for detention or when a detention warrant cannot be issued pursuant to the provisions of paragraph (2) of the preceding Article, he/she shall immediately order the release of the suspect without issuing a detention warrant.

Article 212

A person who is in the very act of committing or has just committed an offense is a flagrant offender.

2. Where any person who falls under one of the following items is clearly deemed to have committed an offense a short time before, he/she shall be deemed a flagrant offender;

- (i) A person being engaged in fresh pursuit;
- (ii) A person carrying with him/her goods obtained through an offense against property or a dangerous weapon or other things which are manifestly believed to have been used in the commission of a criminal act;
- (iii) A person with visible traces of the offense on his/her body;
- (iv) A person who attempts to run away when challenged.

Article 213

Any person may arrest a flagrant offender without an arrest warrant.

Article 247

Prosecution shall be instituted by a public prosecutor.

The Constitution of Japan

Article 14, Paragraph 1

All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin.

Article 19

Freedom of thought and conscience shall not be violated.

Article 21

Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

Article 23

Academic freedom is guaranteed.

Article 32

No person shall be denied the right of access to the courts.

Article 98, Paragraph 2

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

/end/