

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA JPN 1/2017

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 25/2, 32/32 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest and detention of Mr. Hiroji Yamashiro**, in relation to his human rights work and the exercise of his rights to freedom of expression and of peaceful assembly protesting against the expansion of military bases in Okinawa.

Mr. Hiroji Yamashiro is the Chairman of the Okinawa Peace Movement Centre, a non-governmental organization established for the protection of peace and democracy in Okinawa. The centre has been protesting the construction of the Henoko military base and the withdrawal and closure of the Marine Corps Air station Futenman and the plan to relocate it within Okinawa.

Mr. Yamashiro was the subject of a previous joint communication sent by Special Procedures on 15 June 2015 (JPN 1/2015). We would like to thank your Excellency's Government for the substantive reply given.

According to the new information received:

On 13 October 2015, Governor Onaga revoked the approval to landfill in Henoko as part of the expansion of the military base into that area. Despite the local government's objections, the central Government enforced the continued development in that area.

On 28 and 29 January 2016, in response to the central Government's decision, Mr. Yamashiro and a large number of civilians gathered to lay concrete blocks at

the gate of Camp Schwab US Marine Corps base as part of the symbol of their protest.

On 17 October 2016, Mr. Yamashiro was arrested at the military facility and base in Henoko, for the offence of cutting a small piece of barbed wire installed by the Okinawa defence bureau. He was charged under article 261 of the Penal Code and article 212(2) (i) and (iv) of the Code of Criminal Procedure.

After his initial arrest, he was charged on 20 October 2016 for a prior incident which allegedly occurred on 25 August 2016. Charges were brought under article 95(1) and article 205 of the Penal Code and article 207 and 60(i)(ii) of the Code of Criminal Procedure.

On 29 November 2016, Mr. Yamashiro was arrested and charged retroactively for the events that transpired on 28 and 29 January 2016, despite the fact that he was already in detention for other alleged offences. Mr. Yamashiro was charged with the destruction of property, interference with official duties and the obstruction of business, under article 234 of the Penal Code and article 199 of the Code of Criminal Procedure for which the maximum penalty is three years' imprisonment

It has been reported that Mr. Yamashiro has been prohibited from having contact with anyone other than his lawyers since October 2016, under the justification that this may lead to the destruction of evidence. At the time of this communication, Mr. Yamashiro continues in detention.

We express concern at the arrest and detention of Mr. Yamashiro, as well as the charges brought against him, which appear to be directly related to his activities in defence of human rights, and which also represent a criminalization of his legitimate exercise of the rights to freedom of expression and peaceful assembly. We express further concern at the allegations of lack of due process, in particular in connection with Mr. Yamashiro's longtime detention, the use of retroactive charges while he continued to be in detention, and the prohibition of visits from his family. Moreover, we express a broader concern at the chilling effect this case may have on the exercise of freedoms of expression and peaceful assembly in Japan, in particular when important issues of public interest will be at stake.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above-mentioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan on 21 June 1979.

We moreover appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression and the right to freedom of peaceful assembly in accordance with articles 19 and 21 of the ICCPR.

In this connection, we wish to reiterate the principle enunciated in Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent.

We would finally like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular, articles 1, 2, 5 and 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Yamashiro in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please confirm the legal basis for the arrest and detention of Mr. Yamashiro, as well as the charges brought against him. If confirmed, please indicate how such measures are compatible with Japan's obligations under international human rights law, in particular with respect to articles 9, 14, 19 and 21 of the ICCPR.
3. Please provide details about the legal basis under which Mr. Yamashiro is denied visits from his family or other individuals other than his lawyers.
4. Please indicate what measures have been taken to ensure that the legitimate exercise of the rights to freedom of expression and freedom of peaceful assembly are respected in Japan.

5. Please provide details of the consultations process that has occurred with regard to the construction and expansion of military bases in Okinawa.
6. Please indicate what measures have been taken to ensure that human rights defenders in Okinawa, and in general in Japan, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

In addition, we would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
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