

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL JPN 7/2018

11 September 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the attack against investigative journalist Shunsuke Yamaoka**.

Mr. **Shunsuke Yamaoka** is a journalist and founder of the website for investigative journalism *Access Journal*. He has investigated issues of corruption and, most recently, possible links between the prime minister of Japan and the mafia. In 2005, he was sued for libel by a former politician following his publication of accusations of corruption.

According to the information received:

On 7 August 2018, Mr. Yamaoka was reportedly pushed while at Tokyo's Shinjuku subway station, sending him into a 20-step fall that left him unconscious. He was brought to the hospital where he received 20 stitches in the forehead. His shoulder was furthermore fractured.

The police has reportedly refused to launch an investigation and claimed that there is no surveillance camera covering the area of the incident.

Mr. Yamaoka has previously received threats. In 2005, his apartment was set on fire.

I express serious concern at the allegations of an attack against Mr. Yamaoka, and at the refusal of the police to investigate the incident. I am concerned that the attack may be linked to Mr. Yamaoka's activities as an investigative journalist, in particular in light of previous threats received, and I urge the police to initiate an investigation into the incident as such. I highlight the importance of such investigations as a means to prevent impunity and to create an enabling environment for the exercise of journalism. I would in this regard also refer to the recommendations made following my official visit to Japan in 2016, where I called upon authorities to publicly express their rejection of any form of threat and intimidation against journalists or other professionals carrying out investigative reporting work (A/HRC/35/22/Add.1).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the lack of investigation into the attack against Mr. Yamaoka is in compliance with Japan's obligations under international human rights law.
3. Please provide information about measures taken to ensure an enabling environment for freedom of expression in Japan, in particular for the exercise of investigative journalism

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I 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(s) responsible for the alleged violations.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forward by the situation described above.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan 21 June 1979, guarantee the inherent right to life of every human being and that no one shall be arbitrarily deprived of one's life. In its General Comment No. 31, the Human Rights Committee, recalled that it is the responsibility of the State party to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by both State and non-State actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure on the part of the State to do so could in and of itself give rise to a separate breach of the ICCPR (Ibid, para. 15).

I would also like to appeal to your Excellency's Government to take all measures to guarantee the right to freedom of opinion and expression, as provided in article 19 of the ICCPR. Freedom of expression entails that "everyone shall have the right to hold opinions without interference" as well as that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This right includes not only the exchange of information that is favorable, but also that which may shock or offend.

In this regard, I highlight that the Human Rights Committee in General Comment No. 34 has stated that under no circumstance can an attack on a person, because of the exercise of his freedom of opinion or expression be compatible with article 19. The Committee furthermore states that as journalists are frequently subjected to threats, intimidation and attacks because of their activities, all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted (CCPR/C/GC/34). As underlined by the former Special Rapporteur on freedom of expression, an attack against a journalist is not only a violation of his or her right to impart information, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under articles 19 of the ICCPR. An attack against a journalist is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy (A/HRC/20/17).

In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions (see above) as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.