

Joint submission

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Infringement of the rights to free expression, peaceful assembly and association in Okinawa

Introduction

This briefing paper highlights concerns over restrictions of the rights to freedom of expression and assembly against citizens, environment and peace activists as well as on journalists in Okinawa, Japan. The briefing paper also documents reports of the use of force against those who oppose and protest in relation to construction of American military bases in the Okinawa territory. The arguments developed in this document support the need for the *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* to visit Okinawa in order to examine and report back on the human rights situation in this part of the country.

History of Okinawa

Okinawa is composed of a group of small islands located in the East China Sea. Okinawa used to be the independent Kingdom of the Ryukyu. In 1879, Japan invaded the Kingdom and subordinated the region, which became a prefecture of Japan as Okinawa prefecture. Near the end of World War II, the US Army invaded Okinawa, as a result a quarter of the Okinawa population were killed. From 1945 to 1972, Okinawa was under the U.S. military government's administration¹. This period was characterized by widespread human rights abuses such as confiscation of land, sexual violence and killing of civilians. The victims were hardly given any justice under the foreign administration and the local population developed an anti-American feeling². In 1972, the U.S. government returned the islands to Japanese administration while keeping a strong military presence. Currently, 74% of the entire US military force in Japan is located in Okinawa, even though Okinawa only comprises 0.6% of Japan's total land area³.

Opposition to a new base in Henoko

The construction plan of a U.S. military base in Henoko derives from the rape of a local Japanese elementary school girl (12 years old) by two U.S. marines and one navy officer in 1995. Okinawan people were outraged when the rape incident was reported, in addition to their suffering from a large number of violent crimes, including sexual violence, committed by U.S. soldiers. In response to the outrage of Okinawan people, the Governments of Japan and U.S. set up the Special Action Committee on Okinawa (SACO). The highlight of the SACO's final report released in 1996 was a promise to close the Futenma Air Base in five to seven years. This final report might have looked to reduce the burden on Okinawan people, but in fact it conditioned the construction of a new base in the prefecture. It is said that after all it was a strategy to gain an enormous state-of-art base in the name of "*budern reduction*", in return to the closure of the old Futenma base. This is clear from the fact that the current construction plan is same as the plan designed by U.S. Marine Corps in 1960s which was withdrawn due to the financial difficulty of the U.S. government.

Moreover, Japanese government at first explained that alternative facilities are "*temporary facilities which can be removed once it is no longer necessary*". However, the current plan is to

¹ Ryukyu Shimpo. *Okinawa Governor to make speech at UN as step to stop human rights violations*
<http://english.ryukyushimpo.jp/2015/09/21/23711/>

² T. Komatsu and S. Karaman. "70 Years after Hiroshima, Okinawa's Long Resistance to US Military Occupation". *Global Research*, August 07, 2015 <http://www.globalresearch.ca/70-years-after-hiroshima-okinawas-long-resistance-to-us-military-occupation/5467825>

³ supra

reclaim the coral reef for 160 hectares in which the facilities are neither possible to be removed nor temporary. Hence, the information from the Japanese government was inaccurate.

Henoko is chosen as a site for alternative facilities, but the majority of people in Okinawa are against the plan. Not only the transferring of a dangerous military base within the prefecture does not solve the issues, but also it does not reduce the burden but creates new problems including environmental destruction.

Firmly opposed to this project, Okinawans are demanding the closure of the Futenma base and contest its relocation within the Okinawa prefecture. They are also calling for a significant reduction of the U.S. troop presence in the prefecture.⁴ The Okinawan people have continuously showed clear opposition to military base projects through various elections and protests on land and sea. In 2014, Okinawan civil society delivered powerful messages to the government in Tokyo, to the nation, and to the central government of the United States by electing Governor Onaga who is committed to doing “*everything in my power*” to stop the new base construction⁵. In a speech delivered on June 23, Takeshi Onaga, said that he hoped the Japanese government will cancel its plan to extend a US military presence in Okinawa because “*it is impossible to build a cornerstone of peace if freedom, equality, human rights and democracy are not guaranteed equally for all citizens.*”⁶

Violation of the right to free expression, peaceful assembly and association

The opposition to the construction of the new base is growing louder in Okinawa and the Japanese government is adopting increasingly forceful means to contain it. There have been a number of reports of violence and force used against citizens by Japanese police and US military employees as well as attempts to reduce freedom of expression⁷.

First of all, freedom of expression has been constrained by the slanderous statements of government officials addressing newspapers and media critical of the Japanese government’s plan to build an additional military base. On 25th June 2015, referring to the *Okinawa Times* and *Ryukyu Shimpo* (two daily Okinawan newspapers highly critical of the plan to establish an additional military base) were targeted. Naoki Hyakuta, a writer and former governor of NHK (Japan Broadcasting Corporation), declared during a workshop of the Liberal Democratic Party (LDP, Prime Minister’s party) lawmakers that the two newspapers “*must be closed down by any available means*”⁸. The two newspapers issued a joint statement to denounce his remarks.⁹

Secondly, while the right to information regarding matters related to the U.S. military in Okinawa is generally not respected for Okinawan people¹⁰ often to an extent that this undermines the safety and well-being of Okinawan people,¹¹ their right to information regarding the planned base construction has been particularly manipulated and undermined by both governments in their efforts to push forward the construction plan. For example, the U.S. Department of Defense had informed the Japanese government that aircrafts from the planned base would “overfly” the local communities, prior to the Japanese government’s issuing of its “Screening Document” in the process of the Environmental Impact Assessment (EIA) for the construction of the base. However, the Japanese government did not include this information in its EIA Screening Document provided to the public. In fact, a memorandum released by the U.S. Department of Defense stated that “*the JDA [Japan Defense Agency] appeared adamant that they did not want to depict flight*

⁴ supra

⁵ G. McCormack. “All Japan” versus “All Okinawa” - Abe Shinzo’s Military-Firstism. *The Asia-Pacific Journal*, Vol. 13, Issue. 10, No. 4. <http://japanfocus.org/-Gavan-McCormack/4299/article.html>

⁶ Ryukyu Shimpo. *Governor Onaga’s Peace Declaration* (Full Text) <http://english.ryukyushimpo.jp/2015/06/28/19030/>

⁷ Okinawa Bar Association. *Presidential statement on security activities of Japan Coast Guard in Henoko*. March 11, 2015 <http://www.okiben.org/modules/contribution/index.php?page=article&storyid=127>

⁸ ibid T. Komatsu and S. Karaman.

⁹ Ryukyu Shimpo. *Ryukyu Shimpo, Okinawa Times issue joint protest statement over Hyakuta remarks*. June 26, 2015 <http://english.ryukyushimpo.jp/2015/07/02/19059/>

¹⁰ This is due in large part to the fact that the Status of Forces Agreements between Japan and the US governments (SOFA) and other agreements pertaining to SOFA do not warrant access to information on U.S. military facilities. For SOFA, <http://www.mofa.go.jp/mofaj/area/usa/sfa/pdfs/fulltext.pdf>

Also for the so-called 5.15 Memorandum http://www.mofa.go.jp/mofaj/area/usa/sfa/kyoutei/pdfs/02_03en.pdf

¹¹ Access to information on the 2014 US military helicopter crash on the campus of Okinawa International University campus in Ginowan was severely constrained. See Sanechika, <http://www.japanfocus.org/-Sanechika-Yoshio/1816/article.html>

*paths over land*¹² as the information contradicted the Japanese government's position on flight paths. While this "overfly" information was eventually made public in the subsequent process of the EIA, the entire process of the base construction has been marked by the governments' total disregard for the principle that relevant and necessary information be provided in a timely manner as well as for the principle of Free, Prior, and Informed Consent (FPIC) to participate in decision making guaranteed in the UNDRIP. There is a reasonable ground to believe that information, which would not undermine State security such as environmental damages, has been kept secret, in order to avoid fuelling opposition from citizens. Non-transparency in decision making processes has grown the opposition to the construction plan.

Then, the freedom of peaceful assembly and association is restricted in Okinawa. In fact, on a daily basis, the Government forces to evacuate peaceful protesters gathering at the entrance of American military bases¹³. Japan's police and coast guard have been violating citizens' freedom of peaceful assembly by taking video footage of protesters and journalists, looking up their names, and threatening them by name in order to suppress their actions¹⁴. Furthermore, at sea, the Japan Coast Guard (JCG) have used violence to forcefully remove protesters, cameramen, and journalists in kayaks and small motorboats by violently detaining them, forcefully moving them, purposely colliding with their boats, and even overturning their boats¹⁵. Such practices imply failure to comply with Article 18 of the Japan Coast Guard Act. In fact, according to the section 1, stop, transfer and disembarkation of a vessel are only permitted: 1) in dangerous situation (such as in case of accident); 2) in situation of risk of threat to life or body of person or significant damages to property; and 3) in situation of urgent need¹. Strict interpretation of these derogations is needed since these forcible measures limit personal liberty guaranteed as a human right in the Japanese Constitution. Consequentially, assaults upon individuals who peacefully protest represent a violation of the law.

Since January 2015, it has been reported that, while protesting against the construction plan of a new U.S. military base in Henoko, at least 6 individuals have been subject to excessive use of force, 138 have been detained and 13 arrested (see list page 3)¹⁶. There is also an alarming arbitrary use by the Japanese government of the *Act on Special Measures Concerning Criminal Cases*¹⁷ to arrest and oppress protesters and journalists¹⁸. This law, adopted in 1952 at the height of the Korean War, prescribes stringent punishment for unauthorized entry or attempted entry into US bases in Japan. The Government misuses this act in order to arrest and oppress peaceful protesters and therefore, impede them to access their right of peaceful assembly and association.

These incidents are not isolated but are the consequences of a political will to silence people opposed to U.S. military base projects. In fact, the then-Liberal Democratic Party chief, Ishiba Shigeru, currently Minister of State, wrote in his blog on 29 November 2013 that there was little difference in substance between vociferous demonstrators and terrorists. Moreover, in February 2014, Okinawan Diet member Aiko Shimajiri from the conservative Liberal Democratic Party, current Minister of State for Okinawa and Northern Territories Affairs, pushed for a legislative proposal to reinforce the police presence on Okinawa in anticipation of anti-military protesters. She urged the national government to put in place advanced security forces to contain the expected rash of demonstrators¹⁹.

¹² United State District Court Northern District of California, Case 3:03-cv-04350-MHP, Document 94, Government Exhibit 15.

¹³ IMADR. "*Militarization and Human Rights Violations in Okinawa, Japan*", *the islands' voice to UN Human Rights Council*. September 9, 2015.

<http://imadr.org/militarizationhumanrights-okinawa-japan-hrc30-21september2015/>

¹⁴ IMADR, *Human Rights Violations in Okinawa, Japan (HRC30, 2015, Joint-WS)*. September 17, 2015.

<http://imadr.org/humanrights-violations-okinawa-japan-hrc30-2015-joint-ws/>

¹⁵ Under the warrant principle, a restriction of personal liberty has to be supported by a warrant from a court judge. This measure is considered as an exceptional in an emergency situation. See *Okinawa Bar Association*.

¹⁶ IMADR. *Violence, detention and arrests in Henoko, Okinawa in 2015*. 2015

¹⁷ This act is based on "*The Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan*"

¹⁸ Ryukyu Shimpo. *Henoko protesters detained by US military*. February 23, 2015

<http://english.ryukyushimpo.jp/2015/02/24/17224/>

¹⁹ T. Tritten. "Proposal made to bolster Okinawa police for expected protests". *Stars and stripes*. February 6, 2014. <http://www.stripes.com/blogs/stripes-central/stripes-central-1.8040/proposal-made-to-bolster-okinawa-police-for-expected-protests-1.265888>

As the Okinawa Times noted, it appeared to be a clear case in which the constitutional rights to freedom of opinion, expression, and peaceful assembly and association have been sacrificed to the overarching extraterritorial rights enjoyed by the U.S.²⁰.

Below a list of some of the numerous events²¹ that took place recently illustrating the infringement of the right to free expression, peaceful assembly and association in Okinawa²²:

- On 21st November 2014, journalists from the Okinawan daily *Ryukyu Shimpo* were manhandled, abused and forcibly removed from the site and protesting canoeists and kayakers were intimidated and driven off or on occasion dumped at sea, as far as four kilometers from shore, after being held for varying periods²³.
- On 17th January 2015, 21 protesters on canoes and boats were temporary detained for entering the temporary restricted area²⁴.
- On 20th January 2015, a coastguard officer gripped a woman filmmaker around the neck with his legs intent on wrenching away her camera.
- On 22nd February 2015, before the opening of a mass protest meeting at the gate of Camp Schwab (an American base), local Japanese security agents for the US Marine Corps arrested two protesters, including the head of the Okinawa Peace Movement Centre, Yamashiro Hiroji, on suspicion of breaching the *Act on Special Measures Concerning Criminal Cases*. Film footage showed Yamashiro, when ordering demonstrators to be especially careful not to cross the boundary line of the base, being suddenly attacked, flung to the ground, dragged feet-first into the base by US Marine Corps security personnel before being handcuffed.
- On 4th of March 2015, protesters on 7 canoes and 1 boat were detained inside the temporary restricted area when they were protesting against the preparation for drilling survey.
- On 28th April 2015, a boat, carrying 4 citizens protesting against the construction plan inside the temporary restricted area, was turned over when coast guard officers moved from their boat to protesters' boat. An officer allegedly put the head of one of the protestor into the water. After this incident, two protesters were detained and brought to the Nago police station. They were later released on the day.
- On 22nd May 2015, 4 individuals, protesting against the set-up of floats to indicate the temporary restricted area, were temporary detained.
- On 4th June 2015, a Japan Coast Guard intentionally hit with his boat a man who was swimming inside the temporary restricted area to protest against the construction plan. He was placed under the boat before he managed to come up from the water.
- On 13th September 2015, 9 individuals on canoes protesting against the set-up of floats for drilling survey on the sea were temporary detained.

²⁰ Okinawa Taimusu. *Keitokuho de futari taiho' shinjigatai futo kosoku, naze*. Editorial. February 24, 2015

²¹ IMADR. *Violence, detention and arrests in Henoko, Okinawa in 2015*. 2015

²² *ibid.* G. McCormack

²³ Ryukyu Shimpo. *Kenkei ga Henoko shusai bogai, kasha, eiga kantoku o haijo*. November 21, 2014.

²⁴ The temporary restricted area is a prohibited zone. Any individual which entry the area will be subject to the *Act on Special Measures Concerning Criminal Cases*. This area has been established with the aim to ensure the security of: the land; the construction of alternative facilities; and the amphibious training by the U.S. military. According to the Ministry of Defence of Japan, the temporary restricted area is approximately 5,618,000 square meters. See Ryukyu Shimpo. *Expanding the temporary restricted area in Henoko. Japan-US agreement, "temporary area" for transferring work*. June 21, 2014 <http://ryukyushimpo.jp/news/preentry-227315.html> (Japanese).

Annex 1: Map of the U.S. military facilities in Okinawa

Source: Okinawa Prefecture, <http://www.pref.okinawa.jp/site/chijiko/kichitai/25185.html>

