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Human Rights Situation in Japan
with specific focus on the right to self-determination of
indigenous people of Ryukyu/Okinawa

A joint submission of :
All Okinawa Council for Human Rights and
International Movement Against All Forms of
Discrimination and Racism (IMADR)

INTRODUCTION

1. The All Okinawa Council for Human Rights¹ and IMADR² present this submission concerning the human rights situation in Japan for consideration by the UPR Working Group at its 28th session, November 2017. The focus is on issues of the right to self-determination of the indigenous people of Ryukyu/Okinawa.

BACKGROUND

Recognition as indigenous people

2. Okinawa, the southernmost part of Japan, had been an independent territory called the Ryukyu Kingdom until 1879. The Kingdom entered into an Amity Treaty in 1854 with the United States, in 1855 with Holland, and in 1859 with France, and at the time it had an international position which was recognized, but in 1879 Japan forcibly annexed the Ryukyu Kingdom using military threat. This violated Article 51 of the Vienna Convention on the Law of Treaties³. Since then, under the forcible assimilation policy, Ryukyuan/Okinawan's rights to inherit their own history, language and culture have been violated. Systematic discrimination against Ryukyuan/Okinawan violates various rights including land rights, which continues to the present.
3. As stated clearly in the concluding observations⁴ (18 December 2008) of the UN Human Rights Committee on the fifth periodic report submitted by the Government of Japan; "The State party should expressly recognize the Ainu and Ryukyu/Okinawa as indigenous peoples in domestic legislation, adopt special measures to protect, preserve and promote their cultural heritage and traditional way of life, and recognize their land rights." Additionally, in the concluding observations of the Human Rights Committee on the sixth periodic report submitted by the Government of Japan⁵, it is clearly stated that "the Committee reiterates its concern regarding the lack of recognition of the Ryukyu and Okinawa, as well as of the rights of those groups to their traditional land and resources and the right of their children to be educated in their language (art. 27). The State party should take further steps to revise its legislation and fully guarantee the rights of Ryukyu and Okinawa communities to their traditional land and natural resources, ensuring respect for their right to engage in free, prior and informed participation in policies that affect them."

Violations of land rights including to ancestral territories

4. During the Ryukyu Kingdom era, all of the land of Ryukyu/Okinawa such as forests, agricultural land and coastal areas, were accessible and available for the people, while also being carefully managed. Coastal waters had been used for transportation and fishery for everyone. However, the Government of Japan established the Okinawa prefectural

¹ All Okinawa Council for Human Rights is a research group consisting of researchers, journalists, and committed volunteers. Its purpose is to illuminate the continuing violation of human rights in Okinawa from the perspective of international human rights law, and send voices of Okinawa to the international society.

² International Movement Against All Forms of Discrimination and Racism (IMADR) is an international non-governmental human rights organization devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system.

³ <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf> page 14

⁴ See CCPR/C/JPN/CO/5, para32 (18 Dec 2008)

⁵ See CCPR/C/JPN/CO/6, para26 (20 August 2014)

government office in 1879, a local agency of the Government, which excluded the people of the Ryukyu/Okinawa from administrative system, and completed imposing the modern forms of property rights to the ancestral territories of Ryukyuan/Okinawan during 1899 and 1903. While the prefectural government recognized the ownership of fields and residential areas used by the people of Ryukyu/Okinawa as private properties, common properties like woodlands were taken as state-owned land to be managed and owned by the Government of Japan. In addition, there were cases in which a part of the land was subject to sale without the consent of the people of Ryukyu/Okinawa, which clearly infringed the ancestral territories.

5. During the Second World War, Japan built a military base to make Okinawa a battlefield, taking up the private land of the people of Ryukyu/Okinawa with insufficient monetary compensation. The U.S. military who won the Battle of Okinawa and occupied Okinawa did not return the land to the people, but further forcibly collected more land and expanded the base. This violated land rights and Article 46 of Convention respecting the Laws and Customs of War on Land.
6. Currently the Government of Japan refuses to recognize the people of Ryukyu/Okinawa as indigenous people, and does not acknowledge their rights to land and natural resources which constitute the "ancestral territories". Nor does it give special protection to them. On the contrary, a new U.S. military base and its facilities are being built by the Government of Japan in the northern part of the main island of Okinawa. The Government of Japan claims that national security and military affairs are entirely exclusive to the Government and the construction of the military base is based on Japanese law, denying the collective will and rights of the people of Ryukyu/Okinawa, making decisions without guaranteeing any effective participation of the people

Issues relating to the right of self-determination of the indigenous people of Ryukyu/Okinawa

7. In 1951, the Government of Japan negotiated and concluded a peace treaty with the United States regarding restoration of sovereignty, on the condition of transferring all governing power of Ryukyu/Okinawa to the United States. The Japanese Diet ratified it without a single representative of the people of Ryukyu/Okinawa in the Diet.
8. The U.S. military government, which was the ruling force in Ryukyu/Okinawa, also did not recognize the right to self-determination of the people of Ryukyu/Okinawa. For the next 27 years the people of Ryukyu/Okinawa suffered under the direct control of the U.S. military without adequate protection of human rights.
9. Under the U.S. military rule, the Governments of Japan and the United States further moved the U.S. bases from Japanese mainland to Okinawa. As a result, 18% of the main island of Okinawa is taken by U.S. military bases and facilities. Crimes and accidents due to the presence of the U.S. military continue to take place, threatening the safety and lives of the people of Ryukyu/Okinawa. Nevertheless, both the Governments of Japan and the United States neglected the will of the people of Ryukyu/Okinawa expressed in the decisions of the Ryukyu/Okinawa Prefectural Assembly.
10. All the while neglecting the will of the people of Ryukyu/Okinawa, in 1969 the United States entered into an agreement on the return of administration rights of Okinawa to Japan. Ignoring the fact that the military bases on Okinawa were constructed while violating human rights, this agreement ensures the permanent use of the bases, and gives

the U.S. military's exclusive control of the land, which is in Japan's territory. The continued use of the military bases and exclusive control by the U.S. military are violations of the rights of the people of Ryukyu/Okinawa. Yet, a special law only applicable to Ryukyu/Okinawa that justifies human rights abuses by the U.S. military bases was enacted without the consent of the people of Ryukyu/Okinawa.

Violations of the economic, social and cultural rights including the right to development

11. In its concluding observations on the combined third to sixth reports of Japan⁶ the UN Committee on the Elimination of Racial Discrimination (CERD) "expresses its concern about the persistent discrimination suffered by the people of Okinawa. The disproportionate concentration of military bases on Okinawa has a negative impact on residents' 'enjoyment of economic, social and cultural rights.'"
12. When the administration of Ryukyu/Okinawa was returned to Japan in 1972, the Law on Special Measures for the Promotion and Development of Okinawa, which only applies to Ryukyu/Okinawa, was enacted and took effect. In the enacting process, no procedure was provided to obtain the consent of the people of Ryukyu/Okinawa. This law stipulates that the Government of Japan has the authority to formulate and decide economic, social and cultural development plans for Okinawa, and although there is an inquiry commission on promotion of Okinawa to hear the opinions of the people of Okinawa, issues related to US military bases are not considered a subject of this plan.
13. Since 1972, the Government of Japan has had the authority to formulate the budget for the Promotion and Development of Okinawa in order to realize the Plan for the Promotion and Development of Okinawa. In this formulation of the budget, structurally, a large weight is placed on public work projects for a long time. Although the development of socioeconomic infrastructure has progressed, sufficient budget had not been allocated for cultural and social development for more than 40 years. This has caused serious social problems including the relative poverty rate being about twice as high as in the whole of Japan, nearly 30%.
14. In the beginning of 2012, the authority to formulate a plan was transferred to Okinawa Prefecture. At the same time, comprehensive grants for local governments of Ryukyu/Okinawa for social and cultural development have been introduced in part. Since 2016, grants in aid for the problem of poverty have been introduced, and some improvements are seen. However, the Ryukyu/Okinawa municipalities still have no final authority on the budget formation of the plan. The system remains unchanged where they still have to apply for all the individual projects to the Government of Japan, the one who finally determines the budget. This system violates the Article 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
15. Particularly in recent years, the misuse or abuse of budget formulation authority has become a problem. Yosuke Tsuruho, Minister of State for Okinawa and Northern Territories Affairs, said that progression in the construction work of a U.S. marine base at Henoko will be influencing the amount of the Okinawa development budget. This clearly violates the right to self-determination of the people of Ryukyu/Okinawa. "Development measures and base issues in Okinawa are certainly linked together," Minister Tsuruho said on August 4,

⁶ See CERD/C/JPN/CO/3-6 (06 Apr 2010)

2016, in his first news conference as the Minister.⁷ He has threatened to reduce the policy budget for Ryukyu/Okinawa's development if there is continued opposition to the U.S. military base. In fact, the government budget plan for Fiscal Year 2017 had a substantial reduction of 20 billion yen (approximately 180,000,000 US dollars), about 6% compared with the initial budget for Fiscal Year 2016.

Non-respect to the Free Prior Informed Consent (FPIC) principles

16. In 1999, instead of simply closing the aged U.S. Marine Corps Futenma airbase, a proposal on the construction of an alternative base on the sea 2 km off from Henoko ward was agreed upon by the local Nago city, Okinawa prefecture, and the Government of Japan, with the condition that it would be used only for the limited term of 15 years, and it would be subsequently converted into a non-military airport.
17. In 2005, both the Governments of Japan and the United States abandoned this agreement unilaterally, completely ignoring the will of the locals of Nago city and Okinawa Prefecture, and agreed to a new construction plan for a permanent U.S. military base without expiration date on a landfill at Cape Henoko. Since then, there has not been one Nago Mayor, Okinawa Prefectural Governor or Diet member who won the elections with explicit agreement of this proposal. All of those who won opposed the proposal. After the elections, the Government of Japan pressured the former mayor and former governor to change their decision, using a mix of political intervention and budgetary formulations, and made them go against their pledge and agree to the Henoko base construction proposal. However, the Nago mayor and the prefectural governor who went against their pledge were defeated in the next election.
18. In the concluding observations⁸ of the Human Rights Committee on the sixth periodic report submitted by the government of Japan (2014), it is clearly stated that "the Committee reiterates its concern regarding the lack of recognition of the Ryukyu and Okinawa, as well as of the rights of those groups to their traditional land and resources and the right of their children to be educated in their language. The State party should take further steps to revise its legislation and fully guarantee the rights of Ryukyu and Okinawa communities to their traditional land and natural resources, ensuring respect for their right to engage in free, prior and informed participation in policies that affect them."
19. The approval of the landfill in the Henoko coastal area for the construction of the U.S. Marine Corps air base is the authority of the prefectural governor under Japanese law. The previous governor Nakaima was elected after expressing his opposition to this, and he emphasized this opposition when travelling to Tokyo in December 2013 to lobby for the budget for the promotion of Okinawa. However during his visit, he had an emergency hospitalization in a totally private hospital, and he suddenly reversed his opposition, later announcing that he approved the landfill proposal. This approval violates the Article 26 of UNDRIP.
20. In November 2014, the current governor who was elected based on his electoral pledge to oppose the Henoko base construction, has cancelled the approval of the previous governor. Then a lawsuit was brought by the Government of Japan to invalidate this cancellation,

⁷ The Asahi Shimbun (Japanese), <http://www.asahi.com/articles/ASJ845HW7J84ULFA00Y.html>

⁸ See CCPR/C/JPN/CO/6, para26 (20 Aug 2014)

and the Supreme Court has ruled for the claims of the Government of Japan, deciding that the cancellation was invalid. The Japanese Supreme Court completely failed to consider the right to ancestral territories recognized in international human rights law, and also failed to acknowledge the need to form consensus based on the FPIC principle described below.

21. In a legal system that does not recognize the right to ancestral territories, under the ruling of the Supreme Court, the Government of Japan ignored all rights to engage in free, prior and informed consent (FPIC principles). The Government of Japan further conducted secret negotiations to get the approval from the previous governor, regarding the reclamation of the coastal area for construction of the new Henoko base, and is forcibly continuing construction. This procedure of approval of the landfill violates the Article 26, 27 and 30 of UNDRIP.
22. Furthermore, in Kunigami village of Takae ward, 30,000 trees were cut without obtaining the consent of the people of Ryukyu/Okinawa, and the Government of Japan forcibly continued with the construction of the U.S. Marine Corps Osprey's landing site. This violated human rights violation by disrespecting the FPIC principles regarding the Ryukyuan/Okinawan people's ancestral territories. Furthermore, four civilians who promoted an opposition movement were arrested as an obstacle to the construction work, and were detained for a long period⁹. Three of them were bailed recently, however one still remains under detention as of 25 March, 2017.
23. On Yonaguni island, the Government of Japan purchased private estates and townships, and a base for the Japanese Self Defense Force (SDF) was built with the approval of the town council and mayor. However, these also correspond to the ancestral territories subject to collective rights of the indigenous people of Ryukyu/Okinawa. No measures have been taken to protect the rights of the people of Ryukyu/Okinawa from the construction of the SDF base at Yonaguni island and the deployment of SDF troops.
24. Furthermore, the Government of Japan is planning the construction of a SDF base and troops deployment similarly in Ishigaki island and Miyako islands. A movement calling for the consent of the mayor and city council is growing. However, the process for the construction in the islands does not comply with the FPIC principles for ancestral territories. Therefore the construction of the SDF base violates the Article 26 and 31 of UNDRIP.

Infringement of the right to receive education in their own language, history and culture of the indigenous people of Ryukyu/Okinawa

25. The Human Rights Committee has also recommended on social, cultural and linguistic rights of the indigenous people of Ryukyu/ Okinawa. As stated in the concluding observations of the Committee on the fifth periodic report¹⁰ submitted by the Government of Japan, "(The State party) should also provide adequate opportunities for Ainu and Ryukyu/Okinawa children to receive instruction in or of their language and about their culture, and include education on Ainu and Ryukyu/Okinawa culture and history in the regular curriculum." The Government of Japan has not responded positively to this recommendation yet, repeatedly saying that the people of Ryukyu/Okinawa are not indigenous people.

⁹ See <https://www.amnesty.org/en/documents/asa22/5552/2017/en/>

¹⁰ See CCPR/C/JPN/CO/5, para 32

26. In the CERD concluding observations¹¹ on the combined seventh to ninth periodic reports of Japan, it states the following. "The Committee regrets the position of the State party in not recognizing the Ryukyu/Okinawa as indigenous peoples, despite recognition by UNESCO of their unique ethnicity, history, culture and traditions. While noting measures taken and implemented by the State party concerning the Ryukyu — based on the Act on Special Measures for the Promotion and Development of the Okinawa and the Okinawa Promotion Plan — the Committee is concerned that sufficient measures have not been taken to consult Ryukyu representatives regarding the protection of their rights. The Committee is also concerned by information that not enough has been done to promote and protect the Ryukyuan languages, which are at risk of disappearance, and that education textbooks do not adequately reflect the history and culture of the Ryukyu people (art. 5). "
27. Based on the opinion of two city councils in Okinawa Prefecture, the Government of Japan claims that the people of Ryukyu/Okinawa are not indigenous people and the region is not different from other regions in Japan, and their rights are equivalent with other citizens. The Government also does not initiate any positive policy to introduce language education of Ryukyu/Okinawa and education about their history and culture in the regular school curriculum
28. In Japan's education, the Curriculum Guidelines define the content of the regular curriculum, but the language, history and culture education of Ryukyu/Okinawa are not specifically guaranteed. It is apparent in the response of the Government of Japan that they do not consider the right to receive education in their own language as a right of the people of Ryukyu/Okinawa, therefore this right continues to be violated.

RECOMMENDATIONS TO THE GOVERNMENT OF JAPAN

In light of the recommendations of the UN Human Rights Committee and the CERD, in summary the following will be proposed recommendations to the Government of Japan.

1. Recognize the people of Ryukyu/Okinawa as indigenous people, and take concrete measures to protect their rights¹².
2. Strengthen consultations with Ryukyu/Okinawa representatives on issues related to the promotion and protection of the rights of the people of Ryukyuan/Okinawa¹³.

Requirements regarding areas of ancestral domain and land rights:

1. Establish a legal system to protect the right to ancestral territories in Ryukyu/Okinawa¹⁴,

¹¹ See CERD/C/JPN/CO/7-9, para 21 (25 Sep 2014)

¹² See CCPR/C/JPN/CO/5, para.32(18 December 2008). CCPR/C/JPN/CO/6, para.26(20 August 2014). CERD/C/JPN/CO/7-9, para.21(26 September 2014).

¹³ See CERD/C/JPN/CO/3-6, para.21(6 April 2010). CERD/C/JPN/CO/7-9, para.21(26 September 2014).

¹⁴ See CCPR/C/JPN/ CO/5, para.32(18 December 2008). CCPR/C/JPN/CO/6, para.26(20 August 2014).

2. In order to improve measures against discrimination and human rights abuses:
 - (1) Establish an independent mechanism to monitor contemporary forms of discrimination against the people of Ryukyu/Okinawa¹⁵;
 - (2) Introduce appropriate protection measures and policies for the people of Ryukyu/Okinawa¹⁶; and
 - (3) Consult with representatives of the people of Ryukyu/Okinawa in order to establish mechanisms (1) and (2) above¹⁷.
3. Take measures to guarantee the people of Ryukyu/Okinawa's rights to their traditional land and natural resources, including through ensuring free, prior and informed consent¹⁸.

On the right to education:

1. The Government of Japan should acknowledge and guarantee the rights of the people of Ryukyu/Okinawa to receive education in their language, history and culture¹⁹.
2. The Government of Japan should provide appropriate opportunities to receive education in the language of Ryukyu/Okinawa and incorporate the education of the history and culture of Ryukyu/Okinawa in the regular school curriculum²⁰.

Furthermore, we propose the following recommendations to the Government of Japan.

1. Promptly recognize the right of self-determination of the indigenous people of Ryukyu/Okinawa.
2. Establish an independent mechanism for consultations with the people of Ryukyu/Okinawa regarding U.S. military bases and facilities.
3. Revise the legal infrastructure and policies to protect and promote the rights of the people of Ryukyu/Okinawa.
4. Recognize the rights of the people of Ryukyu/ Okinawa to ancestral territories, and fully comply with the Free, Prior and Informed Consent (FPIC) principles.
5. Ensure the composition of law enforcement officers and enforcement agencies in Ryukyu/Okinawa to reflect the composition of the local community.
6. Improve the decision-making process to be more inclusive concerning the people of Ryukyu/ Okinawa's economic, social and cultural development.

¹⁵ See CERD/C/JPN/CO/3-6, para.21(6 April 2010).

¹⁶ See CERD/C/JPN/CO/3-6, para.21(6 April 2010).

¹⁷ See CERD/C/JPN/CO/3-6, para.21(6 April 2010).

¹⁸ See CCPR/C/JPN/CO/6, para.26(20 August 2014).

¹⁹ See CCPR/C/JPN/CO/5, para.32(18 December 2008). CCPR/C/JPN/CO/6, para.26(20 August 2014), CERD/C/JPN/CO/7-9, para.21(26 September 2014).

²⁰ See CCPR/C/JPN/ CO/5, para.32(18 December 2008). CCPR/C/JPN/CO/6, para.26(20 August 2014), CERD/C/JPN/CO/7-9, para.21(26 September 2014).