

**Universal Periodic Review (UPR)**  
**28<sup>th</sup> Session**  
(November 2017)

Human Rights Situation in Japan  
With *specific-focus* on human rights in Okinawa

A joint Submission of:  
Okinawa Environment Network, All Okinawa Council for Human Rights, Plaintiff Group  
for Third Lawsuit against Aircraft Noise of Kadena Airbase, Plaintiff Group against  
Aircraft Noise of Futenma Airbase, The Informed-Public-Project, Okinawa  
Environmental Justice Project, Tida no Fua Group to Make Peaceful Future for the  
Islander Children

## INTRODUCTION

Okinawa Environment Network<sup>1</sup>, All Okinawa Council for Human Rights<sup>2</sup>, Plaintiff Group for Third Lawsuit against Aircraft Noise of Kadena Air Base<sup>3</sup>, Plaintiff Group against Aircraft Noise of Futenma Airbase<sup>4</sup>, The Informed-Public Project<sup>5</sup>, Okinawa Environmental Justice Project<sup>6</sup>, and Tida no Fua Group to Make Peaceful Future for the Islander Children<sup>7</sup> present this submission concerning the human rights situation in Japan for consideration by the UPR Working Group at its 28<sup>th</sup> session, November 2017. Our focus is on the violation of the rights to human rights violations resulting from the presence of military bases.

## BACKGROUND

1. Okinawa was once an independent kingdom known as the “Kingdom of the Ryukyus” until it was forcibly annexed by the Meiji government in the late 19<sup>th</sup> century. During World War II, Okinawa became the ultimate battleground of the Pacific theater, significantly sacrificed for the defense of mainland Japan. After the war, Okinawa was placed under U.S. control for 27 years during which many U.S. military bases and training areas were constructed on land that was taken away from local people without their consent. Although Okinawa was “returned to Japan” in 1972, it continues to shoulder a major part of the burden of the U.S. military strategy in Asia. At present, while Okinawa comprises only 0.6% of Japan’s total land area, it bears 70% of the U.S. base footprint in Japan.
2. The concentration of U.S. military bases continues to cause various environmental problems for the people of Okinawa. “Noise pollution” emitted from aircraft, aircraft related accidents, and land contamination all pose grave health, environmental and social issues, constituting violations of human rights to a “safe, clean, healthy, and sustainable environment.”
3. The Government of Japan has failed to address, much less redress these issues. The government lacks understanding of the seriousness of the problems and issues. Its existing measures are not effective enough to bring about meaningful remedies. It appears to be concerned with following the U.S.-Japan Security Treaty and the Status of Forces Agreement, and other various military related guidelines at the expense of the rights of the people of Okinawa to the environment.

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<sup>1</sup> Okinawa Environmental Network is an environmental NGO coalition in Okinawa consisting of professors, researchers and citizens.

<sup>2</sup> 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.

<sup>3</sup> The plaintiff group consists of about 20,000 residents living near U. S. Kadena Airbase

<sup>4</sup> The plaintiff group consists of about 3,400 residents living near Futenma Airbase

<sup>5</sup> The Informed-Public Project is a research organization and also media based in Okinawa which mainly deals with environmental issues.

<sup>6</sup> Okinawa Environmental Justice Project is a NGO group in Okinawa with special focus on U.S. military related environmental issues in Okinawa.

<sup>7</sup> Tida no Fua Group to Make Peaceful Future for the Islander Children is a group consisting of mothers and citizens in Miyako island who oppose to militarization of the island.

4. Meanwhile, the Government of Japan is constructing new bases and facilities for the U.S. military and its Self-Defense Forces despite local opposition, exacerbating the existing situations. The construction of a new U.S. air base in Henoko and “helipads” for MV-22 Osprey aircraft in Takae in northern Okinawa Island impact both the people living in those areas and the biodiversity-rich environment. The construction in Takae and Henoko could also jeopardize the northern part of Okinawa Island’s bid for UNESCO’s World Natural Heritage status.<sup>8</sup>
5. We argue that, under the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, the Government of Japan is obligated to remedy these situations. When there is a serious or unrecoverable danger to the physical and mental health of the citizens, the Government of Japan must assume its obligation to protect them.
6. We also argue that, in order to fulfill its obligations, the Government of Japan must respect and follow the principle of Free, Prior, and Informed Consent (FPIC), which includes access to information, and is an indispensable component of the right to a safe, clean, healthy, and sustainable environment. We further argue that information should be relevant and objective obtained through transparent and scientific processes.
7. We argue that the current posture of the Government of Japan constitutes a violation of Okinawan people’s rights to land, territory, and resources under Article 26 of the Declaration on the Rights of Indigenous Peoples, and also the right to conservation and protection of the environment under Article 29, as well as the prohibition of military activities under Article 30. Also, as the Human Rights Committee pointed out in the Concluding Observation for the fifth periodic report<sup>9</sup> submitted by the Government of Japan. We argue that the Government of Japan should recognize the Ryukyuan/Okinawans as indigenous peoples in domestic legislation, adopt special measures to protect, preserve, and promote their cultural heritage and traditional way of life, including recognition of their land rights.

In the following, we present six sets of recommendations and provide background information for each set.

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<sup>8</sup> The Government of Japan submitted a proposal on February 1<sup>st</sup> in 2017 to UNESCO to add the Amami and Ryukyu Islands, including the northern part of the Okinawa main island, to the list of World Natural Heritage sites. See [http://www.pref.okinawa.lg.jp/site/chijiko/kohokoryu/foreign/english/documents/a\\_imingto\\_become\\_a\\_naturale\\_world\\_heritage.pdf](http://www.pref.okinawa.lg.jp/site/chijiko/kohokoryu/foreign/english/documents/a_imingto_become_a_naturale_world_heritage.pdf)

<sup>9</sup> See CCPR/C/JPN/CO/5,para.32(18 December 2008).

I. **Infringement of the right to life, and physical and mental health (aircraft noise)**  
Recommendations to the Government of Japan

8. In accordance with Article 6, Article 9 and Article 17 of the International Covenant on Civil and Political Rights and in accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights<sup>10</sup>, we call upon the Government of Japan, in collaboration with the U.S. military, immediately halt the U.S. military's night-time operations of aircraft at Futenma and Kadena. We further demand that the Government of Japan take effective measures to reduce the excessive noise from U.S. aircraft and to establish a legal framework through which local people, the Government of Japan, the U.S. military work together to remedy the damages inflicted upon the local people so as to respect the rights of the people in Okinawa and their environment.

<Background>

9. Over fifty aircraft including twenty-four MV-22 Ospreys and five CH-53 are stationed at U.S. Marine Corps Air Station Futenma in the Ginowan City.<sup>11</sup> The U.S. Marine Corps regularly conducts flight training operations, including takeoffs and landing and circling over the populated areas. About 38% of the area in vicinity of Futenma is affected by noise levels of 75-80 or above decibels (dB) Weighted Equivalent Continuous Perceived Noise Level (WECPNL), exceeding the levels set forth in Japan's environmental standards regulations.<sup>12</sup> The low-frequency noise emitted from Osprey aircraft is also found to exceeds the level of 90 dB.<sup>13</sup> Those operations have diverse psychological impacts on residents and cause sleep deprivation, which can lead to severe health problems such as strokes, heart disease, and diabetes. Night time flight training (after 10 pm) is said to cause sleep disorders among children.
10. Over 100 aircraft, including forty-eight F-15 Eagle fighter jets and ten KC-135 aerial refueling airplane are stationed at the U.S. Air Force's Kadena Air Base which stretches over Kadena Town, Chatan Town and Okinawa City.<sup>14</sup> Kadena is the U.S. Air Force's "hub in the Pacific." Aircraft from bases in Japan, South Korea, and the U.S. also frequent the base. Roughly 60,000 take offs and landings per year disturb the residents day and night. About 50 percent of the area in vicinity of Kadena is affected by noise levels of 75-80 or above dB (WECPNL), exceeding the levels set forth in Japan's environmental standards regulations.<sup>15</sup> Residents have long

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<sup>10</sup> See E/C.12/2000/4 para 6 (11 August 2000)

<sup>11</sup> Chapter 8 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa Prefectural Government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/1kaiheitai.pdf>

<sup>12</sup> Chapter 3 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa Prefectural Government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/dai3syoun.pdf>

<sup>13</sup> Takeshi Tokashiki, an associate professor at the University of the Ryukyus, has conducted surveys for the frequency of noise emitted by the MV-22 Osprey and CH-53 helicopters stationed at the U.S. Marine Corps Futenma Air Station. See "Osprey eight times louder than CH-53 helicopter" *The Ryukyu Shimpo*, June 4, 2014.

<http://english.ryukyushimpo.jp/2014/06/04/14177/>

<sup>14</sup> Chapter 8 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa Prefectural Government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/2kuugunn.pdf>

<sup>15</sup> Chapter 3 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa Prefectural

suffered from excessive noise or “noise pollution” from aircraft conducting training drills over the residential areas.

11. Also training operations with MV-22 Ospreys and other aircraft occur day and night, using newly constructed “helipads” at Takae, Higashi village. The distance between the helipads and the residential area is only 400 meters, and training aircraft fly over the residential area. The noise from aircraft has already caused health problems for residents and forced some residents to move out of the area.
12. The necessity to limit night-time operations of U.S. military aircraft, thereby abating noise pollution at Futenma and Kadena, has been recognized and countermeasures have been proposed by both the Government of Japan and the U.S. military as stipulated in the Special Action Committee on Okinawa (SACO) Final Report in 1996.<sup>16</sup> However, these provisions have not resulted in actual abatement of noise pollution since such efforts are required of the U.S. military only “to the maximum extent possible, consistent with operational readiness of U.S. forces.” In reality, operations of U.S. military take priority over the health of residents.
13. In this peculiar situation, the Government of Japan resorts to financial reparations, while leaving the issue of noise pollution unresolved. Thus, the violation of the rights of the people to a safe and clean environment continues.
14. The rulings of Japanese courts in a series of lawsuits filed by local residents around Futenma and Kadena against the Government of Japan for allowing the U.S. military to conduct night time flights are revealing. The rulings have confirmed the illegality of the excessive noise and have ordered that the Government of Japan pay reparations, and it has paid.<sup>17</sup> However, all the courts take the stance neither the Government of Japan nor the Japanese court is not in a position to regulate flights operations of U.S. military bases in Japan. Thus, the plaintiffs’ requests to halt the night time operations of U.S. military aircraft have been all rejected.<sup>18</sup>
15. Also, there is a disturbing tendency towards easing of restrictions on noise of U.S. military aircraft operating in Japan. Since 1995, the Japanese Environmental Governing Standards (JEGS) have been recognized as guidelines for environmental protection and safety by the U.S military in Japan. In its first five editions, the JEGS had a chapter on “noise.” However, the sixth edition (2006) deleted that Chapter on Noise.<sup>19</sup> Currently, the JEGS noise pollution regulations

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Government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/dai3syou.pdf>

<sup>16</sup> *The SACO Final Report, December 2, 1996.*

<http://www.mofa.go.jp/region/n-america/us/security/96saco1.html>

<sup>17</sup> “The Japanese govern’t ordered to pay record damaged suits,”the Mainichi, Feb. 27, 2017.

<http://mainichi.jp/english/articles/20170223/p2g/00m/0dm/056000c>

<sup>18</sup> “In second Futenma lawsuit, court rejects demand for flight ban, claims of unconstitutionality,” The Ryukyu Shimpo, Nov. 30, 2016.

<http://english.ryukyushimpo.jp/2016/11/30/26076/>

<sup>19</sup> *Japan Environmental Governing Standards September 2006.* Department of Defense.

<https://ja.scribd.com/document/48311452/JEGS-Manual>

are completely lacking.<sup>20</sup>

**II. Infringement of the right to life, and physical and mental health (aircraft clash)**  
Recommendations to the Government of Japan

17. In accordance with Article 6, Article 9 and Article 17 of the International Covenant on Civil and Political Rights as well as in accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights<sup>21</sup>, the Government of Japan, in collaboration with the U.S. military, must conduct a survey on the safety of residents in relation to operations of U.S. military bases and training areas in Okinawa and make survey results available to the people of Okinawa. Based upon the survey results, the Government of Japan, in collaboration with the U.S. military, must take effective measures, including the creation of “clear zones” at Futenma, to protect and remedy the rights of the local people to a safe environment

<Background>

18. Operations of the U.S. military bases and training areas have resulted in serious accidents and incidents over the years, threatening and endangering the life and safety of the people of Okinawa and the environment.<sup>22</sup> Among the most serious accidents are aircraft-related accidents. From 1972 to 2016, there were over 680 aircraft-related accidents, including a CH-53 helicopter crashing onto the campus of Okinawa International University located next to Futenma in 2004 and a MV-22 Osprey crashing offshore of Abu, Nago city in 2016. The court ruling in the second Futenma lawsuit in 2016 recognized that the frequency of aircraft crashes and accidents has resulted in psychological distress among residents near Futenma.<sup>23</sup> The Osprey crash also increased the anxiety of local residents and many claim that they are forced to live with such fear.<sup>24</sup>
19. The Government of Japan itself has no effective measures to prevent such accidents or remedy their adverse effects. This is because the U.S. military exercises complete control over its military operations in Okinawa,<sup>25</sup> and because, as discussed above, the Government of Japan and the Japanese court take the stance that neither the Government of Japan nor the Japanese courts take the stance that they have no jurisdiction over operations of U.S. military bases in Japan.<sup>26</sup>
20. In fact, it has been the case that whenever a serious aircraft accident or other type

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<sup>20</sup> *Japan Environmental Governing Standards September 2016*. Department of Defense.  
<http://www.usfj.mil/Portals/80/Documents/Other/2016%20JEGS.pdf>

<sup>21</sup> See E/C.12/2000/4 para 6 (11 August 2000)

<sup>22</sup> Chapter 3 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa prefectural Government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/dai3syou.pdf>

<sup>23</sup> “In second Futenma lawsuit, court rejects demand for flight ban, claims of unconstitutionality,” *The Ryukyu Shimpo*, Nov. 30, 2016.

<http://english.ryukyushimpo.jp/2016/11/30/26076/>

<sup>24</sup> “US Osprey aircraft crashes off Okinawa Coast in Japan,” *BBC News*, Dec. 14, 2016.

<http://www.bbc.com/news/world-asia-38311685>

<sup>25</sup> U.S.-Japan Status of Forces Agreement Article 3 Item 1.

<sup>26</sup> See “In second Futenma lawsuit, court rejects demand for flight ban, claims of unconstitutionality,” *The Ryukyu Shimpo*, Nov. 30, 2016.

<http://english.ryukyushimpo.jp/2016/11/30/26076/>

of serious accident occurs, the accident site is “off limits” to everyone except the U.S. military personnel in accordance with U.S.-Japan SOFA.<sup>27</sup> In the case of the helicopter crash at Okinawa International University in 2004, local police forces were kept off the site including university buildings that were damaged while local fire fighters were forced to leave the site as soon as they had helped extinguishing the fire.<sup>28</sup> In the case of the Osprey crash at Abu, the local police and even the Japan Coast Guard, an agency of the Japanese government, were both kept off the site.<sup>29</sup> In both cases, the Japanese police were allowed to enter the sites only after the U.S. military had completed its investigations and taken away the debris. In both cases, the Government of Japan agreed to allow the U.S. military to resume normal aircraft operations of aircrafts before a full investigation was completed, ignoring local opposition.

21. Meanwhile, the Government of Japan has failed to negotiate with the U.S. military to address the issue of “clear zones” for Futenma. While the U.S. Department of Defense establishes a “clear zone” at both ends of runways at any military air base in the U.S. for the safety of nearby residents,<sup>30</sup> “clear zones” have not been established at Futenma. At Futenma, the areas that should be “clear zones” are occupied by an elementary and a middle school, a pre-school, a community center, a hospital, and other public buildings. This situation arose because MCAS Futenma was built on the land of local people taken over by the U.S. military after WWII, and many local people began live around the base, with the expectation that their land would returned to them.<sup>31</sup>

### **III. Infringement of the right of children to education and health**

Recommendations to the Government of Japan

22. In accordance with Article 24 and education under Article 28 of Convention on the Rights of the Child and Article 13 of International Covenant on Economic, Social and Cultural Rights<sup>32</sup>, we demand that the Government of Japan, in collaboration with the U.S. military, conducts survey on the impact of aircraft noise on the children’s educational experience and makes it available to the Okinawan public. Also we call upon the Government of Japan to create and implement appropriate measures to guarantee Okinawan children and students their right to an education.

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<sup>27</sup> U.S.-Japan Status of Forces Agreement Article 3 Item 1

<sup>28</sup> Sanechika, Yoshio “Anger Explodes as a U.S. Army Helicopter Crashes at Okinawa International University” *The Asia Pacific Journal: Japan Focus*. Vol. 2. Issue 9. 2004. <http://apjif.org/-Sanechika-Yoshio/1816/article.html>

<sup>29</sup> “US military sets up restriction area on beach to keep people away from Osprey,” *The Ryukyu Shimpo*. Dec. 16, 2016. <http://english.ryukyushimpo.jp/2016/12/21/26166/>

<sup>30</sup> According to the U.S. Navy, “clear zones” are “the area immediately beyond the usual runway threshold. It is the area with the greatest potential for occurrence of aircraft accidents. Clear zones should remain undeveloped.” *Air Installations Compatible Zones (AICUZ) Program Procedures and Guidelines for Department of the Navy Installations* (2008). <http://www.marines.mil/Portals/59/Publications/MCO%2011010.16.pdf>

<sup>31</sup> *Ginowan shi no rekishi* [History of Ginowan City] Ginowan City Office. <http://www.city.ginowan.okinawa.jp/pageRedirect.php?csrt=17561081657928449650&url=/2556/2562/2563/2602/27094.html>

<sup>32</sup> See E/C.12/2000/4 para 47 (11 August 2000)

<Background>

23. Excessive noises emitted from U.S. military aircraft often interrupts classes at schools around Futenma and Kadena. In extreme cases, the noises interrupts classes 5-6 times in a 50 minutes' class. After each interruption, it takes time to recover the children's attention. Children are always exposed to explosive noises and this is not a suitable educational environment for them.<sup>33</sup>
24. Furthermore, the excessive noise is terrifying to many of the children. For example, children in a preschool rushed into their caretaker's arms in tears, and refused to be consoled after the detonation-like sounds stopped. When they heard the same noise during lunch, many started crying in the middle of eating, and some children refused to eat anymore. In order to minimize the noise, many schools installed air conditioners, but they sometimes have to open the windows in order to refresh the air so as to minimize the transmission of infectious diseases.<sup>34</sup>
25. It is obvious that the learning environment is seriously degraded by the noise pollution and children's right to a good educational environment is violated daily. The long-range consequences of this loss of education are difficult to quantify, but both individually and collectively for Okinawans the impact is negative and is likely to adversely impact generations to come.

#### **IV. Environmental Impact Assessment for military bases and operation**

Recommendations to the Government of Japan

26. In accordance with Article 2 of the International Covenant on Civil and Political Rights, we demand that the Government of Japan revise its Environmental Impact Assessment Law, so that it also applies to construction of military bases, facilities, and training areas, as well as to training exercises by the U.S. military and the Japanese Self-Defense Forces. Also, we insist that the Government of Japan establish a legal framework under which construction activities of military bases and facilities and their operations be suspended until the issues found in the EIA process can be redressed. Specifically, the Government of Japan must suspend all activities related to air base construction at Henoko and the operation of aircraft using helipads at Takae.

<Background>

27. Amidst strong local opposition, the Government of Japan completed the construction of "helipads" in the U.S. military's Northern Training Area (NTA) in the northern part of Okinawa Island in December 2016 and those helipads, located just next to the Takae community, Higashi village, are now being used by U.S. military's Osprey aircraft. The Government of Japan is now constructing a new U.S. military base at Henoko, Nago City to replace MCAS Futenma in Ginowan city.
28. The Government of Japan has been able to proceed with these construction plans

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<sup>33</sup> Ms. Katsumi Chinen, Teacher of Kadena High School in the 14<sup>th</sup> oral argument of the lawsuit against Aircraft Noise of Kadena Airbase in 2014 December 18  
<http://kadena-bakuon.com/kouhou/news20150210.pdf> (Japanese)

<sup>34</sup> Ms. Setsuko Makabe, Director of Kadena Parenting Support Center in the 14<sup>th</sup> oral argument of in the lawsuit against Aircraft Noise of Kadena Airbase in 2014 December 18  
<http://kadena-bakuon.com/kouhou/news20150210.pdf> (Japanese)



because the government had concluded in its Environmental Impact Assessment (EIA) that the construction and operation of the base and helipads would not have adverse impact on the environment and because conservation measures were all appropriate and sufficient.<sup>35</sup>

29. However, experts and NGOs have criticized the EIAs as flawed from many different angles. One of the most troubling aspects of these EIAs is that information on the deployment of the Osprey aircraft to the new base in Henoko was concealed until the very late stage of its EIA process whereas information on the deployment of the Osprey to the NTA was not even considered in the EIA process for the construction of helipads. This is despite the fact that the Osprey aircraft will be the main aircraft operated at the new base at Henoko.
30. Under the Japanese Environmental Impact Assessment Law, residents have the right to express their opinions on a scoping document<sup>36</sup> and on a draft-environmental impact statement.<sup>37</sup> However, in the case of the Henoko EIA, neither the scoping document nor the draft-environmental impact statement mentioned the deployment of Osprey aircraft. Instead, the deployment of Osprey aircraft was discussed in the “environmental impact statement.” As the law doesn’t guarantee residents the right to express their opinions on the “environmental impact statement,” residents were deprived of the opportunity.
31. When the Special Action Committee on Facilities and Areas in Okinawa (SACO) made an agreement in 1996, the Japanese Government knew that Ospreys would be deployed to Futenma. Therefore, it is clear that the Government was also aware of the plan to deploy Ospreys at Henoko as a substitute for MCAS Futenma. Moreover, the Government of Japan asked the U.S. Military not to disclose flight patterns and functions of the new base<sup>38</sup>, although the U.S. Military considered it important to inform the Okinawan public while making an environmental impact assessment. Flight patterns and functions of the base have never been disclosed to the public, even though the environmental impact assessment has been conducted. This violated the public’s right to Free, Prior, and Informed Consent<sup>39</sup>.
32. International environmental impact assessment law such as the “Convention on Access to Information, Public Participation in Decision-making and Access to Justice” includes an option to stop a project when an environmental impact assessment finds problems. However, the Government of Japan’s environmental impact assessment doesn’t have such an option, so a judicial rescue for the environment is not possible under the current Japanese legal system.

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<sup>35</sup> Futenma hikoujo daitai shisetsu kensetsu jijyo ni kakaru kankyo eikyo hyokasho no hoseigo no hyokasho [Final Environmental Impact Statement for Construction of the Futenma Replacement Facility]. Okinawa Defense Bureau (2012).

<http://www.mod.go.jp/rdb/okinawa/07oshirase/chotatsu/hyoukasyohosei/hyoukasyohosei.html>

<sup>36</sup> Item 1, Article 8 of Environmental Impact Assessment Law

<sup>37</sup> Item 1, Article 18 of Environmental Impact Assessment Law

<sup>38</sup> According to a memorandum sent to Commanding General in III Marine Expeditionary Force in April 2006 (United State District Court Northern District of California, Case 3:03-cv-04350-MHP, Document 94, Government Exhibit 15), US aircraft would “overfly” the local communities, contrary to the Government of Japan’s publicly declared position.”

<sup>39</sup> FRIC, A/HRC/24/41, para 27

33. The Government of Japan has an obligation to aggressively restrict activities that abrogate human rights guaranteed by the International Covenant on Civil and Political Rights. Especially, States must desist from acts and omissions that create a risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially and the responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct<sup>40</sup>. The Government of Japan has an international responsibility where the resulting impairment of human rights is a foreseeable result of their conduct.

## V. Threats to public health by land contamination

Recommendations to the Government of Japan

34. In accordance with the rights to land, healthy environment, and in accordance with the principle of Free, Prior and informed Consent (FPIC), the Government of Japan, with the U.S. military, must establish a comprehensive land restoration framework by which former military land returned to people of Okinawa is guaranteed to be safe and free of contamination. Thus, the Government of Japan must survey all returned land, and clean up contaminated areas. It must provide the people of Okinawa with information on survey processes and findings, risks, prevention measures, and countermeasures while inviting them to participate in at each step of the land restoration process. If the restoration of returned land is anticipated to take a long time or to be impossible, the Government of Japan must provide appropriate compensation to the land owners and discuss with the land owners and relevant stakeholders the further handling of the land.

### <Background>

35. The US-Japan SOFA absolves the U.S. military of Japan from any responsibility to return sites to their original condition<sup>41</sup> and the U.S. military hardly provide records of its use of former base lands. This has created a situation in Okinawa where serious land contamination is discovered at former U.S. base areas only after the land was returned to the landowners and a development project has been initiated on the land.<sup>42</sup> In such a situation, it can be assumed, people using the land have been exposed to health risks without knowing it.
36. The 2013 discovery of discarded rusted barrels in a soccer field in Okinawa city was a case in point. The soccer field was part of the Kadena Air Base until it was returned to Okinawa in 1987, and the barrels included those marked with logos of U.S. manufacture of Agent Orange. The Government of Japanese conducted a full-scale investigations, and to date 108 barrels have been unearthed. The investigations revealed that the barrels and the field were contaminated with dioxins, PCP, PCB, arsenic, fluorine, DDT, volatile organic compounds (VOCs) including

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<sup>40</sup>Principle 13, Obligation to avoid causing harm, Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights on September 28, 2011 available at:

<https://www.ilsa.org/jessup/jessup17/Batch%202/Maastricht%20Principles%20on%20Extraterritorial%20Obligations%20of%20States%20in%20the%20Area%20of%20Economic,%20Social%20and%20Cultural%20Rights.pdf>

<sup>41</sup> U.S.-Japan Status of Forces Agreement Article 4 Item 1

<sup>42</sup> Chapter 3 in *Okinawa no beigun kichi* [U.S. military bases in Okinawa], Okinawa prefectural government (2013).

<http://www.pref.okinawa.lg.jp/site/chijiko/kichitai/documents/dai3syou.pdf>

TCE and PCE. From the barrels, 2,4,5-T, one of the two components of Agent Orange (defoliant) , and the most toxic dioxin, 2,3,7,8-TCDD was detected. An expert concluded that highly concentrated dioxins had been continually leaking from the barrels into the soil for a long period of time. The Government of Japan is removing contaminated soil from the site.

37. While the Government of Japan's "full-scale" investigations may be commended, they were retroactive nonetheless. Also, while the government conducted investigations and removed contaminated soil according to the Act on Special Measures for Promotion of Returned Land in Okinawa (2012),<sup>43</sup> the only existing law for issues related to returned land in Okinawa, the law itself is oriented more toward for promotion of land use than the safety of the land and the people using the land. In fact, the Government of Japan did not investigate the impacts of land contamination on people and its final analysis downplayed the seriousness of land contamination. The whole process of land restoration under way also lacks public participation.
38. Moreover, the Government of Japan has been reluctant to negotiate with the U.S. military and the U.S. government regarding possible revision of U.S.-Japan Status of Forces Agreement Article 4 Item 1, which exempts the U.S. military from the additional responsibility of returning the area to its original state.
39. Furthermore, the Japanese Diet has not ratified the Environmental Stewardship Agreement, and discussions related to the Agreement are taking place between the Government of Japan and the Government of the United States through an unknown process behind closed doors, while ignoring the Okinawan people. The principle of Free, Prior and Informed Consent (FPIC) is not being upheld. This secretive decision making, which is done so as to skirt environmental issues, robs citizens of their right to participate in the process<sup>44</sup>.

## **VI. Infringement of the right to water**

Recommendations to the Government of Japan

40. In accordance with Article 13 of International Covenant on Economic, Social and Cultural Rights<sup>45</sup>, the Government of Japan, in collaboration with the U.S. military, must approve on-site inspections in U.S. bases and training areas by the local government and civil society and must enact legal amendments necessary to protect the right of local residents to have access to water resources free of contamination caused by U.S. military bases. Also, the Government of Japan conduct full-scale investigation on possible consequences of water contamination caused by deployment of SDF bases in the Miyako Islands and must publicize all findings. Necessary measures should be implemented to guarantee the right to clean water.

<Background>

41. For Okinawa, consisting of over 150 small islands (49 inhabited), securing access

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<sup>43</sup> <http://law.e-gov.go.jp/htmlldata/H07/H07HO102.html>

<sup>44</sup> Rio Declaration of Environment and Development, Principle 10.

<sup>45</sup> See E/C.12/2002/11, para 10 (20 January 2003)

to clean water sources is of critical importance. The northern part of Okinawa Island holds the largest water resources in Okinawa, supplying 60% of the local water on Okinawa Island while islands maintain their own water sources or rely upon water from other islands. Because of U.S.-Japan SOFA,<sup>46</sup> however, the Government of Japan and local municipalities do not have control over water sources located within U.S. bases and training areas in Okinawa. Given that about 18 percent of Okinawa Island is occupied by U.S. military bases and training areas and that military operations take place daily, the people of Okinawa faces a risk of water contaminated by U.S. military without a proper risk management system.

42. In August 2013, a U.S. HH-60 helicopter crashed at Camp Hansen near Okawa Dam in Ginoza Village, the source of drinking water for the villagers. Neither Okinawa Prefecture nor Ginoza Village were permitted to carry out their own survey at the site to assess environmental impacts from the crash, including water safety.<sup>47</sup> It led Ginoza village to suspend the use of water from the dam for more than a year until the village confirmed the safety of the water.
43. In 2016, Okinawa Enterprise Bureau (OEB) announced that perfluorooctanesulfonate (PFOS) has been detected in rivers running through the Kadena Air Base and in adjacent groundwater wells, the sources of water supply<sup>48</sup>. OEB urged Kadena Air Base (KAB) to stop using PFOS-tainted products, but the ingredient is still being detected. In response, OEB stopped taking water from the Hija river, one of the contaminated water sources, and it replaced the activated charcoal treatment of Chatan Water Treatment Plant. OEB requested KAB permission to conduct an on-site survey, KAB has not given permission. In 2016, the Okinawa Prefectural Government has started environmental survey for PFOS contamination of water around US bases. Its interim report revealed that high level of PFOS was detected in some springs around MCAS Futenma.<sup>49</sup>
44. In both cases, the Government of Japan has not taken any effective measures to address the situations, nor has it urged the Government of the United States to prevent violations of the right to clean water.
45. The case of Miyako Island is also troubling. The Government of Japan plans to deploy a Self-Defense Forces unit with advanced surface-to-air and anti-ship missile systems to the island. Construction of facilities and operations of the unit will require a large amount of water, which will certainly impact the water supply of the island. The water supply of Miyako Island depends mainly on ground water since

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<sup>46</sup> U.S.-Japan Status of Forces Agreement Article 3 Item 1.

<sup>47</sup> "U.S. military helicopter crashes in Okinawa", Reuters. Aug. 5, 2013.

<http://www.reuters.com/article/us-japan-helicopter-idUSBRE97407W20130805>

<sup>48</sup> "Detection of PFOS in drinking water lead to access to onto US base compounds." The Ryukyu Shimpo. Jan. 21, 2016.

<http://english.ryukyushimpo.jp/2016/02/02/24468/>

"Restricted chemical found in rivers; Kadena says drinking water safe." Stars and Stripes. Jan. 16, 2016.

<https://www.stripes.com/news/restricted-chemical-found-in-river-kadena-says-drinking-water-safe-1.390653#.WNmlWmekL1J>

<sup>49</sup> Mid term report on PFOS. Okinawa prefectural government (2016).

[http://www.pref.okinawa.jp/site/kankyo/hozen/mizu\\_tsuchi/water/documents/tyuukannhoukou.pdf](http://www.pref.okinawa.jp/site/kankyo/hozen/mizu_tsuchi/water/documents/tyuukannhoukou.pdf)

there are no rivers that could be used as water sources. Miyakojima City ensures the safety and sufficient amount of groundwater with its Groundwater Preservation Act. For projects accompanied with certain volumes of water discharge, the Act requires the proponent to have consultations with the City in prior to advancing the project, and conduct hearing with the Miyako Groundwater Conservation Council.

46. The Government of Japan is now advancing its deployment plan without providing citizens with details of the plan although the government revised its plan so as to exclude the protected areas defined by city ordinances. However, no impact studies on groundwater have been conducted, giving rise to concerns over adverse effects on the water supply. There is no evidence to suggest that the Government of Japan is concerned about the people's right to safe water.