

Special Report on Important Matters after the Release of the List of  
Issues (CCPR/C/JPN/QPR/7) by the Human Rights Committee  
- Land Use Regulation Act

June 16, 2022

Japan Federation of Bar Associations

I. Content of Recommendation to the Government of Japan

The Government of Japan should repeal or drastically amend the Act on the Review and Regulation of the Use of Real Estate Surrounding Important Facilities and on Remote Territorial Islands.

II. Reasons to Call for the Recommendation

1. Introduction

The “Bill for the Act on the Review and Regulation of the Use of Real Estate Surrounding Important Facilities and on Remote Territorial Islands” approved by the Cabinet on March 26, 2021 and submitted to the Diet was enacted before the dawn of the last day of the 204<sup>th</sup> ordinary session of the Diet on June 16, 2021, although the opposition parties and factions, such as the Constitutional Democratic Party of Japan, the Japanese Communist Party, the Social Democratic Party, and Okinawa no Kaze were opposed to this.

The JFBA was also opposed to the Bill on grounds that it was extremely likely to infringe fundamental human rights due to its obscure wording and extensive delegation to Cabinet Orders<sup>1</sup>.

Opinions and resolutions have been already adopted in municipalities nationwide, calling for repeal or amendment, etc., of the Act.

2. Outline of the Act

(1) Purpose and Objective of the Act

The Act designates as “important facilities” (i) “defense facilities” (i.e., U.S. military bases and bases of the Self-Defense Forces, etc.), (ii) facilities of the Japan Coast Guard and (iii) “facilities supporting the public” specified by Cabinet Orders

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<sup>1</sup> JFBA: “Statement Opposing the Bill on the Review and Regulation of Important Real Estate” (June 2, 2021) <https://www.nichibenren.or.jp/document/statement/year/2021/210602.html>

(Art. 2, para. 2 of the Act), and stipulates that the Prime Minister may designate as “monitored areas” any area within a range of approximately 1,000 meters from such facilities and within remote territorial islands which have a baseline of the territorial waters and islands within populated remote territorial island areas where Japanese nationals reside, if it is particularly necessary to prevent the use of land and buildings (hereinafter referred to as “Real Estate”) in such areas that impedes the “functions of facilities” or “functions of remote islands” (Art. 5, para. 1) and further that the Prime Minister may designate such “monitored areas” as “special monitored areas” if the area is related to particularly important facilities or remote territorial islands that cannot be easily substituted (Art. 12, para. 1).

And the purpose of the Act is to prevent Real Estate in “monitored areas” and “special monitored areas” from being used for acts that impede the functions of facilities or functions of remote islands (hereinafter referred to as “Acts to Impede Functions”) in order to support the lives of the public and contribute to protecting the territorial waters and national security of Japan (Art. 1).

(2) Designation of “Monitored Areas” and “Special Monitored Areas” by the Prime Minister and Punitive Clauses

The Prime Minister shall formulate a draft of the basic policy and seek the Cabinet’s approval (Art. 4, para. 3), and designate “monitored areas” (Art. 5, para. 1). Furthermore, it is provided that the Prime Minister (i) shall conduct a review of the use of Real Estate in the “monitored areas” (Art. 6), (ii) may request the heads of relevant administrative organs and relevant local governments and other executive agencies to provide information on the names, addresses and other matters provided for by Cabinet Orders of the users and other relevant parties of such Real Estate in the monitored areas when necessary for the reviews (Art. 7), (iii) may request the users and other relevant parties of such Real Estate to provide reports or written materials on the use of the Real Estate, if necessary (Art. 8), and (iv) may impose a fine not exceeding 300,000 yen on those who refuse to do so or provide a false report and so on (Art. 27).

Furthermore, it is provided that the Prime Minister may designate the “monitored areas” as “special monitored areas” if the area is related to particularly important facilities or particularly important remote territorial islands (Art. 12), and (i) if the ownership of Real Estate of a certain size or larger in a “special

monitored area” is to be transferred, the parties are obliged to notify the Prime Minister in advance of their names and addresses, the purpose of use and other matters provided for by Cabinet Orders (Art. 13) and (ii) if they fail to notify or file a false notification, they will be subject to imprisonment for not more than six months or a fine not exceeding 1,000,000 yen (Art. 26), and there are other provisions concerning the submission of information with penalties as with the case of “monitored areas.”

3. No legislative fact has been identified for the Act.

The Government legislated the Act on grounds that areas surrounding facilities of the Self-Defense Forces had been acquired by foreign capital in succession and written opinions had been submitted by local governments, but in fact, only 16 such opinions were submitted out of 1,800 local governments<sup>2</sup>.

Furthermore, in the Budget Committee of the House of Representatives in 2020, the Government stated that no such fact (legislative fact) had been identified that functions of bases were impeded through land acquisition by foreigners (8<sup>th</sup> Study Group of the House of Representatives’ Budget Committee, February 25, 2020).

On the plenary session of the House of Representatives on May 11, 2021 after the submission of the Bill, the Minister of State for Special Missions, Hachiro Okonogi, refused to give an answer, stating “It is not appropriate to answer”<sup>3</sup> on grounds of avoiding security risks. Even after that, he continued to change his answers, such as “We must proceed with our reviews on what may happen, also in terms of looking for (a legislative fact)” (May 26, 2021)<sup>4</sup>, “such concerns seemed to be more like a wild goose chase. (Omitted), the purpose of this Bill is that we shall first review” (June 15, 2021)<sup>5</sup>, and so on.

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<sup>2</sup> The 204<sup>th</sup> Session of the Diet; Minutes of the House of Representatives’ Committee on Cabinet No. 26 on May 21, 2021

[https://www.shugiin.go.jp/internet/itdb\\_kaigiroku.nsf/html/kaigiroku/000220420210521026.htm#p\\_honbun](https://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000220420210521026.htm#p_honbun)

<sup>3</sup> The 204<sup>th</sup> Session of the Diet; Minutes of the House of Representatives’ Plenary Session No. 26 on May 11, 2021 (the relevant statement)

<https://kokkai.ndl.go.jp/txt/120405254X02620210511/27>

<sup>4</sup> The 204<sup>th</sup> Session of the Diet; Minutes of the House of Representatives’ Committee on Cabinet No. 27 on May 26, 2021 (the relevant statement)

<https://kokkai.ndl.go.jp/txt/120404889X02720210526/80>

<sup>5</sup> The 204<sup>th</sup> Session of the Diet; Minutes of the House of Councillors’ Committee on Cabinet No. 28 on June 15, 2021 (the relevant statement)

<https://kokkai.ndl.go.jp/txt/120414889X02820210615/19>

As described, the Act was enacted without any legislative fact identified in the Diet deliberations.

4. The Act infringes Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

The first problem with this Act is that the concepts and definitions provided by the Act are so vague that they could be interpreted in any way the Government would like at its discretion. “Facilities supporting the public,” which is a category of “important facilities” defined as a prerequisite for the designation of monitored areas, are to be designated by Cabinet Orders, and “Acts to Impede Functions” of “important facilities” are also to be determined by the basic policy formulated by the Government.

Important facilities shall not only include facilities of the Self-Defense Forces, the U.S. forces stationed in Japan, and the Japan Coast Guard, but also those designated by Cabinet Orders; in other words, any major infrastructure, such as nuclear and other power plants, information and communications facilities, as well as financial, aviation, railway, gas, medical and water facilities, etc., could be included as such.

Further, the Act does not stipulate the scope of information regarding those subject to the review, delegating it to Cabinet Orders. Furthermore, as for “other related parties” with respect to whom information is requested in reviews and “other necessary measures” to be taken according to recommendations/orders, there is not even a provision to stipulate that they shall be determined by Cabinet Orders, but it is up to the Prime Minister’s decisions who they are and what measures shall be taken.

Although the Act provides for punitive clauses, it is unclear what acts will be subject to such punishments. For example, the definition of “Acts to Impede Functions” is delegated to the Basic Policy to be formulated by the Government, and thus, there is a concern that it may contravene the principle of legality of crime and punishment, and therefore it constitutes a violation of Article 9 of the ICCPR which prohibits arbitrary arrest or detention and requires clarity on the constituent elements of criminal punishments.

During the hearing of witnesses held by the House of Councillors’ Committee on Cabinet on May 14, 2021, Ms. Shoko Yoshihara who was recommended by the ruling parties and was also a member of the Advisory Panel expressed her concern, stating “Reading the proposed text, I have fully realized that this may lead to various speculations. Without thorough discussions, people will interpret it in various ways.”

5. The Act infringes Articles 17 and 18 of the ICCPR.

Further, Article 7 of the Act provides that personal information not only of the owners of the land surrounding important facilities but also of the residents of the buildings and those who visit such land for business or other activities will be collected. There is concern that, in order to evaluate whether their acts may impede “functions of facilities” or not, information not only on their addresses and names, etc., but also on their occupations, daily activities, employment histories and records of other activities, or records of arrests or criminal activities, relationships, and also thoughts and beliefs may be collected, and the possibility cannot be dispelled that the Prime Minister may collect personal information of a person merely because the person resides within a range of 1,000 meters from important facilities or visits the relevant area, and may *de facto* monitor the person.

Article 8 of the Act requires the “users and other related parties” of land and buildings surrounding “important facilities” or on remote territorial islands to submit information for the purpose of reviewing the use by their owners and users. Since it is provided that, if such “related parties” fail to submit a report or written materials or submit any false report or material, they will be subject to a fine not exceeding 300,000 yen (Art. 27), they have no choice but to submit personal information of their neighbors and acquaintances and those who cooperate with their activities. In short, this provision could *de facto* force them to inform against such people.

As described, the Act infringes Article 17 of the ICCPR which guarantees privacy rights and Article 18 of the ICCPR which guarantees the freedom of thought and conscience.

6. The Act infringes Article 19 of the ICCPR.

Article 23 of the Act stipulates that, if the Government finds it necessary to appropriately manage real estate, the Government is to endeavor to purchase the real estate or take other necessary measures. This can be said to *de facto* enable compulsory expropriation of land surrounding important facilities.

Article 9 of the Constitution of Japan stipulates renunciation of war as means of settling international disputes and the potential for war shall never be maintained. Reflecting on the pre-war military regime, military purposes are excluded from the scope of undertakings for which expropriation is allowed under the Expropriation of Land Act in order to realize the purport of Article 9 of the Constitution.

Furthermore, the Act does not provide any means for citizens to file objections against such designations, recommendations and orders.

In light of the above, it is possible that monitoring activities over bases or nuclear power plants will be subject to regulations under this Act. For example, in areas where U.S. military bases are concentrated, such as Okinawa or Kanagawa Prefecture, where residents have been suffering from noise and extremely low-flying U.S. military aircraft and crimes committed by U.S. soldiers, many citizens have long engaged in activities of monitoring and protesting against the bases to protect their lives and livelihoods. There was also an incident even during deliberations on the bill regarding this Act in June 2021, where the house of a scholar who had lined up U.S. military waste discarded at training grounds in the northern part of Okinawa in front of the gate of the base in protest was searched by the police on a charge of forcible obstruction of business. In this manner, there is a possibility that such monitoring activities over bases for the compelling purpose of protecting the lives and livelihoods of citizens will be subject to regulation and surveillance despite the fact that the bases could cause harm to the residents.

In the Diet deliberations, the Government answered that such monitoring activities would not be subject to regulations. However, the recommendation of the Advisory Panel to the Government contains a statement made on the premise that monitoring activities over bases will be subject to regulations<sup>6</sup>. Since no limitation on application is provided for under the Act, either, such answer is unlikely to work as an effective restraint.

As this Act enables de facto expropriation of land for military purposes and may subject monitoring activities over military bases or nuclear power plants to regulations, it could constrain the activities of citizens who oppose the bases or nuclear power plants, and thus infringes Article 19 of the ICCPR which guarantees freedom of expression.

7. Acquisition of land surrounding the bases by foreign capital is not prohibited.

This Act was legislated on the basis of risk of acquisition by foreign capital of land surrounding the bases, but the Act itself does not restrict land acquisition by foreign capital per se.

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<sup>6</sup> Advisory Panel on assessment of the actual state of land use: “Recommendation for new legislation on assessment of the actual state of land use” (December 24, 2020)

[https://www.cas.go.jp/jp/seisaku/kokudoriyou\\_jittai/pdf/021224teigen\\_en.pdf](https://www.cas.go.jp/jp/seisaku/kokudoriyou_jittai/pdf/021224teigen_en.pdf) (English)

[https://www.cas.go.jp/jp/seisaku/kokudoriyou\\_jittai/pdf/021224teigen.pdf](https://www.cas.go.jp/jp/seisaku/kokudoriyou_jittai/pdf/021224teigen.pdf) (Japanese)

The Government explains that the purpose of this Act is to correct or prevent any inappropriate use of land from a security perspective and that discriminatory treatment of any landowner based on his/her nationality would be inappropriate and establishment of any system applied only to foreign capital, etc., would contravene the rules of GATS, which are international rules for trade in services stipulating national treatment.

However, according to a Government study, there is a similar system in the United States, where purchase, etc., of real estate located in proximity to military facilities was added to the scope of review under the “Foreign Investment Risk Review Modernization Act (FIRRMA)” in February 2020, granting the President the authority to suspend transactions. In Australia, it is possible to remove building structures, etc., within areas designated under the “Defense Act,” and prior permission is required for foreigners to acquire title to land of a certain value or higher by the “Foreign Acquisitions and Takeovers Act.”

Even if such legislative fact as described by the Government is undeniable, restriction of acquisition of land surrounding the bases by foreign capital would have been sufficient as a means to regulate the same.

Nevertheless, the Act contains provisions that could subject even citizens, etc., residing in the neighborhood of bases and nuclear power plants to surveillance and allow collection of information on citizens, etc., with penalties, which will have chilling effect. This clearly lacks balance with such purpose of legislation explained by the Government and is largely problematic also in terms of the protection of human rights.

### III. Conclusion

Therefore, the JFBA strongly urges that the UN Human Rights Committee recommend the Government of Japan to either repeal or drastically amend the Act which contains many provisions that contravene the ICCPR.