

**OPINION No. 9/2009 (JAPAN)**

**Communication addressed to the Government on 16 March 2009.**

**Concerning Messrs. Junichi Sato and Toru Suzuki.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

II. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).

3. The Working Group expresses its thanks to the Government for having submitted information on the allegations transmitted. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto.

4. The case summarised below was reported to the Working Group on Arbitrary Detention as follows:

5. Messrs. Junichi Sato, aged 32, and Mr. Toru Suzuki, aged 42, two environmental campaigners, anti-whaling bloggers and Greenpeace Japan activists, were arrested on 20 June 2008 by police agents on suspicion of stealing about 50 pounds of whale meat that the environmentalists said had been illegally siphoned by whalers from government-backed hunts. The box, which had been marked

“cardboard”, contained cuts of the most expensive whale meat which had been illicitly removed from the whaling factory ship and sent to a private address.

6. Messrs. Sato and Suzuki were conducting an in depth investigation into allegations of official Japanese Government science trips being used to provide cover for illegal whaling. On 15 May 2008, they took the box ceased and other evidence they had gathered to the office of the Tokyo Public Prosecutor and requested an official investigation.

7. The same day they were arrested, the Tokyo Public Prosecutor announced that he was dropping the investigation into Greenpeace’s allegations of embezzlement. Messrs. Sato and Suzuki’s homes were searched as were the homes and offices of other five Greenpeace staff in Japan. The server at the Greenpeace office was confiscated by the authorities. After 23 days of their arrest, Messrs. Sato and Suzuki were charged with trespass and theft.

8. According to the source, Messrs. Sato and Suzuki’s investigation was designed to gather information and evidence on alleged Government complicity in whale meat embezzlement. The aim of their action was to inform the official authorities as well as the public about ongoing illegal activities. A key piece of evidence was an intercepted box of salted whale meat. Messrs Sato and Suzuki delivered the information about their findings on the whale meat embezzlement at a press conference and by a press release and received wide media coverage.

9. On the same day of the press conference, Messrs. Sato and Suzuki filed a report about the suspected embezzlement and offered their full collaboration in order to help the authorities to investigate further on this matter.

10. Messrs. Sato and Suzuki cooperated fully both with the police and the Prosecutor’s Office. They have provided written depositions to the Public Prosecutor, and voluntarily and proactively submitted relevant evidence. They acted with a view to raising public awareness around the Government-sponsored Southern Ocean whaling programme, rather than for illegitimate personal gain, while working for a well-respected environmental organization.

11. The source considers that the arrest and detention of these persons, the charges brought against them, and the police raids on Greenpeace’s office and the homes of five of its staff were aimed at intimidating both activists and non-governmental organizations.

12. In its response, dated 27 May 2009, the Government informed the Working Group that the factual backgrounds of this case, from investigation, arrest, detention, parole to the trial up to 1 May 2009, was as follows:

(a) 20 June 2008: The Police arrested Messrs. Junichi Sato and Toru Suzuki at 6.42 a.m. and 7.08 a.m., respectively, and put them in detention cells;

(b) 21 June 2008: The Police referred the case to the Public Prosecutor, who recognized the necessity to maintain them in detention;

(c) 22 June 2008: The Police presented these two persons before the Public Prosecutor, who requested the Judge for a 10-day extension of their detention. That was authorized by the Judge who ordered to proceed with the inquiry.

(d) 1 July 2008: The Public Prosecutor requested a further extension of another period of 10 days. The judge conceded the authorization.

(e) 11 July 2009: The Public Prosecutor indicted Messrs. Sato and Suzuki.

(f) 15 July 2008: They were freed on bail. Their trial is still underway.

13. The Government precises that on 16 April 2008, these two persons, in conspiracy, broke into a branch of a transportation company in Aomori City and stole a box containing 23.1 kg. of whale meat. The Japanese Constitution provides that “No persons shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law”. The legal bases for their arrest are the following provisions of the law:

**(i) Legal Basis for the Arrest.**

(a) Penal Code, article 130 (Breaking into a residence): “A person who, without justifiable ground, breaks into a residence of another person or into the premises, building or vessel guarded by another person, or who refuses to leave such a place upon demand shall be punished by imprisonment with work for not more than three years or a fine of not more than 100,000 yen”;

(b) Penal Code, article 235 (Theft): “A person who steals the property of another commits the offense of theft and shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen”;

(c) Penal Code, article 60 (Co-Principals): “Two or more persons who commit an offense in joint action are all principals”;

(d) Code of Criminal Procedure, article 199, paragraph 1 excerpt: “When there exists sufficient probable cause to suspect that an offense has been committed by a suspect, a public prosecutor, public prosecutor’s assistant officer or judicial police official may arrest him/her upon an arrest warrant issued in advance by a judge”;

(e) Code of Criminal Procedure, article 199, paragraph 2: “In cases where a judge deems that there exists sufficient probable cause to believe that the suspect has committed an offense, he/she shall issue the arrest warrant set forth in the preceding paragraph, upon the request of a public prosecutor or a judicial police officer (in the case of a judicial police officer who is a police official, only a person designated by the National Public Safety Commission or the Prefectural Public Safety Commission and who ranks as equal to or above police inspector; the same shall apply hereinafter in this article); provided, however, that this shall not apply in cases where the judge deems that there is clearly no necessity to arrest the suspect”.

**(ii) Detention of a suspect.**

Code of Criminal Procedure, article 203, paragraph 1: “When a judicial police officer has arrested a suspect upon an arrest warrant or has received a suspect who was arrested upon an arrest warrant, he/she shall immediately inform the suspect of the essential facts of the suspected offense and the fact that the suspect may appoint defense counsel. Then, given the suspect an opportunity for explanation, he/she shall immediately release the suspect if he/she believes that it is not necessary to detain him/her, or shall carry out the procedure of referring the suspect, together with the documents and articles of evidence, to a public prosecutor within 48 hours of the suspect being placed under physical restraint, if he/she believes that it is necessary to detain the suspect”.

**(iii) Detention of the accused.**

(a) Code of Criminal Procedure, article 60, paragraph 1: “The Court may detain the accused when there is probable cause to suspect that he/she has committed an offense and when: (i) The accused has no fixed residence; (ii) There is probable cause to suspect that he/she may conceal or destroy evidence; (iii) The accused has fled or there is probable cause to suspect that he/she may flee”.

(b) Code of Criminal Procedure, article 61 excerpt: “The accused may not be detained unless he/she has been informed of the case and a statement has been taken from him/her”;

(c) Code of Criminal Procedure, article 205, paragraph 1: “When a public prosecutor has received a suspect referred pursuant to the provision of article 203, he/she shall give the suspect an opportunity for explanation and, if he/she believes that it is not necessary to detain him, he/she shall immediately release the suspect; when he/she believes that it is necessary to detain the suspect, he/she shall request a judge to detain the suspect within 24 hours of receiving him.”

(d) Code of Criminal Procedure, article 205, paragraph 2: “The time limitation set forth in the preceding paragraph shall not exceed 72 hours of the suspect being placed under physical restraint.”

(e) Code of Criminal Procedure, article 207, paragraph 1: « The judge who has been requested detention pursuant to the provision of the preceding three articles shall have the same authority as a court or a presiding judge regarding the disposition thereof; provided, however, that this shall not apply to bail”.

(f) Code of Criminal Procedure, article 207, paragraph 4: “When a judge has received the request for detention set forth in paragraph 1, he/she shall promptly issue a detention warrant; provided, however, that when the judge deems that there are no grounds for detention or when a detention warrant cannot be issued pursuant to the provisions of paragraph 2 of the preceding article, he/she shall immediately order the release of the suspect without issuing a detention warrant”.

(g) Code of Criminal Procedure, article 208, paragraph 1: "When a public prosecutor has not instituted prosecution against a suspect within ten days of the request for detention regarding a case in which the suspect was detained pursuant to the provisions of the preceding article, he/she shall immediately release the suspect."

(h) Code of Criminal Procedure, article 208, paragraph 2: "When a judge deems that it exists unavoidable circumstances, he/she may extend the period set forth in the preceding paragraph upon the request of a public prosecutor. The total period of such extensions shall not exceed ten days."

**(iv) Bail.**

(a) Code of Criminal Procedure, article 89: "The request for bail shall be granted, except when:

(1) The accused has allegedly committed a crime which is punishable by death penalty, life imprisonment with or without work, or a sentence of imprisonment with or without work whose minimum term of imprisonment is one year or more;

(2) The accused was previously found guilty of a crime punishable by death penalty, life imprisonment with or without work or a sentence of imprisonment with or without work whose maximum term of imprisonment was in excess of ten years;

(3) The accused allegedly committed a crime punishable by imprisonment with or without work whose maximum term of imprisonment was in excess of three years;

(4) There is a probable cause to think that the accused may conceal or destroy evidence;

(5) There is probable cause to suspect that the accused may harm or threaten the body or property of the victim or of any other person who is deemed to have essential knowledge of the case for the trial or the relatives of such persons;

(6) The name or residence of the accused is unknown".

(b) Code of Criminal Procedure, article 90: "The court may, when it finds it appropriate, grant bail ex officio".

14. The Government adds that in Japan, in order to arrest a suspect, there must be a probable cause sufficient to believe that an offence has been committed by him/her. An arrest warrant issued in advance by a judge is required, except in cases of emergency including on-the-spot arrest against in flagrant offenders. The police, prosecutors and judges, in sequence, strictly check the case and decide whether or not the suspect should be maintained in detention after his/her arrest. The suspect must be released, unless the judge authorizes the detention, at the latest, within 72 hours after his/her arrest.

15. The Government reports that the procedures of arrest and detention in Japan are fully compatible with applicable international human rights norms and standards. Extensions of a period of detention are only authorized when the judge deems that

unavoidable circumstances exist. The investigative authority carries out its duties by investigating illegal cases on a neutral, impartial and fair ground, under relevant legal provisions as well as with credible evidence; paying due consideration to the criminal situation and to the requirements to constitute a crime.

16. The Government concludes that the allegations of the source are not factually correct and that the detention of Messrs. Sato and Susuki is not arbitrary.

17. Although the response from the Government was transmitted to the source on 24 June 2009, it has not provided its comments.

18. The Working Group considers that it is in a position to render an Opinion on this case. It notes that the two Greenpeace's activists were arrested after having exposed a whale meat scandal involving a Government-sponsored whaling programme.

19. The source, in its communication, has well explained that Messrs. Sato and Suzuki are two environmental campaigners who acted in the framework of their activities as member of the environmental organization Greenpeace Japan; that they proceeded to an in depth investigation into allegations of official Government science trips being used to provide cover for illegal whaling. Messrs. Sato and Susuki seized a box filled with salted whale meat and took this and other evidence they had gathered on this illegal activity to the Tokyo Public Prosecutor Office in order to demand an official investigation. They acted with transparency, delivering the information about their findings at a press conference and by a press release which received wide media coverage. Everything about their investigative work was made public. The source invokes that the detention of the above-mentioned two persons is in violation of article 19 of the International Covenant on Civil and Political Rights which refers to the exercise of the freedom of opinion and expression.

20. These two persons voluntarily went to the Office of the Tokyo Public Prosecutor, submitted the evidence they had gathered, and offered their cooperation in the eventual public investigation they were requesting. However, the same day that the Tokyo Public Prosecutor announced that he was dropping the investigation on the alleged whale meat embezzlement, they were arrested. Subsequently, almost a month after their arrest, they were charged with trespass and theft.

21. The Working Group further notes that the Government has devoted its response to strongly indicate that the Japanese legislation is in accordance with the principles and norms of international human rights law concerning arrest and detention, and has provided detailed information about the Japanese criminal and procedural legislation. However, the Government has not provided enough information on the circumstances of the arrest and detention of these two investigators nor has given detailed response to the different allegations from the source.

22. In its response, the Government limits itself to conclude that the allegations from the source "are not factually correct" and concludes that the detention of the above-mentioned two persons is not arbitrary. The Government does not submit information on the activities carried out by Messrs. Sato and Susuki as environmental activists; about the investigations they were carried out on a major corruption scandal

surrounding the whaling programme; on the evidence they had gathered into the allegations of embezzlement; nor on the collaboration they offered to the police and the Public Prosecutor in order to help the authorities to investigate the allegations they had submitted. The Working Group considers that these points are essential.

23. The fact that the Government has kept itself silent on these important points is of a nature to accredit the source thesis. Especially, the fact that the Government does not give any precisions or details on the charges brought against these persons and about their participation in peaceful environmental activities and on the other allegations submitted by the source.

24. Consequently, the Working Group may conclude that these two persons have acted in the framework of their capacities as active members and investigators of the environmental organization Greenpeace. They acted considering that their actions were in the greater public interest as they sought to expose criminal embezzlement within the taxpayer-funded whaling industry. Their willingness to cooperate with the police and the Public Prosecutor concerning the manner in which they obtained the evidence of their allegations of corruption and their attitude of conciliation and collaboration have not been recognized. In its response, the Government does not refute these allegations, nor raise in this cooperative attitude a breach.

25. The Working Group considers that the right to freedom of opinion and expression, the right to assembly, the right to investigate corruption and to voice opposition to government policies must always be upheld. Citizens have the right to investigate and expose evidence on public servants suspected of corruption.

26. The right of these two environmental activists not to be arbitrarily deprived of their liberty; their rights to freedom of opinion and expression and to exercise legitimate activities, as well as their right to engage in peaceful activities without intimidation or harassment has not been respected by the Justice system.

27. The Working Group further notes that these persons have not been allowed to challenge their detention before an independent and impartial court in proceedings which meet international standards of fairness, in accordance with articles 2, 10, 14 and 19 of the International Covenant on Civil and Political Rights, to which Japan is a State party.

28. Consequently, the Working Group renders the following Opinion:

The detention of Messrs. Junichi Sato and Toro Susuki is arbitrary and contravenes the dispositions contained in articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights to which Japan is a State party, and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group.

29. The Working Group request the Government to ensure that the above-mentioned two persons be subjected to fair proceedings which meet international standards of fairness, in accordance with articles 2, 10, 14 and 19 of the International

Covenant on Civil and Political Rights, ensuring that all their rights of defence in trial be fully respected.

Adopted on 1 September 2009