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Statement:

Human Rights Now strongly opposes the Japanese Special Secret Bill

The Japanese government propose a Special Secrecy Bill for enactment and now the Bill is under discussion of Parliament.

Human Rights Now expresses grave concerns on this bill and strongly oppose to enforcement of this law due to the following reasons;

- 1 According to the bill, very wide range of information will be specified as a 'secret' and be away from civilian eyes. The information which is defined as a 'secret' in this bill is that of defence, diplomacy, counterintelligence and counterterrorism; which means that quite comprehensive information will be specified as secret. There is a high possibility that almost all of information related to military, diplomacy and counterterrorism is to be categorized as a 'secret'. The bill itself does not specify any clear objective criteria to determination of secret and there is no legal limitation to designate secret even though the bill says that criteria will be designed based on consultation with intellectuals. This will keep a lot of information away from the nations and is highly likely to violate 'right to know'.
- 2 The designation of secret can be done arbitrarily by 'a chief of administrative agency' (Article 3) and there is no framework of democratic control by third parties and Diet, which means that there is no institutional security to prevent inappropriate designation of secret. The designation of secret will valid for 5 years, but it can be extended. The principles of disclosure of secret are not stipulated.
- 3 The bill does not contain any safeguard-articles to bring immunity of whistle-blowers. The current Whistle-blower Protection Act is to protect Whistle-blowers from detriment such as dismissal, but not to protect Whistle-blowers in case of prosecution for any criminal charge. This means that governmental officers could be punished when they accuse of government's unjust and illegal acts.
- 4 Further problem is the Secrecy Bill has article that mere complicity without commission will be punished as follows; if 'a person colludes with, abets and agitates someone else to disclose secret will be sentenced to imprisonment of less than 5 years' (Article 24). This article contains a risk to invoke punishment on activities of journalists and to extremely violate freedom of press and expression. Although the article 21 states consideration on freedom of press and expression, this is just an advisory provision which does not prevent abuse of investigation authority as there is no clear definition of 'a person who is in charge of publication or press' that the bill designates as person who

will be given consideration. The civil society such as NGOs might be punished due to its monitoring activities and discussions over it by gathering and releasing information of government. The proper function of democracy that civil society oversees administration and authority - check and balance - will be seriously damaged by this bill.

5 The bill stipulates that information which is once designated as a secret will not be disclosed to courts or Diet except for limited and exceptional occasions. The disclosure to Diet will be limited 'when the disclosure of information is acknowledged as information not to cause serious damage on our national security, and only be disclosed to the crossed-door session or investigation of the official meeting of houses or committee of Parliament. The members of Parliament cannot obtain the copy of secret based on their investigative power. Furthermore, the disclosure to courts is also strictly limited and it will surely disturb judicial review. In cases of criminal trials, defenders will face with difficulties to defend by themselves fairly and their rights to receive due process and public trial might be violated unduly. This bill will allow the government and bureaucrats to work arbitrarily while Diet and courts do not know anything, and major decisions regarding national defence and diplomacy might be done without acknowledgement of the nations and politicians.

6 The Global Principles on National Security and the Right to Information (The Tshwane Principles) stipulates that; the monitoring agencies such as courts or ombudsmen have a right to access to information (Principle 6); information regarding human rights violation by the nation (violation of international human rights and humanitarian law), monitoring civilians by the nation, decision of use of force by the nation, nuclear/mass destructive weapons, infringement of constitution or laws and abuse of power, public health, safety of civilians, or environment should be disclosed (Principle 10); whistle-blowers should be protected (Principle 40, 41, and 43); civilians other than government officials will not be punished by receiving and unveiling secret information as well as will not be accused of conspiracy or other suspicion due to obtaining or requesting information (Principle 47); and the secrecy of origins of information will be guaranteed (Principle 48). However, the bill which is under discussion is far from those principles.

7 Originally, current legislations in Japan, such as National Public Service Act, Local Public Service Act and Self Defence Force Act have already prescribes the punishment regarding disclosure of secrets. The government has not clarified necessity to expand the scope of crime as well as stiffer penalties. Nor it demonstrates the insufficiency of current law.

8 Therefore, Human Rights Now expresses our grave concern on this bill and oppose to it. To the government, we strongly request not to enforce this bill which endangers protection of human rights and democracy.