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TPP negotiations behind closed doors

It's unacceptable to significantly deteriorate human rights protection in TPP countries

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International Human Rights NGO, Human Rights Now

1. Twelve countries at the negotiation table for the Trans-Pacific Partnership Agreement (TPP), including Japan and The U.S., held a meeting with chief negotiators in Maui, Hawaii on July 24, 2015, prior to a ministerial meeting which will be held from July 28.¹

Human Rights Now (HRN), a Tokyo-based international human rights NGO, expresses its grave concerns that the TPP negotiations have been conducted under secrecy without any disclosure of information to people in the TPP countries who would be affected, although the results of the negotiation might have detrimental impacts on their enjoyment of human rights.

On June 2, 2015, UN human rights experts released an unusual joint statement and expressed their concerns over the adverse impact of TPP on human rights, warning that the TPP may bring multi-faceted and detrimental impacts on the enjoyment of human rights of people in TPP countries, such as rights to life, food, water and sanitation, health, housing, education, science and culture, improved labor standards, and a clean environment. They recommended that appropriate parties:

- Ensure transparency by allowing all interested parties to participate in negotiations of trade and investment agreements,
- Publish draft treaty texts,
- Adequately assess the human rights impacts of TPP, and
- Include human rights safeguards in TPP.

In the same month, human rights experts from TPP countries also expressed their grave concerns about the current negotiations.² It is unacceptable that the countries at the negotiating table ignore the voices of affected persons and adopt the TPP under a secrecy which endangers human rights.

¹ <http://jp.reuters.com/article/2015/07/25/idJP2015072501001040>

² <http://canadians.org/media/top-un-human-rights-experts-tp>

2. The TPP, which is a wide-ranging agreement covering 21 areas³ and aims not just eliminating tariffs but also removing non-tariff barriers, is currently being negotiated.

The negotiations have been carried out behind closed doors, and in Japan the content of the negotiations has not been disclosed to citizens nor members of Parliament. Moreover, negotiation documents are to remain secret until four years after the all TPP comes into force or four years after the last round of the negotiations, including draft documents in the negotiation process, proposals from participating countries, addendum documents, emails related to the content of negotiations, and other information exchanged during the negotiations.

According to fragmented, leaked information on TPP draft treaty texts, while the treaty would eliminate regulations in each participating country in order to promote free trade, the introduction of overly protective rules on intellectual property—which should be unrelated to promoting free trade—would include a number of provisions that may have significant impacts on fundamental human rights in TPP countries, such as the rights to life and health.

The potential impact is wide-ranging as shown below. In each case there are risks that:

- Rights related to Sanitary and Phytosanitary (SPS) measures will be limited in each TPP country. For instance, in Japan there is a risk that food safety, protection of health, and consumer protections might be jeopardized due to rules of origin, which determine where a product originates, and restrictions on labeling regulations of genetically-modified food;⁴
- Provisions of intellectual property protection, which would strengthen protections of pharmaceutical patents and data, may cause a steep rise in medicine costs and thus violate people's rights to have access to inexpensive medicine;⁵
- The Japanese national pension system may lose substance due to a lifting of the ban on billing for mixed medical care service, allowing private operators to participate in public medical insurances, and allowing commercial enterprises to participate in hospital management;⁶
- Consumer protections deteriorate;
- There are grave chilling effects on freedom of expression and the press for derivative works due to the introduction of copyright extension and legal compensation, as well as by allowing prosecutions for copyright infringements without complaints from victims.

UN human rights experts expressed strong concerns that lowering standards for labor, health and food safety protections, along with worsening the problem of poverty, pose grave risks to the human rights of indigenous peoples, persons with disabilities, older persons and other socially vulnerable

³ http://www.cas.go.jp/jp/tpp/pdf/2012/1/20111021_1.pdf

⁴ http://www.mofa.go.jp/mofaj/gaiko/tpp/pdfs/tpp02_03.pdf

⁵ http://www.msf.or.jp/about/access_campaign/pdf/MSF_Briefing_Note_TPP2013_JAP.pdf

⁶ http://dl.med.or.jp/dl-med/teireikaiken/20130227_14.pdf

persons.

The TPP negotiations are also to include Investor-State Dispute Settlement (ISDS) provisions, which will establish a system allowing foreign investors to appeal for international arbitration in cases where they think measures taken by the state in which they invested (“Host State”) violate TPP regulations and cause damages. There have been several cases brought against states involving massive compensation under similar regulations such as North American Free Trade Agreement (NAFTA).

In this way, ISDS provisions have a chilling effect which causes states to hold back on measures to protect the human rights of their citizens for the sake of investor interests.

3. In spite of the potentially detrimental impact on human rights as shown above, the TPP has been negotiated behind closed doors.

Human Rights Now expresses its grave concern that the negotiation process totally excludes stakeholders and citizens who may be affected by the adoption of TPP, denying them the right to access information that may have significant effects on their human rights, and failing to ensure opportunities for consultation .

Principle 9 of the UN Guiding Principle on Business and Human Rights endorsed by the Human Rights Council in 2011 stipulates that states should meet their human rights obligations when they adopt treaties such as trade agreements. The negotiations should never require participating states to lower their level of human rights protection on the pretext of addressing TPP provisions.

4. Human Rights Now, expressing strong concerns over the current TPP negotiations, the content of the agreement, and the consequent human rights violations, calls on governments of TPP countries, including Japanese government, to:

- Disclose draft treaty texts and all relevant documents used in the TPP negotiation process;
- Conduct adequate assessments of the effects that the treaty provisions might bring to each area of TPP;
- Consult with stakeholders and interested organizations who might be affected by the treaty provisions in each area of TPP;
- Refrain from entering any agreement that might deteriorate domestic human rights safeguards in each TPP country, and refrain from making recommendations or advocacy for such an agreement;
- Remove ISDS provisions;
- Include safeguards in TPP that may protect the human rights of citizens, and;
- Refrain from engaging in any negotiations or compromises without the above-mentioned process.