

**NATIONS UNIES**  
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**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

REFERENCE: UA G/SO 214 (67-17) Health (2002-7)  
JPN 1/2013

19 November 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolutions 16/4 and 24/6.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the draft Special Secrets Bill which can seriously restrict the right to freedom of opinion and expression in Japan.

According to the information received:

The lower house of the Japanese Parliament is currently deliberating a bill, which was approved by the Cabinet in October 2013, that includes a number of provisions that are allegedly not in line with international human rights standards on freedom of opinion and expression as well as with Japan's Constitution which recognizes the right to access information a part of the right to freedom of expression as a fundamental right.

Based on the information received, we would like to raise the following concerns:

- The definition of protected information in the draft law is reportedly very broad and unclear. A table attached to the draft bill allegedly provides very broad list of categories of information to be kept secret, which allegedly could apply to issues relating to defence, diplomacy, 'harmful activities' and terrorism and allow

authorities to hide legitimate information about environmental hazards, human rights abuses and corruption. Information in the area of foreign relations, any information related to official efforts in the area of counter terrorism, and any information related to “designated activities potentially harmful to national security” could qualify as a secret.

- The draft bill reportedly enables the uncontested enforcement of secrecy for indefinite periods. **Article 4** allegedly stipulates that the initial designation can be up to five years and can be extended for five-year periods up to a maximum of thirty years. After the thirty year point, the executive must obtain authorization from the Cabinet for further extension, hence, certain information, if authorized by the Cabinet, can remain secret for indefinite period;

- Through **Article 5**, the bill allegedly provides “heads of executive agencies” with wide discretion to designate certain information as “secrets” with no references on the review by any independent body (including courts). There is also no indication on disclosure to the public, or even to parliament regarding even what sort of information has been designated by the “heads of executive agencies” as secret.

- Provisions relating to penalties for revealing State secrets (allegedly established from **Article 22 to 26**) may seriously threaten whistleblowers and journalists. Article **22.2** provides that persons provided with secrets can be liable to up to 5 years in prison. **Article 22.4** establishes that persons who accidentally reveal secrets can also be subject to imprisonment for up to two years. **Article 24** indicates that persons who “incite” or conspire to divulge secrets (or the illegal obtaining of secrets) can also be punished, by up to five years in prison.

Grave concern is expressed that the proposed Special Secrets Bill could severely restrict the right to freedom of opinion and expression in Japan. Grave concern is further expressed that this legislative development could curtail the activities of journalists and will certainly intimidate whistleblowers.

We would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In this regard, the Human Rights Committee has affirmed in its General Comment on the right to freedom of opinion and expression (CCPR/C/GC/34) that “Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.” The Human Rights Committee further asserted that “to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. (...) The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.” It further noted that “authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.”

Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the International Covenant on Civil and Political Rights, including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government.

We would also like to call your Excellency’s Government’s attention to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed by E/CN.4/1996/39 of 1996, which provides that a restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. The Johannesburg Principles further indicate that no person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

In his most recent report to the United Nations General Assembly (A/68/362) the Special Rapporteur on the right to freedom of opinion and expression focused on the right to access information. While revising national experiences promoting this right, the report recommended that “national laws should contain a clearly and narrowly defined list of exceptions or grounds for refusing the disclosure of information. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information, and should be determined by an independent body, preferably a court, and not the body holding the information.”

In the same report, the Special Rapporteur on the right to freedom of opinion and expression further indicated the need to pay particular attention to the protection of whistle-blowers and journalists while enforcing national laws on national security. His report recommends that: “Government officials who release confidential information on violations of the law, or wrongdoing by public bodies, on grave cases of corruption, on a serious threat to health, safety, the environment, or a violation of human rights or humanitarian law (whistle-blowers) should be protected against legal, administrative or employment related sanctions, if they act in good faith. Other individuals, including journalists, media workers and civil society representatives, who receive, possess or disseminate classified information because they believe it is in the public interest, should not be subject to liability unless they put individuals in an imminent situation of serious harm.”

In the 2013 report on his country visit to Japan (A/HRC/23/41/Add.3), the Special Rapporteur on the right to health noted that access to information is an essential component of the right to health and observed that information about the Fukushima nuclear accident, including on contaminated and potentially contaminated areas, should be made public immediately and in a coordinated manner. Urging your Excellency’s Government to facilitate access to information about radiation levels in the affected areas to allow people to make informed decisions that will have a bearing on their health, the Special Rapporteur stressed that effective emergency response system “requires the public to be provided with useful, timely, truthful, consistent and appropriate information promptly throughout a nuclear or radiological emergency” (para.50).

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide the full details of the aforementioned Bill and explain how its provisions are in accordance with Japan’s obligations under international human rights law and standards, particularly with regard to the rights to freedom of opinion and expression.
3. Please indicate the main legal and institutional instruments in place to ensure the realization of the right to access information in Japan.
4. Please indicate any consultation undertaken, including with civil society in the drafting of this Bill.

The response of your Excellency's Government will be made available in a report that will be submitted to the Human Rights Council for its consideration.

Given the seriousness and urgency of the allegations, we would like to inform your Excellency's Government that we intend to issue a press release on the issues contained herein.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the highest  
attainable standard of physical and mental health