

[The Japanese Secrecy Act: A Serious Step Backwards for Transparency, Human Rights and Democracy](#)

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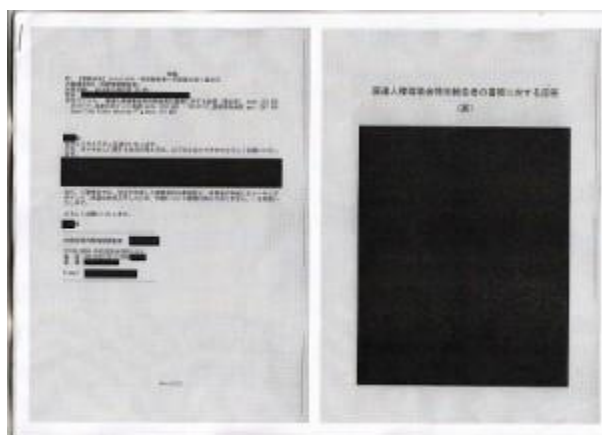
By [Sanae Fujita](#)

On 6th December 2013, the Japanese National Diet quickly pushed through the Secret Protection Bill in the face of nationwide protest, including a demonstration involving more than 10,000 people outside the Diet itself. Anti-Secrecy Bill demonstrations were held on a nationwide scale because people were worried that the law would negatively affect their right to access information and eventually that Japan might repeat past mistakes, which could lead to war: in Japan there is widespread belief that previous wars were caused in part by Government secrets and deception.

Japan is a democratic and economically developed country that does not attract much discussion within the human rights community. However, the establishment of the Secrecy Act demonstrates a serious regression of the human rights situation in Japan.

Lacking in transparency and an undemocratic drafting process

While the Secrecy Bill was being prepared last September, the Japanese Government held a 2 week public comment period for the Bill. Despite this restricted timeframe, 90,480 public comments were received: 69,579 of these opposed the Bill. However, citizen's concerns were not properly taken into consideration by the Government and the drafting process was carried out in a secret and extremely undemocratic manner. Although civil society groups requested information about the drafting process, they received only redacted documents.



The Bill was finally disclosed to the public on 25th October 2013 when the Cabinet approved it, leaving only 6 weeks to the passage of the Bill. In total, only 41 hours were spent for questions and answers in the Lower House, and only 22 hours in the Upper House. In contrast, when South Africa was preparing its Secrecy Law, the Government spent more than 2 years on the drafting process, having discussions on the Bill with international experts and civil society. Without such discussion and expert input, the quality of the Japanese Secrecy Bill turned out to be extremely poor. A [US expert on national security](#) stated that “This law is about as bad as any that a democratic government has considered in the 21st Century.”

Criticisms from the international community

Last November, deep concerns regarding this Bill were expressed by the international community. With the help of another Essex alumnus I translated the Bill into English and submitted it to [ARTICLE 19](#) (a leading NGO on freedom of expression) and Frank La Rue, UN Special Rapporteur on Freedom of Expression. They concluded that the Bill posed a potential threat to freedom of information and issued [official statements](#) to the Japanese Government.

La Rue [pointed out](#) that the “The draft bill not only appears to establish very broad and vague grounds for secrecy but also include serious threats to whistle-blowers and even journalists reporting on secrets.” He drew special attention to the penalties established by the law for the release of information, stressing that “government officials who, in good faith, release confidential information on violations of the law, or wrongdoing by public bodies, should be protected against legal sanctions.”

La Rue’s statement was made jointly with Anand Grover, UN Special Rapporteur on the Right to Health, who visited Fukushima in 2012 as part of a country visit. He underlined the need for full transparency in emergency contexts. However, Prime Minister Shinzo Abe did not pay attention to their statements and stated in the Diet that La Rue had misunderstood the issue, and that his opinion had not come from the UN Human Rights Council.

The statement by the UN Special Rapporteurs resulted in international awareness regarding the Bill. During the press conference with Navi Pillay, the UN High Commissioner for Human Rights, on 3rd December, a question was raised about the Bill. In [her response](#), she argued that the “Japanese Government should not rush through the law without first putting in proper safeguards for access of information and freedom of expression as guaranteed in Japan’s constitution and international human rights law,” and further that the “Japanese Government should listen to the people’s concerns”.

This statement upset the Japanese ruling party. Some MPs argued that her statement was interfering in Japan’s internal affairs and she should be disqualified as high commissioner. Minoru Jonai, Chair of diplomatic service stated that: “We should find out and ask why she made such factually incorrect statements. Under certain circumstances, we can request an official apology or her dismissal, and we can even freeze a financial contribution.”(*Mainichi Newspaper*, 5 December 2013)

Prime Minister Abe stated in the Diet that the Japanese Ministry of Foreign Affairs in Geneva had a “dialogue” with Navi Pillay and explained to her that the Government was modifying the Bill; that the Diet would ensure the appropriate “checks and balances”; and that this had been accepted by Navi Pillay. However, according to the Office of High Commissioner for Human Rights, although Navi Pillay acknowledged the Bill was modified, she still wished to continue discussions with the Japanese Government based on the final version of the law: she still had concerns about the law. To facilitate this discussion the Japanese Government was supposed to prepare an official translation but the process was seriously delayed and the official translation was only finally released in July. It is not clear if Navi Pillay will have the opportunity to resume discussions with the Japanese Government before the end of her mandate in July 2014.

An Independent Monitoring Body?

International human rights law requests State Parties to establish an independent body to monitor any laws which restrict access to information. However, no independent monitoring body with authority has been set up in Japan. Although the Government modified the bill and added oversight bodies (a council of external advisors and three governmental bodies), the council of external advisors cannot address individual designations or un-designations. The other governmental bodies are neither independent nor have an oversight ability.

Besides these mechanisms in the Government, a standing committee in the Diet was built only after 7 hours of discussions in the Lower House and the Upper House respectively. Without a proper discussion, weaknesses in the draft about the committee were not amended, for example, the committee does not permit any whistle-blowing and does not have binding power to determine inappropriate withholding of information.

Review by the UN Committee on Civil and Political Rights

On 15-16th July 2014, the UN Committee on Civil and Political Rights held a periodic review of Japan. For this session, Japanese civil society chose the Secrecy Act as one of two priorities together with the issue of hate speech. [Alternative reports](#) on this Act were submitted by Japanese institutions, such as the Bar Association and a coalition of 19 NGOs. In addition, Amnesty International and the Open Society Justice Initiative submitted reports.

The Act, although not due to be implemented until December 2014, drew attention from the Committee members because of the anticipated chilling effect of its clauses. Following a question by Anja Sebert-Fohr (Germany), Prof Nigel Rodly, a chair of the Committee, asked why this Act was even necessary...

In its [concluding observations](#), the Committee expressed concern that the Act contained vague and broad definitions of matters classified as secret, and that it sets high criminal penalties that could generate a chilling effect on the activities of journalists and human rights defenders. Then it states that Japan should take all necessary measures to ensure that the Act and its application conform to the strict requirements of Article 19 of the Covenant.

This concluding observation is a great achievement and gives encouragement for the anti-Secrecy Act campaign in Japan. The challenge to make the Government implement and fight for transparency and human rights in Japan will continue.

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