



# **JOINT NGO REPORT ON THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS (ICCPR) ARTICLES 18, 19 & 21**

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**For the 7<sup>th</sup> Periodic Review of Japan  
at the UN Human Rights Committee  
session**

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**30 September 2020**

## **Part 2: Conspiracy Law and Specifically Designated Secrets Act**

**NGO COALITION FOR FREE EXPRESSION &  
OPEN INFORMATION IN JAPAN (NCFOJ)**



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## List of Acronyms

BOR	Boards of Oversight and Review
CPI	Council for Protection of Information
ICCPR	International Covenant on Civil and Political Rights
IGPRM	Inspector General for Public Records Management
ISOD	Information Security Oversight Division
KRRCB	Kansai Region Ready-mixed Concrete Branch
LDP	Liberal Democratic Party
LoI	List of Issues
MoECSST	Ministry of Education, Culture, Sports, Science and Technology
MoD	Ministry of Defense
MoFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
NPA	National Police Agency
PSP	Public Security Police
SDF	Self Defense Forces
SDS	Specially Designated Secrets
TOC	Transnational Organized Crime
WW II	World War II

## Introduction

This report is a product of a collaborative effort by the following civic organizations:

- 1 Women's Active Museum on War and Peace
- 2 Solidarity Network with Migrants Japan
- 3 Support Group for the Case of Itabashi High School Graduation Ceremony and “Freedom of Expression”
- 4 FoE Japan
- 5 Japan Network towards Human Rights Legislation for Non-Japanese Nationals and Ethnic Minorities
- 6 Center for Prisoners’ Rights Japan
- 7 Lawyers’ Association Against the Conspiracy Law
- 8 Group of Protesters Against the Secrets Law and the Anti Conspiracy Law in Aichi, Japan
- 9 People's Association against Criminalization of Conspiracy
- 10 Greenpeace Japan
- 11 Japan NGO Action Network for Civic Space (NANCiS)
- 12 Japan Civil Liberties Union (JCLU)
- 13 Japan NGO Network for the Elimination of Racial Discrimination (ERD Net)
- 14 The Organization to Support the Lawsuits for Freedom of Education in Tokyo
- 15 Society for Abolishing the Family Registration System and Discriminations against Children Born out of Wedlock (AFRDC)
- 16 Japan International Volunteer Center (JVC)
- 17 Consumers Union of Japan
- 18 Japan Mass Media Culture Information Workers' Union Conference (MIC)
- 19 International Movement Against All Forms of Discrimination & Racism (IMADR)
- 20 Peace Boat
- 21 League of Lawyers Against the State Secret Act
- 22 Human Rights Now
- 23 Media Research Institute

## Part 2 Conspiracy Law and Specifically Designated Secrets Act

### Chapter 1 Conspiracy Law

In response to the Paragraph 9 of the List of Issues (LoI)

#### 1. Recommendation

The State Party should repeal the Conspiracy Law (the 15 June 2017 amendment of the Act on Punishment of Organized Crime and Control of the Proceeds of Crime).

#### 2. Reasons for the recommendation

Paragraph 9 of LoI, Question 3

Please respond to concerns that the Act on Punishment of Organized Crime and Control of the Proceeds of Crime (the “Conspiracy Law”) may unduly restrict the freedoms of expression, assembly and association and lead to violations of the right to liberty and security and the right to a fair trial, owing in particular to open-ended elements of the crime of conspiracy, such as “organized criminal group”, “planning” and “preparatory acts”, that allegedly do not comply with the principle of legal certainty and predictability and due to the fact that the 277 new crimes contained in appendix 4 include crimes that are apparently unrelated to terrorism and organized crime.

#### (1) The Government of Japan's justification on the grounds of the United Nations Convention against Transnational Organized Crime is superficial

The Government of Japan (hereinafter referred to simply as the "Government") belatedly submitted the Seventh Periodic Report ("the Government Report") to the Human Rights Committee on 19 April 2020 for the review due to take place in the 130<sup>th</sup> session.

The Government Report states that “the concern that the crime of the act of preparation for terrorism<sup>1</sup> and other organized crimes leads to the unfair restriction or violations of the rights of the citizens is unfounded, and no specific examples of this happening exist to date” (the Paragraph 56). The rationale for this new legislation is mainly to “fulfil the obligation under the United Nations Convention against Transnational Organized Crime (the TOC Convention)”. Such an assertion, however, must be critically regarded as "a mere excuse" to implement the crime of conspiracy under the guise of compliance with the TOC Convention, as explained further in detail below.

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<sup>1</sup> Although the government documents refer to it as "the crime of the act of preparation for terrorism", in reality it is not any different from the "conspiracy" crime when the relevant bill was first proposed in 2004, so in this document we refer to it as "conspiracy".

(2) Disregard for the Article 34 of the TOC Convention.

Article 34, paragraph 1 of the TOC Convention provides that “Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.” Furthermore, the Legislative Guide (para. 43) provides that “National drafters should focus on the meaning and spirit of the Convention rather than attempt simply to translate Convention text or include it verbatim in new laws or amendments...Therefore, they must ensure that the new rules are consistent with their domestic legal tradition, principles and fundamental laws.”

The legal system for the protection of privacy is still underdeveloped in Japan. In this context, Japan’s criminal justice system has developed "domestic legal tradition, principles and fundamental laws" to ensure alignment with fundamental human rights. The Government established the crime of conspiracy, however, without due regard to Article 34 (1) of the TOC Convention or paragraph 43 of the Legislative Guide, and in contravention of the “domestic legal tradition, principles and fundamental laws” in the Japanese criminal justice system. The Government Report attempts to conceal this, as explained below.

① Legislation of overt act as criminal offence in contradiction to the Criminal Code

In paragraph 51, the Government Report claims that it adopted both of the two options granted to the States Parties under Article 5 (1) of the TOC Convention in establishing the crime of conspiracy. However, Japan's methods of adoption of the two options under the TOC Convention are problematic.

The first of these relates to the so-called overt act, or " an act undertaken by one of the participants in furtherance of the agreement". This is a concept that has never been employed as an element<sup>2</sup> of a criminal offence in the Criminal Code and was adopted without regard to Article 34 (1) of the TOC Convention or paragraph 43 of the Legislative Guide.

In light of the grossly inadequate legal system for the protection of privacy, it is "preparatory acts" or "preliminary acts" that are cited -albeit not without its criticisms- as elements of an offence in the Criminal Code. Moreover, such acts are limited to those that cause danger in their own right. However, overt acts constituting the crime of conspiracy include such acts as simply "withdrawing a deposit," "buying groceries," and "visiting a place," among others. These are routine acts, and the only way to determine whether these acts constitute acts of conspiracy is to investigate whether the individual in question committed the act with the intent to conspire. This raises the concern that such investigations may lead to unrestrained human rights violations.

② A broad definition of organizations covered by the TOC Convention

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<sup>2</sup> In April 2006, Mr. Obayashi, Director-General of the Criminal Affairs Bureau of the Ministry of Justice, referred to it as a "condition for punishment," but in April 2017, Mr. Hayashi, the then incumbent, referred to it as an "element".

The other option cited in the Government Report at para 51 above is to criminalize acts of (2) “involving an organized criminal group.” “Organized criminal groups”, however, are defined in Article 6-2 of the Conspiracy Law to cover a wider range of groups than intended in Article 5(1)(a)(ii) of the TOC Convention, including organizations created for religious or political purposes. The latter is limited to groups of people with the aim of committing serious crimes “in order to obtain, directly or indirectly, financial or other material benefit”. On the other hand, the former even subjects organizations created for religious or political purposes to the crime of conspiracy. In comparison, the German Penal Code Article 129, which establishes the “crime of forming a criminal organization”: (1) limits the target organizations to those that are formed for criminal purposes, and (2) excludes organizations in which criminal purposes are only secondary. The term “organized criminal group” in Japan’s domestic legislation does not provide either of the above two limitations, and its scope is extremely vague. As will be discussed below, the excessively broadened definition of “terrorist groups” is in fact the result of the Public Security Police (PSP), which has jurisdiction over counter-terrorism, masterminding the Conspiracy Law.

In this regard, the parliamentary debate on the passage of the Conspiracy Law demands attention. First, the definition of an organized criminal group is part of the definition of a “group”. A group is defined in Article 2 (1) of the Conspiracy Law as: (1) a continuous association of persons having a common purpose, and (2) being organized (i.e. group members act in unison based on a predetermined division of duties and through a chain of command) to repeatedly or continuously execute acts that realize part or all of the purpose or intent of such association. At the Justice Committee of the House of Councilors on 8 June 2017, Mr. Hayashi, Director-General of the Criminal Affairs Bureau, Ministry of Justice (MoJ) elaborated further on this definition as follows: “Generally speaking, civic associations or clubs (for shared interest or hobbies) do not have a chain of command or division of duties among their members. Therefore, they are not organized to repeatedly or continuously execute acts that realize part or all of their purpose or intent, and are thus excluded from the definition”. Even these groups, however, may have a leader and, under his or her direction, carry out its activities based on a predetermined division of duties, such as treasury, book-keeping, public relations, membership service or induction of new members. Such features are actually quite common among civic associations and clubs. The definition of a “group” in Article 2 (1), therefore, falls short of excluding civic associations or clubs from the scope of the Conspiracy Law.

Furthermore, an organized criminal group is defined as an “association whose common purpose laying the foundation of its unifying relationship is to commit a crime listed in Annex 3.” (Article 6 (2) 1 of the Conspiracy Law). It is not immediately obvious, however, whether an “association whose common purpose laying the foundation of its unifying relationship” is limited to those associations whose primary purpose is to commit an offence listed in Annex 3. It is, after all, a matter to be judged based upon the totality of all of the circumstances in the light of social conventions. This is true for general elements of other offenses. The then-Minister of Justice Kaneda provided the following clarification at the Audit Committee of the House of Councilors on 5 June, 2017. “Whether or not the definition of an organized criminal group applies to a

particular group is not to be judged solely on the basis of its stated objectives or the objectives asserted by its members. Whether or not the purpose of the group is to commit certain serious crimes is examined holistically, considering the actual activities of the group in question". Furthermore, Minister Kaneda stated at the Budget Committee of the House of Representatives on 17 February, 2017 that "even an organization that was originally engaged in legitimate activities may be charged as an organized criminal group if and when it is found that its purpose has turned into committing a crime". He also said at the House of Councilors' plenary session on 29 May, 2017 that "even if the externally stated purpose of a group is to protect the environment or human rights, it may be charged as an organized criminal group if its manifested purpose is only a cover and the group's real common purpose laying the foundation of its unifying relationship is deemed to be to commit certain serious crimes. Under such circumstances, the group's members shall be punished for the crime of preparation of terrorist acts." Those statements in the legislative process demonstrates the Government's intent to apply the crime of conspiracy to civic associations and clubs of ordinary citizens. There is an undeniable risk that investigative agencies may intensify their level of scrutiny and gathering of intelligence on civil society organizations, under the suspicion that protection of the environment or human rights is only a "cover".

As discussed above, the Government Report's claim that "the crime of conspiracy was legislated in accordance with the TOC Convention" is untrue, at least with respect to the definition of "organized criminal groups" to which the crime of conspiracy applies.

### ③ Open-ended elements for the crime of conspiracy

The Government Report, in paragraph 52, claims that "three strict elements...are stipulated to constitute an act of preparation for terrorism and other organized crimes." One of the elements is "the 'planning' of a serious crime". This, like the other two elements ("the involvement of 'organized criminal groups'" and "the 'act of preparation for execution' of the planned crime"<sup>3</sup>), cannot be characterized as "strict " in any sense of the word. With the inadequate legal system for the protection of privacy in Japan, there is a very high risk that a criminal investigation into the presence of a "plan" will result in a violation of human rights.

This is not the only factor leading to an increased risk of human rights violations. A broad scope of crimes subject to the crime of conspiracy further adds to this risk. Prior to the legislation of the Conspiracy Law, acts of conspiracy criminalized at the "planning" stage had been limited to those acts that would be extremely dangerous in and of themselves and likely to cause widespread damage. The number of such crimes had little more than two dozen. The Conspiracy Law has increased this number tenfold to 277 (+  $\alpha$ ). With conspiracy to common crimes being made punishable, the resulting wide scope of criminal investigations will in turn lead to an increase in the number of human rights violations on a corresponding

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<sup>3</sup> Even these two elements are too broad to identify the elements of the crime. In essence, the so-called crime of "the act of preparation for terrorism and other organized crimes" is the crime of conspiracy.

wide scale, including that of privacy.

(3) Lack of clear limitations to the scope of the crime of conspiracy

As has been pointed out above, the three elements of the crime of conspiracy - “the involvement of organized criminal groups”, “the planning of a serious crime” and “the act of preparation for execution of the planned crime” - lack the clarity required by the Criminal Code. The Government Report in paragraph 53 further argues, however, that “criminal intent” is necessary for all three elements, and “a person cannot be punished on the grounds that he/she was involved in these three elements without his/her knowledge.”

To date, however, the Japanese criminal court has recognized "dolus eventualis" as criminal intent in many cases, and “implied conspiracy”<sup>4</sup> as conspiracy in some cases. There was even a recent court case that recognized “implied conspiracy by dolus eventualis”<sup>5</sup>. As these cases indicate, it is quite likely that investigators may infer implicit criminal intent conspired in a group from just one group member’s state of mind, and conduct a criminal investigation to confirm such an inference. Under Japan's inadequate legal system for the protection of privacy, however, no effective measures are in place to avert such investigations.

(4) Too many crimes subject to the crimes of conspiracy

When the Government tabled the Conspiracy Bill in March 2017, it selected 277 offences (and the newly established crime of bribery of a witness) as crimes subject to the crime of conspiracy “based on the standard of whether or not it is realistically anticipated that organized criminal groups would plan to commit the crime”, an explanation repeated in the Government Report in paragraph 54.

In a survey of the number of "serious crimes" around the world published by the Ministry of Foreign Affairs (MoFA) in March 2017, many countries had less than 100 "serious crimes", including 46 in Spain, 71 in Finland, 77 in Sweden and approximately 100 in Switzerland. Prior to the legislation of the Conspiracy Law, Japan already had over 20 crimes for which conspiracy was punishable, and approximately 50 “preparatory crimes” or “preliminary crimes”, as well as a number of punishable attempted acts, as opposed to actual crimes perpetrated. Japan’s pre-Conspiracy Law criminal legal system had been comparable to the aforementioned countries. This system constitutes Japan’s “domestic legal tradition, principles and fundamental laws”.

In the process of negotiating the TOC Convention, moreover, it was proposed that the following "list of

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<sup>4</sup> An "implied conspiracy" is "a conspiracy in which the intentions are found to be implicitly congruent, even if such intentions have not been expressed", and a famous case that recognized this is the Swat case (decided by the Supreme Court on 1 May, 2003).

<sup>5</sup> Tokyo High Court ruling of 18 May, 2017 on a case of violation of the Public Office Election Act in the Shizuoka mayoral election.

serious crimes”<sup>6</sup> be included in the Convention.<sup>7</sup>

1. Illicit trafficking in narcotic drugs and psychotropic substances
2. Trafficking in persons, in particular women and children
3. Illicit trafficking in and transport of migrants
4. Counterfeiting of currency
5. Illicit trafficking in or stealing of cultural objects
6. Illicit trafficking in or stealing of nuclear materials, their use or threat to misuse them
7. Acts of terrorism as defined in the pertinent international conventions
8. Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.
9. Illicit trafficking in or stealing of motor vehicles, their parts and components
10. Illicit trafficking in human organs and body parts
11. All types of computer and cyber crimes and illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds
12. Kidnapping, including kidnapping for ransom
13. Illicit trafficking in or stealing of biological and genetic materials
14. Extortion
15. Fraud relating to financial institutions

The only crimes in the above list that were not punishable under the existing Japanese laws as “attempted criminal acts, distinct from perpetrated crimes” were the “trafficking of people” and “fraud against financial institutions”. Therefore, it would have sufficed to make preliminary acts punishable for these two crimes.

There was thus no need to make the conspiracy of as many as 277 new crimes (plus the newly created crime of bribery of a witness) punishable offences. If anything, making such a large number of crimes subject to conspiracy does more harm than good in the context of Japan's completely inadequate legal system for the protection of privacy.

(5) Improper forms of investigation by investigative agencies

In Japan, the actual initiation or perpetration of an act is generally required to constitute a criminal act. . Even during investigations of such crimes, however, it is well known that there have been numerous cases

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<sup>6</sup> Serious Crimes List proposed at Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (A/AC.254/5/Add.26)

<https://www.unodc.org/unodc/en/treaties/CTOC/background/session10.html>

<sup>7</sup> The proposal attracted the support of a significant number of countries. Amid objections to the inclusion of crimes of terror that were not compatible with the objectives of the Convention, however, an agreement was not reached.

of extended detentions and forced confessions, which have led to false convictions. If such investigative techniques commonly used in Japan were to be used to investigate conspiracy to commit as many as 277 crimes, it is extremely likely to result in even more violations of human rights. Moreover, Japan's legal system for the protection of privacy is completely inadequate. The more aggressive the investigative agencies are, the more rampant the human rights violations will surely be. The Government did not respond to a question asked at the Diet whether it had plans to amend the Interception of Communications Act so as to make the crime of conspiracy subject to interception and wiretapping of communications. The Government's silence can be inferred that a plan may be underway to do so.

The Government's Report asserts that "the concern that the crime of the act of preparation for terrorism and other organized crimes leads to the unfair restriction or violations of the rights of the citizens is unfounded, and no specific examples of this happening exist to date. (Paragraph 56)". It is true that the Conspiracy Law has not been applied amidst strong criticism of the Law, with bills to repeal it being proposed by both Houses of the National Diet. Among the over 20 crimes of conspiracy predating the Conspiracy Law, however, the crime of conspiracy to commit assault (Article 1 (29) of the Minor Offenses Act), has been applied in 20 cases since its enactment, according to Police Department statistics.

The crime of conspiracy to commit assault applies when, among those who conspire to do bodily harm to another person, one commits a preliminary act. Since it is a violation of the Minor Offenses Act, the punishment is either detention or a fine, and it is not regarded as a serious crime. Investigative agencies have prosecuted these minor offenses. In light of this current practice, the crime of the act of preparation for terrorism may deliberately be applied to even minor offenses.

Another case in point is the criminal case against the Kansai Region Ready-mixed Concrete Branch (KRRCB) of the All Japan Construction & Transportation Solidarity Workers' Union. KRRCB was accused of the crime of conspiracy to participate in the planning of the crime of forcible obstruction of business but not its execution<sup>8</sup>. The investigative agencies often resort to forcible obstruction of business to suppress collective action. An unjustified investigation and extended detentions were carried out to prove the conspiracy.

Under these circumstances, the Conspiracy Law must be repealed as soon as possible. Otherwise, citizens may eventually suffer unjustified restrictions and violations of their rights amid the abuse of crimes of conspiracy.

KRRCB is an industry-wide labor union, mainly composed of drivers who transport ready-mixed concrete

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<sup>8</sup> If two or more persons conspire to commit an offence and some of them commit the offence with a joint intention, the person who did not commit the offence shall also be punished as a joint positive offender.

to construction sites. It has sought to improve wages and working conditions through collective bargaining with employers made up of small and medium-sized companies. By doing so, they have built an equal footing with large corporations and general contractors, and has been working to monitor compliance of the companies with laws and regulations at construction sites.

Since July 2018, a total of 89 KRRCB members have been arrested by the police in four prefectures, of whom 71 were indicted at the four district courts. The Labor Union Act grants criminal impunity to labor dispute actions. Nevertheless, such union actions as strikes demanding higher wages, the distribution of leaflets, demands that daily workers be made permanent, and monitoring of compliance were regarded as forcible obstruction of business and attempted extortion, among other crimes. Moreover, it was the Organized Crime Department of the Shiga Prefectural Police that took charge of the investigation into KRRCB. This was an investigation that regards a labor union as an "organized criminal group", regardless of its foundational purpose. While the union members allegedly accused of these crimes were released on bail, the president and vice president of KRRCB who were alleged to have "conspired" to commit the crimes were detained for a long period of time, exceeding one year and nine months. They were finally released on bail on 29 May and 1 June 2020 respectively. This is nothing short of arbitrary detention by the standards of the international human rights laws. The investigative agencies and the courts acted on the premise that "conspiracy" is a punishable offense, just as under the Conspiracy Law. In addition, the bail conditions for the accused in this case prohibit contact with other union members and access to union facilities. This is another way of viewing the union as an "organized criminal group".

The legislation of the Conspiracy Law gave rise to concerns that the arbitrary application of crimes of conspiracy would result in unjustified restrictions and violations of human rights. But in fact, these concerns had already existed in investigations and criminal proceedings for the preexisting crime of conspiracy to participate in the planning of a crime but not its execution. KRRCB filed a lawsuit against the local government, to which the police, prosecutors and the court belong, as well as the State, claiming damages for the illegal investigation.

Additionally, intrusive investigative methods are also commonly used in Japan in cases involving crimes of defamation or the Act on Prevention of Transfer of Criminal Proceeds, in which entire computers of individuals and organizations are seized and all data is copied to search for collusion. Such investigation methods lack any consideration to protect privacy.

(6) Lack of transparency or legal restrictions on PSP's operations

The enactment of the Conspiracy Law ignored the current state of inadequate protection of privacy in Japan. In a 18 May, 2017 letter to Prime Minister Abe, Joseph Cannataci, UN Special Rapporteur on the right to privacy, noted that:

"Our initial assessment of the current draft would suggest that the new law (note: the Conspiracy Law) or accompanying measures would not introduce any new additional specific articles or provisions which would

establish appropriate safeguards for privacy in an environment where increased surveillance would be required to establish the existence of an offence under the new proposed anti-terror law.”

He also said at a symposium held at the Japan Federation of Bar Associations on 2 October of the same year that:

“Is there an independent body in Japan to monitor activities such as collection and use of information? Which agency, established by law, is responsible for overseeing intelligence and surveillance activities in Japan? Where are the remedies for citizens? Is there a remedy when the agencies that conduct such surveillance cross the line? And where are the laws that set those limits? I've been studying such issues myself for 30 years, including the situation in Japan, but there is no such law in Japan at this time.”

Japan's intelligence agencies consist of the PSP, the Public Security Intelligence Agency, the Self-Defense Forces Intelligence and Protection Unit, the Cabinet Intelligence and Research Office, and the National Security Agency. The PSP plays a central role among them through personnel exchanges and information sharing.

The PSP openly admits that it collects and exchanges personal information with "business operators" (in a statement by the Director of the National Police Agency (NPA)'s Security Bureau at the House of Councilors' Cabinet Committee on 4 June 2015). The PSP has not clarified the legal basis for this, however.

The practice was seen on 24 July, 2014, when the Ogaki Police Office Security Division (an arm of the PSP) of the Gifu Prefectural Police Headquarters, having gathered personal information on four citizens, called a business operator, C-Tech. The Ogaki Police is reported to have provided this information to this company, saying that “You may not be able to proceed with business as planned, if these (four) individuals were to develop a major campaign in collaboration with the Gifu Godo Law Firm” (note: a local human rights law firm).

The four individuals filed a request for disclosure of their personal information to the Gifu Prefectural Police Headquarters in accordance with the Gifu Prefecture's Ordinance on Protection of Personal Information, only to have their request denied, without any indication as to the presence of such personal information on file. The Gifu Prefectural Review Board on Protection of Personal Information, an appeals body, also followed suit, upholding the application of the exceptions to the Ordinance. However, the existence of the Ogaki Police's above statement itself was confirmed by the minutes taken by C-Tech, and subsequently obtained by the four individuals through evidence preservation procedures. Nonetheless, the plaintiffs do not have the right to demand that their personal information be expunged, as the existence of such information on file has not been officially acknowledged. The four individuals filed a lawsuit for state compensation against Gifu Prefecture (essentially the Gifu Prefectural Police) in December 2016, adding as a defendant the State (essentially the NPA) in January 2018, seeking the deletion of the personal information of the plaintiffs retained by the PSP.

The defendants refused to acknowledge any facts on this case. The defendants referred to "maintenance of public safety and order" in Article 2 (1) of the Police Act as the legal basis for gathering and exchanging information. The Police Act is an organizational law that provides for the establishment of police organizations, however. It is legally inappropriate to interpret that the police is permitted to arbitrarily collect, store, and use personal information for the very purpose of the police organization i.e. the "maintenance of public safety and order". The court has urged the defendants to "clarify the legality of the collection of information, even in general terms," but the defendants have not responded.

On the one hand, criminal policing is subject to various orders and rules, under the Code of Criminal Procedure and other relevant laws, which set out the purposes and procedures for collecting information and the time limits for retaining such information. On the other hand, PSP faces no such legal restrictions. This is not normal.

Given that the Conspiracy Law ostensibly serves "counter-terrorism" purposes, it is the PSP that has jurisdiction over crimes of conspiracy. The PSP is also responsible for investigating cases related to the Act on the Protection of Specially Designated Secrets (SDS). The fact that the activities of the PSP are effectively above the law, unfettered and unbound by any legal framework means that there is an extremely high probability of privacy violations.

It would be difficult to prohibit the investigative agencies from collecting (as well as storing and using) any personal information at all. That is why there is an absolute need for laws defining the purpose of collection, types of information to be collected, methods of collection and period of storage. There is also the need to set up an independent monitoring body to deter violations of privacy that deviate from the law and to conduct proper checks. There should also be a legal procedure whereby a court can conduct an in-camera inspection in court cases. But Japan's Freedom of Information Act has no provision for such measures.

Crimes of conspiracy should be repealed, in the context of Japan's inadequate legal system for the protection of privacy, and in direct conflict with Japan's "domestic legal tradition, principles and fundamental laws", as Prof. Cannataci pointed out.

Even if the legal system for the protection of privacy is strengthened in Japan in equal measure to those in the UK and US, where crimes of conspiracy are also sanctioned, the Conspiracy Law should be suspended at least until the legal system for the protection of privacy is fully functioning.

## Chapter 2. The Act on the Protection of Specially Designated Secrets

(In response to Paragraph 25 of LoI)

### 1. Recommendations

In principle, the Act on the Protection of Specially Designated Secrets (The SDS Act) should be repealed. Even if it is not totally repealed, the following amendments are necessary. The State Party shall:

(1) define categories and subcategories of information classified under the SDS Act more strictly and ensure that designations under the SDS Act strictly comply with the International Covenant on Civil & Political Rights (ICCPR).

(2) ensure that no one is punished for disseminating information that serves a legitimate public interest that does not infringe on national security.

(3) establish an independent oversight mechanism with the power to inspect and seek disclosure of secrets.

In particular, the State Party should strengthen the power of each members of the Boards of Oversight and Review (BOR) to ensure that they have access to the information they need.

(4) stipulate in the SDS Act that no secrecy designation should be made for illegal government actions.

(5) set a cap on the number of extensions to the designation of specially designated secrets (SDSs).

(6) establish a system to ensure that administrative documents containing SDSs are preserved until the expiration of the valid period of SDSs. When the retention period expires, all the documents must be transferred to the National Archives and other institutions, in principle, without being destroyed.

### 2. Reasons for the recommendations

#### (1) Issues under ICCPR

The SDS Act does not comply with the Article 19(2) of ICCPR in the following respects

- ① The definition of information classified under the SDS Act is broad and vague;
- ② Lack of measures to minimize SDSs;
- ③ The lack of sufficient independence and authority for oversight mechanisms for the operation of the SDS Act; and
- ④ Imposing heavy penalties that can have a serious chilling effect on journalists and human rights defenders.

#### (2) Past Recommendations from the Human Rights Committee

The Human Rights Committee, in its sixth review of the Government Report, issued the following recommendations with respect to the SDS Act.

“23. The Committee is concerned that the recently adopted Act on the Protection of Specially Designated Secrets contains a vague and broad definition of the matters that can be classified as secret and general preconditions for classification, and sets high criminal penalties that could generate a chilling effect on the activities of journalists and human rights defenders (art. 19). The State party should take all necessary measures to ensure that the Act on the Protection of Specially Designated Secrets and its application

conform to the strict elements of article 19 of the Covenant, inter alia by guaranteeing that: (a) The categories of information that could be classified are narrowly defined and any restriction on the right to seek, receive and impart information complies with the principles of legality, proportionality and necessity to prevent a specific and identifiable threat to national security; (b) No individual is punished for disseminating information of legitimate public interest that does not harm national security.”

(3) The Government response to the above recommendations

After the above recommendations, the Implementation Standards for the SDS Act were established. As discussed below, however, the Implementation Standards are inadequate and seriously flawed.

(4) Paragraph 25 of LoI, Question 1

With reference to the previous concluding observations (para. 23), please report on the measures taken to ensure that the categories and subcategories of information that can be classified as secret under the Act on the Protection of Specially Designated Secrets are narrowly defined.

The Government has not taken any new measures such as revising the Implementation Standards to strictly define the categories and sub-categories of information that can be designated as SDSs. The 23 items in the four fields listed in the Annex to the Act and the items set forth in the Implementation Standards all remain broad and abstract in their wording.

For example, Field 1 "Matters relating to Defense" in the Appendix to the SDS Act contains an entry for "the operation of the Japanese Self-Defense Forces (SDF) or estimates or plans or research relating to it". This definition contains a wide range of information.

The Implementation Standards, which are said to have been embodied and subdivided, are specified as follows.

“SDF operations or estimates, plans, or studies related to SDF that relate to the following matters (a) training or exercises of SDF; (b) intelligence gathering and vigilance monitoring activities of SDF; and (c) defense mobilization, security mobilization, deployment of SDF facilities, and other actions of SDF to ensure the security of Japan, as defined in SDF Law.”

These (a), (b), and (c) encompass nearly all of the activities conducted by SDF.

It cannot be said that these Implementation Standards strictly define the categories and subcategories of information that can be designated as confidential.

(5) Paragraph 25 of LoI, Question 2

that any restriction on the right to seek, receive and impart information complies with the principles of legality, proportionality and necessity to prevent a specific and identifiable threat to national security.

① The Government Report does not directly answer the question and misses the point.

To begin with, the SDS Act does not incorporate the principles of legality, proportionality and necessity into the requirements for designation as a specified secret. The Government has not taken any new steps to resolve this issue, including amending the law.

BOR in the House of Representatives issued an opinion requesting that the Government "take the opportunity of the five-year anniversary of the enforcement of the law to scrutinize again whether the determination of the applicability of the requirements for designation as a specified secret in each administrative agency is being made in a cohesive manner" on page 126 of its 2019 annual report<sup>9</sup>. It is presumed that each administrative agency judges the applicability of the requirements for designation as a specified secret at its own discretion and that the Government does not make a uniform designation. Thus, there are no "measures being taken to ensure compliance with the principles of legality, proportionality and necessity" by the various administrative agencies in designating specified secrets.

② In Japan, the secret designation may be further extended upon the expiration of the effective period of the secret designation. There is no limit on the number of times this secret designation can be extended. The Government may extend the designation as many times as it wishes. Therefore, setting an effective period for the designation of secrecy is likely to be meaningless in practice. There should be an upper limit to the number of times the designation of a specific secret can be extended.

③ Furthermore, in Japan, the expiration of the valid period of a specific secret does not mean that the specific secret is disclosed. Nor does it mean that the expiration of the effective period of the secrecy designation or the fact that the secrecy designation has been terminated is made public. First, a large number of specified secret documents with a retention period of less than one year have already been destroyed. The 2017 Annual Report<sup>10</sup> p.80 of BOR in the House of Representatives states that "the Cabinet Intelligence and Research Office reported that the total number of specified secret documents with a retention period of less than one year that were destroyed during 2016 was 444,877 (including duplicates)". When contrasted with the fact that the number of specified secret documents at the end of 2016 was 326,183 (not including reproductions), the number of destroyed documents is very high.

In addition, when the designated period of 30 years or less for a specified secret expires, the specified secret is to be destroyed with the consent of the Prime Minister if it is determined by the head of the administrative organ that designated it as a secret that it does not fall under the category of "historical documents, etc.". Since it is an administrative body that determines whether or not the document falls under the category of "historical documents, etc.", the determination of whether or not it falls under the category of "historical documents, etc." may be made arbitrarily, and the document may be easily destroyed on the grounds that

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<sup>9</sup>[http://www.shugiin.go.jp/internet/itdb\\_annai.nsf/html/statics/shiryō/2019annualreport.pdf/\\$File/2019annualreport.pdf](http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryō/2019annualreport.pdf/$File/2019annualreport.pdf)

<sup>10</sup>[http://www.shugiin.go.jp/internet/itdb\\_annai.nsf/html/statics/shiryō/2017annualreport.pdf/\\$File/2017annualreport.pdf](http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryō/2017annualreport.pdf/$File/2017annualreport.pdf)

it does not fall under the category of "historical documents, etc.". In such a case, it would not be possible to objectively and ex-post facto verify whether the document does fall under the category of "historical documents, etc." or not, and there is a risk of allowing the administrative organs to operate arbitrarily, from the designation to destruction of the Specified Secret. This would lead to information control by administrative organs and infringe upon the people's right to know.

Therefore, there is a risk that the information may be destroyed after the expiration of the secrecy designation without the public ever knowing of its existence.

A system should be established to ensure that administrative documents containing specified secrets are preserved until the expiration of the period of validity of the specified secret designation, and when the preservation period has expired, all of the documents must be transferred to the National Archives, etc. in principle, without destroying them.

(6) Paragraph 25 of LoI, Question 3

and that no individual is punished for disseminating information of legitimate public interest that does not harm national security.

① Article 22(2) of the SDS Act stipulates that "the act of interviewing by a person engaged in the business of publishing or news reporting shall be considered as a legitimate business act insofar as it is solely for the purpose of serving the public interest and is not considered to be in violation of laws and regulations or in a highly improper manner".

② However, the scope of those engaged in the business of publishing or news reporting are too limited. Such protection does not extend to the general public except for journalists.

③ Even for those engaged in the business of publishing or news reporting, it is difficult to reveal the details of the act of interviewing in terms of confidentiality of the source of the interview, and it is difficult to argue and prove that the interview was not conducted in an unfair manner.

In Japan, on 31 May, 1978, the Supreme Court ruled that Mainichi Shimbun reporter Mr. Nishiyama was guilty of violating the National Civil Service Act after he was accused of receiving secrets from a MoFA official in connection with the Okinawa Reversion Agreement. The Supreme Court ruled that Nishiyama's method of interviewing the journalist was found to be that he had had physical relations with a female civil servant from the outset with the intention of using it as a means of obtaining confidential documents, and took advantage of the fact that the woman was in a psychological state where it was difficult for her to refuse the defendant's request because of this relationship to have the confidential documents removed from her. It has been determined that the method "seriously violated the personality of the subject of the interview" and therefore deviated from the scope of legitimate journalistic activity. Thus, in Japanese courts, even if the method of interviewing does not constitute a violation of laws and regulations such as theft, if the method is unethical, it is not protected as a legitimate business act. And the criteria for determining the

unfairness of this reporting method are ambiguous. Thus, the cases in which journalists are protected are likely to be very limited.

Such Japanese decisions are significantly less protective of journalists than those of the European Court of Human Rights: the case of *FRESSOZ AND ROIRE v. France* of 21 January 1999 (*FRESSOZ and ROIRE v. France* (application no. 29183/95) ), a ruling on the criminal liability of two French journalists for the use of stolen tax documents in an article. The two journalists reproduced excerpts of tax records showing that the managing director of French auto giant Peugeot had received a significant raise, showing that the CEO and management team had received more than 60 percent raises for the past three years. At the time, Peugeot employees were on strike for a raise, but management argued that the company was not in a financial situation to give it. The article had social repercussions. After writing the article, FressoZ, the magazine's then-editor-in-chief (publication director), and Loire, the journalist who wrote the article, were convicted for obtaining and publishing documents allegedly obtained through a breach of confidentiality by an unidentified tax official. Both therefore lodged a complaint with the European Court of Human Rights, claiming that the conviction violated their freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

As a result, the European Court of Human Rights held that Article 10 of the European Convention on Human Rights guarantees that if an illegal act is committed in the process of obtaining information in the public interest, it shall not be subject to criminal penalties if the benefit gained from the publication of the information outweighs the benefit lost from the illegal act, and ruled in this particular case that the benefits outweigh the losses.

In Japan, however, there is no such balancing of benefits. As soon as a journalist is found to have violated the law or to have done so in a grossly unfair manner, he or she is no longer protected.

(7) Paragraph 25 of LoI, Question 4

In addition, please comment on the report that the oversight mechanisms established by the Act lack sufficient independence and do not have guaranteed access to the information necessary to determine whether its designation as secret is appropriate.

Paragraph 31 of the International Principles on National Security and the Right to Information (the so-called "Tshwane Principles") stipulates that " States should establish, if they have not already done so, independent oversight bodies to oversee security sector entities, including their operations, regulations, policies, finances, and administration. Such oversight bodies should be institutionally, operationally, and financially independent from the institutions they are mandated to oversee". However, the oversight mechanism is not sufficiently independent under the SDS Act.

There are three main oversight mechanisms established with respect to the SDS Act.

① Inspector General for Public Records Management (IGPRM)

IGPRM is established in the Cabinet Office and consists of only one prosecutor. Because it is impossible for a single prosecutor to monitor the Government's vast amount of specified secrets, the Information Security Oversight Division (ISOD) is organized under IGPRM.

However, ISOD has been criticized for the fact that at the beginning of the implementation of the SDS Act, many of its employees were seconded from the agencies that handle specified secrets, such as MoFA, the Ministry of Defense (MoD), and NPA, and there are no reports that the problem has been resolved since then. Thus, it lacks substantive independence from the government agencies that designate specific secrets. In fact, there have been few instances of secrecy designations being lifted as a result of the IGPRM and ISOD's activities.

② BOR in both Houses of the Diet

BOR established in the House of Representatives and the House of Councilors, which also have a certain degree of independence, have been engaged in proactive investigative activities to ensure that the designation of secrecy is properly made.

However, for example, BOR in the House of Councilors, the 2019 annual report<sup>11</sup> state that a motion was submitted by three opposition party members requesting the presentation of specific secrets from the National Security Council and MoD, but was rejected. There are a total of eight committee members, five of whom are members of the ruling party, as members are assigned to each faction according to the proportionality of their membership. And each member of the committee is not empowered to request the presentation of specified secrets to the executive body. Therefore, if a member of the ruling party opposes the request for presentation in the panel, they cannot ask the Government to present the secret itself. This, it must be said, is a barrier to the Board's ability to conduct a full investigation as a review board.

In addition, BOR in the House of Representatives' 2019 annual report<sup>12</sup> states that the Government had declined in the past to present the minutes of the proceedings of the ministerial level meetings of the National Security Council, on the grounds that, due to its nature, space must be protected for frank discussions among the highest governmental heads in charge of national security, including the Prime Minister, Deputy Prime Minister, Foreign Minister, and Minister of Defense, and that the content of the discussions is uniquely sensitive. In 2019, at the request of BOR in the House of Representatives, only briefing hearings and Q&A on the agenda of one of the above ministerial meetings were realized, and again, it appears that no minutes of the meeting were presented.

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<sup>11</sup> <https://www.sangiin.go.jp/japanese/jyouhoukanshi/pdf/jyouhoukanshi2019-12all.pdf> pp.18-19

<sup>12</sup> [http://www.shugiin.go.jp/internet/itdb\\_annai.nsf/html/statics/shiryo/2019annualreport.pdf/\\$File/2019annualreport.pdf](http://www.shugiin.go.jp/internet/itdb_annai.nsf/html/statics/shiryo/2019annualreport.pdf/$File/2019annualreport.pdf)

As described above, BOR has no enforceable authority to require the Government to disclose specified secrets and has failed to act effectively as an oversight body. And there is no mechanism in place to verify whether the information designated as a specified secret was truly in need of secrecy designation. There is a need for a system to ensure that each member of BOR has access to the information necessary to independently determine the validity of the secret designation.

### ③ Council for Protection of Information (CPI)

CPI was established in accordance with the requirement to hear the opinions of experts when establishing or changing the Implementation Standards of the SDS Act. CPI can only give its opinion on Implementation Standards. CPI has no function to check on individual secret designations that are actually made.

Moreover, CPI has met only once a year since 2015, and when it met in May 2019, it lasted only one hour and 19 minutes. Published agendas<sup>13</sup> show that attendees have provided input, but it remains unclear whether or not the administration has decided to respond to them. One of the attendees stated that "I have repeatedly given the same opinion since I became a committee member," but even in response to this, no substantive governmental response has been given. Only the secretariat of CPI has responded, not the people in charge of the administrative agencies that actually designate the secrets.

Mechanisms for reflecting the views of the members of CPI are inadequate and do not allow for substantive discussion and consideration.

It should be noted that CPI met on 22 May, 2020, in the form of a rotating meeting, but no meeting was actually held. The summary of the meeting has not been made public at this time (in August 2020).

### ④ Summary

As mentioned above, we cannot say that the multi-layered oversight check system is working. Independence has not been ensured. Access to the information needed to determine the validity of the confidential designation is not guaranteed.

## (8) Paragraph 25 of LoI, Question 5

Please also clarify whether whistle-blowing regarding unethical behaviour in connection with the designation of information as secret is protected under either the Act on the Protection of Specially Designated Secrets or the Whistle-blower Protection Act.

① There is no provision for whistleblowing on specific secrets to be protected by laws such as the SDS

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<sup>13</sup> <https://www.cas.go.jp/jp/seisaku/jyouhouhozen/dai8/gijiyousi.pdf>

Act or the Whistleblower Protection Act. There is only a description of the protection of whistleblowers in the Implementation Standards of the SDS Act and not a system based on the law. Therefore, it is extremely ambiguous as to whether whistleblowers who call out the Government's arbitrary designation of secrets will be held criminally liable and the risk of prosecution has not been eliminated.

According to the annual report of IGPRM, there has never been a single report of whistleblowing. This may be due to a lack of legal backing for the system to protect whistleblowers.

② In Japan, there is no shortage of personal retaliatory attacks against whistleblowers.

With regard to the plan by Kakei Gakuen, a school corporation chaired by a friend of Prime Minister Abe's, to establish a new veterinary school in a national strategic special zone, Mr. Kihei Maekawa, who was the Ministry of Education, Culture, Sports, Science and Technology (MoECSST)'s administrative vice-minister, told MoECSST on 25 May, 2017, about a document that stated that the Cabinet Office had told MoECSST that it was "the Prime Minister's intention" and "the highest level of the Prime Minister's Office has said", he had been briefed by the Specialized Education Division last fall about the establishment of the veterinary school. And he disclosed that the administration had been skewed in its consideration of the new veterinary school because the Kakei Gakuen had been the de facto assumption in the consideration<sup>14</sup>. But on 22 May, just days before this disclosure, the Yomiuri Shimbun ran an article claiming that Maekawa "frequented a dating bar in Kabukicho, Shinjuku Ward, Tokyo, a place where he negotiated for prostitution and assisted dating while in office. Consistent with this, Chief Cabinet Secretary Kan criticized Maekawa at a press conference on 26 May, saying, "It is unthinkable that the chief executive of the education administration would go to such establishments and give pocket money. At Maekawa's 25 May press conference, a Yomiuri reporter asked Maekawa if it would be a breach of confidentiality for him to release what he had learned while in office<sup>15</sup>.

Personal and preemptive retaliatory attacks were made on Maekawa, who attempted to blow the whistle on the illegal fact that the administration's decision-making process had been distorted, in an attempt to diminish the effectiveness of the whistleblowing by reporting the scandal that he had been monitoring his private life and going to a dating bar<sup>16</sup>, as well as to silence him by pointing out the possible breach of

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<sup>14</sup> Asahi Shimbun Digital, 24 May, 2017, 9:54 p.m.: "Kakei Gakuen documents 'shown last fall,' former deputy education minister testifies," [https://www.asahi.com/articles/ASK5S6WJQK5SUTIL05G.html?ref=pc\\_ss\\_date](https://www.asahi.com/articles/ASK5S6WJQK5SUTIL05G.html?ref=pc_ss_date)

Asahi Shimbun Digital, 25 May, 2017, 5:00am: "Former Education Vice Minister 'shown documents' d Kakei Gakuen 'testifies over PM's intentions'" [https://www.asahi.com/articles/DA3S12954515.html?ref=pc\\_ss\\_date](https://www.asahi.com/articles/DA3S12954515.html?ref=pc_ss_date)

<sup>15</sup> Web discussion article delivered on 12 July, 2017, "Government's side should stop unlawful attacks on whistleblowers: the significance and legality of the actions of current and former employees of the MoECSST in terms of whistleblower protection legislation" <https://webronza.asahi.com/politics/articles/2017062300003.html>

<sup>16</sup> It is a standing bar where customers of the opposite sex can talk to each other in a casual manner. It has been pointed out that they have become a hotbed for prostitution and assisted dating.

confidentiality<sup>17</sup>.

In an interview with the Mainichi Shimbun<sup>18</sup> on 20 June, 2019, Maekawa responded as follows: 'I was summoned to the Prime Minister's Office around September or October 2016 by Kazuhiro Sugita, a deputy chief cabinet secretary from NPA, who said, "I heard you're going to a place called a dating bar in Shinjuku. I've heard it from the weekly magazine." Then the weekly magazine should have come to me, but they didn't.' 'I'm concerned that if Mr. Kan becomes the prime minister, we'll have an even worse police state and a politics of fear. Oh, by the way, when Sugita-san called me into the Prime Minister's Office, he said, "That happened to Deputy Minister XX of XX Ministry". So I wondered if we were all being followed. It wasn't just officials who had a weakness in their hands. That's what I thought'. Thus, the Japanese regime is using personal information gathered by PSP to seize politicians and bureaucrats' weaknesses and silence them.

Although MoECSST's internal documents at issue in the Kakei Gakuen case are not "specially designated secrets," the reality that personal attacks on the whistleblower are being made openly and openly is a dampening factor for whistleblowing.

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<sup>17</sup>The 8 June, 2017 issue of Shukan Bunshun, pp. 26-27, refutes the above Yomiuri Shimbun report by publishing an interview with a woman who says she met Maekawa at a dating bar. The woman, who now works at a department store, testified that she met Maekawa in 2011, that she met him about 30 times, that he provided her with personal and employment advice, that there was no sexual relationship whatsoever, and that she credits Maekawa with helping her finish school and get a job. The woman said she felt Maekawa was being slandered by the Government and the press because of his past relationship with her, so she consulted with her parents and contacted the press on her own to disclose these facts. Maekawa's purpose in going to the dating bar was to help these women, not for inappropriate activities such as prostitution or assisted dating.

<sup>18</sup> Mainichi Shimbun, 20 June, 2019: "If this is true, it's a 'modern-day special high school' ... former vice-minister Maekawa talks about the realities of the accusatory novel 'Prime Minister's Police'"

<https://mainichi.jp/senkyo/articles/20190620/k00/00m/010/008000c>

## Chapter 3. Supervisory body for the Public Security Police activities and other intelligence agencies

(In response to Paragraphs 9, 23, 24, 25 and 27 of LoI)

### 1. Recommendation

The State Party should establish a special supervisory body targeted at intelligence agencies, such as PSP, the Public Security Investigative Agency of MoJ, and a separate unit of SDF, intelligence unit of MoFA in accordance with the UN's Paris Principles. Such a body should be guaranteed:

- Organizational independence
- Appointment of an enthusiastic commissioner who can ensure independence
- Valid authority
- Adequate financial resources

### 2. Reasons for the recommendation

① The PSP has jurisdiction over investigations on the Conspiracy Law and the SDS Act, and has been involved in many of the cases discussed in the part 1 of this report<sup>19</sup>. There is no effective oversight mechanism of the activities of PSP within the Government. The National Public Safety Commission and the Prefectural Public Safety Commissions, which were established to democratically control the police, have become puppet organizations for the police and are not functioning at all.

② It is a domestic human rights institution that is expected to act as a monitoring and supervisory body for police activities. The Government has often pledged to establish such a body to the UN Human Rights Council. The Government proposed a bill to establish a domestic human rights institution i.e. Human Rights Commission, in MoJ in November 2012. However, this bill was scrapped due to strong opposition from the ruling Liberal Democratic Party (LDP) and has not been proposed to the Diet since. Although the Government's proposed Human Rights Commission has defects about its independence, LDP opposes the establishment of a body to oversee state institutions for the protection of human rights.

③ However, it is envisaged that even if a domestic human rights institution is established, this body will have to regulate a wide range of subjects, including public institutions and even private companies. It would be necessary and useful to establish a special supervisory body specifically for intelligence agencies, such as PSP, the Public Security Investigation Agency of MoJ, intelligence unit within MoFA and a separate unit of SDF.

④ In this report, we recommended the need for an independent body equipped with the authority to

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<sup>19</sup> The aforementioned cases of I Ch 1. 2. (6) surveillance of citizens in Ogaki, II Ch 1, 2. (8) (2) (i) testimony of Kihei Maekawa, III Ch 1. 2. (3) forcible removal of protesters jittering Prime Minister Abe.

supervise the agencies that designate specified secrets. While the main task of this body would be to ensure that the designation and termination of specified secrets is appropriate or not, the functions of this body could be expanded to include oversight of the overall activities of MoFA, SDF and PSP that designate specified secrets.

### 3. Background

Among the Japanese police forces, the PSP is an extremely secretive organization. It derives from the Special Higher Police, which tortured and killed many civilians to death for the fascist government before World War II (WW II). In pre-WW II Japan, people could not oppose the war. By simply expressing doubts about the conduct of the war, one was labeled "unpatriotic" and eliminated. The Security Law (1925, as amended in 1928) and the amended Military Secrets Protection Law (1937) were used as tools for this purpose, and the police force responsible for its operation was the Special High Police. This organization is comparable to the Gestapo in Germany, and was dismantled together with the abolition of the Security Law and the Military Secrets Protection Law by the United Nations i.e. the Allied occupation forces that occupied Japan after the Potsdam Declaration (October 1945).

With the end of the Cold War in the 1980s, the PSP seemed to have lost its significance, but it has gained the power since then, mainly as an organization to counter terrorism by the Aum Shinrikyo cult and Islamic extremists. In recent years, it has rapidly expanded its organization and power.