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**AMNESTY
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Dear Minister

OPEN LETTER: JAPAN'S CURRENT PROPOSAL TO ESTABLISH A NATIONAL HUMAN RIGHTS INSTITUTE DOES NOT MEET INTERNATIONAL STANDARDS

Amnesty International is concerned that the proposal being put forward to establish a National Human Rights Institute in Japan fails to meet international standards. As Japan approaches its second review under the UN Universal Periodic Review later this year, Amnesty International urges you and the Japanese government to take urgent steps to bring the draft bill for the establishment of a new National Human Rights Commission in line with international human rights standards including the Principles relating to the status and functioning of national institutions for protection and promotion of human rights, adopted by the UN General Assembly on 20 December 1993 (Paris Principles). The concerns raised below were also communicated to your predecessor in the post of Minister of Justice.

ESTABLISHING A NATIONAL HUMAN RIGHTS INSTITUTE IN JAPAN WHICH MEETS INTERNATIONAL STANDARDS

Amnesty International welcomes the initiative to establish a National Human Rights Institution (NHRI) in Japan after many years of deliberations. We have reviewed the "Basic Framework on the Establishment of a new National Human Rights Institution" published by the Ministry of Justice in August 2011 (Basic Framework). Amnesty International is concerned that the Basic Framework and the draft proposed Bill, which was developed on the basis of the Basic Framework and announced in December 2011, does not meet the standards set out in the Paris Principles.

Around the world a large number of effective NHRIs have been established, including in a majority of Asian countries.¹ This global experience demonstrates that an NHRI in Japan will have to be robustly independent if it is to effectively monitor human rights. As the Basic Framework appears to recognize, the NHRI should be designed and operate in a manner that ensures it is able to fulfil its important role effectively and efficiently. This aim can best be attained by ensuring that the NHRI meets or exceeds the standards set out in the Paris Principles.

Amnesty International's recommendations regarding the effective protection and promotion of human rights by National Human Rights Institutions are based on many years of research and global experience of their operations. Many of the recommendations given below are summarized from the

¹ Cited from the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights <http://nhri.ohchr.org/EN/National/DirectoryOfInstitutions/Pages/Asia-Pacific.aspx> contains details of the development of NHRIs, classifying them for their degree of compliance with the Paris Principles.

report: *National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights*" (AI NHRI Recommendations Report).² The UN Office of the High Commissioner for Human Rights has also published detailed guidance on the establishment and functioning of NHRI: *National Human Rights Institutions: History, Principles, Roles and Responsibilities (OHCHR Guide)*.³ These documents, combined with additional research over the past decade, provide the basis for Amnesty International's recommendations in this letter.

INSTITUTIONAL INDEPENDENCE AND LEGAL AUTONOMY OF THE PROPOSED NHRI

Amnesty International is deeply concerned by the proposal that the NHRI be affiliated with a government ministry, namely the Ministry of Justice. Such an affiliation would seriously compromise the institutional independence of the NHRI. The *OHCHR Guide* states that "[t]rue independence is fundamental to the success of an institution", that "[a]n institution that is a department of a government ministry, for example, is not independent", and that "[i]nstitutions that report to or through a ministry are in a less independent position than those reporting directly to parliament or to the Head of State."⁴ Amnesty International urges you to ensure that the proposed NHRI bill provides institutional independence for the NHRI by having it report directly to parliament or to the Head of State, in line with the United Nations guidance.

A FUNDING STRUCTURE THAT GUARANTEES THE INDEPENDENCE OF THE NHRI

Another issue that can seriously affect the independence of the proposed NHRI is funding. Amnesty International notes that the proposed NHRI, as an Article 3 Institution/body⁵ would have its budget set by means of incorporating a clause in the Ministry of Justice's budget. Amnesty International is concerned that this funding structure would not embody sufficient safeguards to protect the NHRI from being subject to influence or intervention by the government using its finances for leverage. Amnesty International therefore recommends that provisions should be added to the proposed bill to the effect that the NHRI must be allocated sufficient funds to allow it to carry out its mandated function properly, that the NHRI fully control and administer its funds, and that accounting and auditing be performed by independent bodies.

According to the Paris Principles, an NHRI should be funded so as "to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence". The *OHCHR Guide* specifically warns against "link[ing] an institution's budget to the budget of a government ministry" because "[e]ven if there is no actual interference, it may give the impression of a lack of independence."⁶

SELECTION AND APPOINTMENT OF HIGH COMMISSIONER AND OTHER COMMISSIONERS

The Basic Framework states that positions of High Commissioner and other Commissioners will be nominated from among people with "proper character" and "judgment for addressing human rights issues neutrally and fairly." Amnesty International believes that the Bill should also expressly provide that the High Commissioner and other Commissioners must demonstrate substantial knowledge and experience of human rights issues. Such criteria are needed to ensure that victims of human rights violations will turn to them with confidence.

In terms of the appointment procedure, Amnesty International is concerned that the Basic Framework states only that the High Commissioner and other Commissioners "will be appointed with the consent of both houses of the Diet". As provided in the Paris Principles, Amnesty International recommends that the proposed NHRI bill expressly provide that these posts be appointed only after a meaningful consultation with different sectors of civil society, including human rights non-governmental organizations (NGOs) and academic experts, and not only after the approval procedure by the Diet.⁷

² AI Index: IOR 40/007/2001 dated 1 October 2001, building on the foundation laid by the Paris Principles. Available at: <http://www.amnesty.org/en/library/info/IO40/007/2001/en>.

³ UN OHCHR, Professional Training Series No. 4 (Rev. 1), 2010. Available at: http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf

⁴ *OHCHR Guide*, pp. 39-40.

⁵ The Basic Framework proposes to establish the NHRI under the provisions of Article 3 of the National Government Organization Act.

⁶ *OHCHR Guide*, pp. 40-41.

⁷ Article 1 of the Paris Principles, under the heading "Composition and Guarantees of Independence and Pluralism", states as follows: "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all

Amnesty International urges you to ensure the selection and appointment of key NHRI functionalities is an open, transparent and inclusive process with ample scope for civil society to participate.

Amnesty International believes that the composition of the NHRI should represent as many sectors of society as possible, including those who are vulnerable to discrimination. Involvement of different sectors of the population of Japan in the process of selection and appointment of the High Commissioner and other Commissioners is necessary for this aim to be achieved.

DEFINITION OF THE SCOPE OF THE NHRI

In establishing the NHRI, it should be recognised that for any NHRI to play an effective role, it is very important to ensure that the founding statute defines its composition, functions, powers and procedures as comprehensively and clearly as possible while addressing the particular national context in which it is to function.

Amnesty International urges the drafters of the proposed NHRI bill to clearly define the range of human rights which the proposed NHRI is to protect and promote. This should be defined in the broadest possible terms as set out in international human rights law and standards, covering all rights recognised in the Universal Declaration of Human Rights, as well as the human rights treaties to which Japan is a party, and other standards adopted by the UN General Assembly, the Human Rights Council, and the former Human Rights Commission.

The mandate of the NHRI should not be defined solely in terms of those rights that are specifically provided for in the country's constitution, but rather explicitly permit the NHRI to consider and apply international human rights concepts directly.⁸ In keeping with the universal nature of human rights, the mandate should not be restricted to protection of the human rights of Japanese nationals, but extend to include anyone within the territory or jurisdiction of Japan.

REQUIREMENTS FOR EFFECTIVE POWERS OF INVESTIGATION

The Basic Framework and the draft proposed bill envisage that the NHRI delegate work to the offices and staff of the Legal Affairs Bureau and Regional Legal Affairs Bureaus which are under the jurisdiction of the Ministry of Justice. Amnesty International is concerned that such a structure would undermine the perception of independence of NHRI investigations such that victims groups may be unwilling to approach the NHRI for redress.⁹ As noted above, the Paris Principles specifically state that the funding to be provided to an NHRI should "enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."

LACK OF CLARITY IN NHRI'S AUTHORITY TO SUBMIT RECOMMENDATIONS TO THE EXECUTIVE; REVIEW LAWS AND LEGAL SAFEGUARDS

Amnesty International is concerned that the draft proposed bill does not clearly state that the NHRI will have the power to make recommendations to governmental departments. In addition, if the NHRI is to be affiliated to the Ministry of Justice, then Amnesty International is concerned that it will not be in a position to make effective recommendations to relevant ministries such as the Ministry of Justice.

The draft proposed bill also does not clearly specify that all relevant new legislative proposals should be provided to the NHRI, that it should be given the opportunity to examine their compliance with national

necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

See also *OHCHR Guide*, pp.37-39.

⁸ See *AI NHRI Recommendations Report*, pp 6-10; Paris Principles provisions on "Competence and Responsibilities"; *OHCHR Guide*, pp. 31-32, 106.

⁹ *AI NHRI Recommendations Report*, pp. 13-14; *OHCHR Guide*, p. 40 ("operational autonomy").

and international human rights law and standards and to make recommendations about the proposed legislation in this regard.¹⁰

NHRI AUTHORITY TO VISIT PLACES OF DETENTION

Amnesty International is concerned that neither the Basic Framework nor the draft proposed bill specifically proposes that the NHRI should have the power to carry out visits to any place where a person may be deprived of liberty, including without prior announcement of its intention to visit, and to speak confidentially with anyone held there. This is a crucial human rights monitoring function and can operate as an effective means of preventing treatment or conditions that fail to comply with human rights standards in places of detention.¹¹

TOWARDS A CREDIBLE AND EFFECTIVE NHRI

Amnesty International's concerns and recommendations are expressed in the hope of strengthening the very welcome proposal to establish a NHRI for Japan.

I am sure you will agree that the proposed NHRI must be, and must be seen to be, independent in its functioning from the government. Its structure, like its staff, members and Commissioners, should clearly demonstrate its commitment to human rights. Ensuring that from the very beginning the NHRI is designed and empowered to exercise manifest and substantial independence from both the executive and legislature will go a long way in enhancing its perception and functioning as an effective NHRI.

Amnesty International calls on you and the Democratic Party of Japan to seriously consider the recommendations set out above and ensure that the proposed NHRI bill reflects fully the Paris Principles and other UN guidance. We hope that the NHRI will, when established, quickly demonstrate itself to be an independent, impartial, credible and effective institution that will effectively uphold human rights for all individuals in Japan, and provide inspiration in Asia and beyond.

Yours sincerely

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¹⁰ Paris Principles, "competency and responsibilities", including "To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation."; *AI NHRI Recommendations Report*, p. 9; *OHCHR Guide*, p. 106.

¹¹ *AI NHRI Recommendations Report*, p. 19-20; *OHCHR Guide*, pp. 120-124.