

Submission to the Universal Periodic Review of Japan (3rd Cycle)

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Title: Extensive and Systematic Surveillance and Profiling of Muslims in Japan

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1. Introduction and Issue Summary

After the 9/11 attacks, so-called terrorist profiling has become an increasingly significant components of states' counter-terrorism efforts. Various international or regional human rights organisations indicated that terrorist profiling practices based on distinctions according to a person's presumed race, ethnicity, national origin or religion raise concern with regard to a number of human rights guarantees including the right to privacy and the principle of non-discrimination.

A massive information leak containing sensitive personal information through the Internet in October 2010 revealed that Japanese police have conducted systematic and extensive surveillance and information gathering activities targeting Muslims. Samples of leaked documents and their English translation are attached as **Annex 1 to Annex 9**.

The Attorney Team for Victims of Illegal Investigation against Muslims ("Attorney Team") have conducted various activities including filing suit against the Japanese police for compensation in order to advocate for Muslim victims and prevent illegal investigation against Muslims.

In January 2014, the Tokyo District Court issued a judgment rubber-stamping the extensive and systematic surveillance and information gathering activities targeting Muslims only as a counterterrorism measure. English translation of the judgment is attached as **Annex 10**. This decision was affirmed by the Tokyo Appellate Court and the Supreme Court.

Although investigation using profiling based on religion violates the international human rights obligations enshrined in the International Covenant on Civil and Political Rights ("ICCPR"), especially Article 2 (right to non-discrimination), 17(right to privacy), 18 (freedom of religion), and 26 (right to equal protection), Japanese government has continually denied systematic and extensive surveillance information

gathering activities targeting Muslims in its report to the UN treaty bodies.

In conducting surveillance and information gathering activities against Muslims, the Police have used nationality of OIC (Organisation of the Islamic Conference) member countries as the first criteria. If a person is from OIC member countries, the person will be the target of surveillance without any connection to wrongdoing. Although surveillance based on national origin violated the Article 2 and 5(d) of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).

Even after the information leak in October 2010, the police are likely to have continued a systematic and extensive surveillance and information gathering activities of Muslims and people from OIC member countries. Despite its violation of the ICCPR and the ICERD, the Japanese government has not taken any measures to prevent human rights violation of Muslims and people from OIC member countries. Also, the Japanese court in its recent judgment condones the police’s investigation activities violating the international human rights standard.

This report provides information about the extensive and systematic surveillance activities and profiling practices targeting Muslims and people from OIC member countries revealed from the leaked materials. It also provides information about the judgment issued by the Tokyo District Court on January 15, 2014, which is affirmed by the Tokyo Appellate Court and Supreme Court¹.

2 □ Factual Background

(1) Leak of Massive Personal Information

On or around 28 October 2010, 114 articles of data were posted on the Internet. In addition to numerous data regarding countermeasures against international terrorism (see **Annex1** to **Annex9**), the Data contained A4- sized pages resembling résumés (hereinafter referred to as “Résumés-like Page,” see **Annex7** for a sample) with the nationality, birthplace, name, gender, date of birth (age), current address, place of employment and vehicle for each of the plaintiffs. It also included information such as

¹ The judgment of the Tokyo Appellate Court, April 14, 2015. The decision of the Supreme Court May 31, 2016.

their date of entry, passport number and issue date, residence status, address at home country, duration of residence, registry date, municipality of residence and registration number listed under the heading “Entry and Residence Related”; their history regarding residence address, schooling and employment in Japan under “History of Addresses, Schooling and Employment”; as well as e.g. height, build, and the presence or absence of hair, beard, or eyeglasses under “Physical Characteristics”; names, dates of birth, employers and addresses of family members, under “Familial Relationships and Acquaintances”; the name of a mosque a person attended, under “Comings and Goings at Mosque”; and for some, the type, date obtained and number for their licenses under “Licenses”; date of arrest, offence, station of arrest and outcome under “Criminal Information”; as well as sections titled “Suspicious”, “Response Status and Policy”, “Affiliated Organisations”, “Status, Positions and Roles etc.”, “Visited and Frequented Locations”, and “Summary of Behavioural Patterns”. Some Résumés-like Pages contain religiously sensitive information such as participation in religious ceremonies or instructional activities (see page 5 of the **Annex10**).

For some Muslims, instead of Résumés-like Page, other type of documents were made, in which nationality, name, date of birth, passport number, residence status, employer and its address, place of birth, address at home country, address in Japan, mobile and home telephone numbers, family, entry and departure history in Japan and accessed mosques were recorded as “1 Particulars of Identity”, together with a specific and detailed account of exchanges and friendship with a particular Muslim individual under “2 Information on Suspicious.” See **Annex8** for a sample. Religiously sensitive information such as passion for missionary activities was in the document for some Muslims (page 6 of the **Annex10**). In addition, some of the information gathered by the police is shared by foreign agencies such as the FBI in the United States (see **Annex9**).

(2) Police’s Surveillance and Information Gathering Activities Targeting Muslims and People from OIC Member Countries

Leaked articles revealed that the police department in Japan, such as the Metropolitan Police Department, which serves as the police force for metropolitan Tokyo, had systematically and extensively monitored Muslims in Japan under the guidance of the National Police Agency, and collected and stored personal data obtained

from such monitoring. In conducting surveillance and information gathering activities against Muslims, the Police have used nationality of OIC member countries as the first criteria. If a person is from OIC member countries, the person will be the target of surveillance without any connection to wrongdoing (see **Annex1** to **Annex3**).

According to the leaked articles, the Tokyo Metropolitan Police Department and the National Police Agency had, as of 31 May 2008, assessed and digitalized the personal information of “roughly 12,677 individuals” equaling “roughly 89% of the 14,254 foreign nationals from Muslim countries registered in Tokyo”. And later, by the Hokkaido Toya Lake Summit convened July of that year, the same agencies had “profiled roughly 72,000 individuals from OIC (Organisation of the Islamic Conference) countries (assessment rate of 98%).” See **Annex3**.

The Metropolitan Police Department and the National Police Agency, since June 2008, as a countermeasure against international terrorism accompanying the Hokkaido Lake Toya Summit, stationed agents in mosques all around Japan with the mission of “detecting suspicious activities of mosque attendants”. The stationed agents detected and observed new arrivals and suspicious individuals at mosques. Then, they followed individuals to their homes, got their names and addresses from alien resident registration, and compiled them into a database (see **Annex4** and **Annex5**).

Extensive and systematic surveillance of mosques continued after the Summit. In addition to the mosque surveillance, the Metropolitan Police Department and the National Police Agency monitored various Muslim communities, including Islam-related non-profit organisations, halal shops, Islam-related restaurants, and Islam-related corporations, and systematically gathered information about these organisations. The gathered information includes the location of the organisations, names of representatives and officials, the amount of annual fee, financial situation including bank account information, name of account holders, balance of the account, and income and expenditure. Based on the information, the police created database of Islamic communities detailing the number of people coming from each OIC member countries (see **Annex6**). Also, surveillance cameras were set up around mosques and Islamic-related organisations.

Further, the Metropolitan Police Department and the National Police Agency, without any legal ground, (i) established a relationship with major automobile rental dealerships headquartered in Tokyo whereby they could receive user information without

a referral document and had that information submitted; (ii) had hotels reinforce their retention of foreign passport photocopies; (iii) acquired the history of paycheck deposits for staff working at the Iranian embassy, from banks; and (iv) obtained a roster of foreign students from the administrators at some universities, assessed the personal information of students from Muslim countries, and collected information on Muslims and Islamic-related organisations extensively. Targets of the surveillance and information gathering are selected solely because they are Muslims or from OIC member countries. As long as they are Muslims or from OIC member countries, the police collected personal information automatically and extensively regardless of criminal records, suspicion of crimes, probability of committing crimes, or affiliation with criminal groups (see **Annex1** to **Annex3**).

Importantly, in none of the targeted individuals did the surveillance and information gathering lead to detection of terrorism-related offences, according to leaked articles and other publicly available information.

(3) Actions of the Metropolitan Police Department and the National Police Agency

The Metropolitan Police Department and the National Police Agency recognized the leakage and commenced investigations. In reports about investigations, the Metropolitan Police Department and the National Police Agency acknowledged the fact that the data contain information with a high probability of having been handled by a member of the police force, but do not disclose specifics of how the data was removed. Also, during court proceedings, the Metropolitan Police Department and the National Police Agency did not acknowledge that the leaked data were those collected stored by the police. Further, neither of them has made apology to each Muslim victim.

It is not clear whether systematic surveillance activities targeting Muslims and people from OIC member countries continue after the leakage, because the police have not disclosed information about the surveillance. However, given that the Attorney Team have received reports from Muslims to the effect that mosques are surveyed, they are followed by detectives, they are frequently stopped and searched by the police, it is highly likely that the systematic and extensive surveillance of Muslims and people from OIC countries continues until now.

(4) The Judgment of the Court

A group of 17 Muslims victims, which include those from OIC countries such as Iran, Morocco, Algeria, and Tunisia, filed suit against the Metropolitan Police Department and the National Police Agency, demanding compensation for violation of various constitutional and statutory rights, including privacy and religious freedom. On January 15 2014, the Tokyo district court issued judgment. See **Annex10** for English Translation.

The court ordered the Tokyo Metropolitan Government, which is in charge of the Metropolitan Police Department, to pay damages to the plaintiffs for violating their privacy by leaking their personal data. The court ruled that the data were created by police, held by the Metropolitan Police Department's Public Security Bureau and leaked by some insider, and that the Tokyo Metropolitan Government was negligent in properly supervising the data. The court, however, also ruled that the Metropolitan Police Department's surveillance targeting Muslims and collecting and storing personal data collected thereof were legal and did not violate constitutional rights of the plaintiffs. Nor did it acknowledge any liability of the National Police Agency, which seems to supervise the surveillance program all over Japan. The court held that the police's information gathering activities were "necessary and inevitable measures for the prevention of international terrorism", and did not violate Article 14 (equal protection) and Article 20 (freedom of religion) of the Japanese Constitution because (i) mosque monitoring activities and other information gathering activities should be regarded as necessary activities for the police, (ii) the police's mosque monitoring and information gathering activities are not conducted "with the intention of meddling in the spiritual and religious aspects of Muslims", and (iii) "effects on the freedom of religion, if any, did nothing more than invite a sense of repulsion toward the presence of police officers in and around mosques." (page 20-21, and 22-23 of **Annex10**) Similarly, the court held that the police's surveillance and information gathering activities did not interfere with the privacy rights of victims, because they were "necessary and inevitable from the point of view of preventing international terrorism". (page 25 of **Annex10**)

The logic of the Tokyo District Court fell far behind international human rights standards. The Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submitted to the Human Rights Council on January 29, 2007 ("The Special Rapporteur Report"), noted that data-mining initiatives based on broad terrorist profiles that include group

characteristics such as religion or national origin may constitute a disproportionate and thus arbitrary interference with the right to privacy². The report also indicated that profiling practices based on religion or national origin used as a means of countering terrorism regularly fail to meet demanding proportionality requirement, and does not comply with the principle of non-discrimination under Article 2 and 26 of the ICCPR.

In addition, since the police's surveillance and information gathering activities are based on nationality of OIC member countries, the surveillance constitutes a racial discrimination based on national origin, and violates the Article 2 and 5(d) of the ICERD.

The judgment of the Tokyo District Court did not consider the issue of the police's surveillance and information gathering from the perspective of international human rights law, including the ICCPR and the ICERD.

The decision of the This decision was affirmed by the Tokyo Appellate Court and the Supreme Court³.

3. Recommendations from the UN Treaty Bodies and UPR

(1) Recommendations from the UN Treaty Bodies

In July 2014, UN Human Rights Committee showed the following concerns, and issued the following recommendations in its Concluding Observations on Japan⁴.

Surveillance of Muslims

20. The Committee is concerned about reports on widespread surveillance of Muslims by law enforcement officials (arts. 2, 17 and 26).

The State party should:

- (a) Train law enforcement personnel on cultural awareness and the inadmissibility of racial profiling, including the widespread surveillance of Muslims by law enforcement officials;

² UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin M'jid Scheinin, A/HRC/4/26, January 29, 2007.

³ The judgment of the Tokyo Appellate Court, April 14, 2015. The decision of the Supreme Court May 31, 2016.

⁴ CCPR/C/JPN/CO/6, para 20.

- (b) Ensure that affected persons have access to effective remedies in cases of abuse.

In August 2014, UN CERD Committee showed the following concerns, and issued the following recommendations in its Concluding Observations on Japan⁵.

Ethno-religious profiling of members of Muslim communities

25. The Committee is concerned about reports of surveillance activities of Muslims of foreign origin by law-enforcement officials of the State party, which may amount to ethnic profiling. The Committee considers the systematic collection of security information about individuals — solely on the basis of their belonging to an ethnic or ethno-religious group — to be a serious form of discrimination (arts. 2 and 5).

The Committee urges the State party to ensure that its law-enforcement officials do not rely on ethnic or ethno-religious profiling of Muslims.

(2) Recommendations from the Second-Cycle UPR

The judgment of the court was issued after the Second Cycle UPR of Japan, and the surveillance of Muslims are not pointed out in the UPR session.

□

4. Recommended Questions

- Has the Japanese government provided any compensation against Muslims whose sensitive personal information was leaked?
- Has the Japanese government provided a consultation service for Muslim victims?
- Has the Japanese government provided any procedures for correcting or deleting personal information of Muslims from its database in response to requests from Muslim victims?
- When the police gathered information based on Muslims from banks, hotels or other organisations, did the police take any measures not to promulgate discrimination against Muslims?
- After leak of personal information of Muslims, do the police still continue to conduct systematic and extensive surveillance against Muslims?
- Do the police still continue to gather information of Muslims from various organisations

⁵ CERD/C/JPN/CO/7-9, para 25,

such as major automobile rental dealerships, hotels, Internet providers, universities and banks?

- Do the police still continue to set up surveillance cameras around Islam-related institutions including mosques?
- What specific efforts have been made to review, modify or end surveillance and profiling based on Islamic or nationality of OIC member countries? For example, is there any guideline or order inside the police department not to disseminate discrimination against Muslims? Are there other examples?
- What steps will the Japanese government take to review, modify or end surveillance and profiling based on Muslims or nationality of OIC member countries?
- Do police still store all of the personal information collected by surveillance of Muslims and people from OIC member countries?
- How does the police analyse if a person has any relationship with terrorism?
- Does the government discard the personal information if it turns out that a specific individual has no relationship with terrorism?

5. Suggested Recommendations

- Acknowledge that the police's systematic and expansive surveillance targeting Muslims and people from OIC member countries violates of the Japanese government's obligations under the international human rights law, especially ICCPR and ICERD.
- All police departments of the Japanese government terminate systematic and expansive surveillance of Muslims and people from OIC member countries.
- Recommend that the police establish guidelines prohibiting profiling based on religion and national origin, and provide anti-profiling trainings for law enforcement.
- Train law enforcement personnel on cultural awareness and the inadmissibility of racial profiling, including the widespread surveillance of Muslims by law enforcement officials;