Report to the Human Rights Committee

On the issue of disclosure of evidence materials for just and fair justice system and

the issue of the Right to Privacy and the Japanese Family Register System "Koseki Seido"

For its consideration and adoption of

the List of Issues to Japan

At 109th Session (14 October – 1 November 2013)

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1. Background and Focus of the Report

Since the examination of Japan by the Committee in 2005, there have been three cases in which innocence of those who were originally accused by the prosecutor and sentenced to life imprisonment was proved through retrial. These cases once again highlighted the deficit in the justice system in Japan especially the issue of false accusation, the need for more transparent and visualized interrogation process and the access of the defense to the evidence materials held by the prosecutor as well as insufficient system for its disclosure. This report describes this issue in relation to the Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and make suggestions to the Human Rights Committee (the Committee) for its consideration and adoption of the List of the Issues to Japan.

Protection of private and sensitive information is another issue being highlighted in the report especially concerning the problematic of Family Register System ("Koseki Seido") in which highly private and sensitive information is collected and kept by the authority, whereby protection of such information is not thorough. The situation and cases of lacking protection are described here in relation to Article 17 of ICCPR. Suggestions for the List of Issues are also included in the end.

2. Article 14

2.1. Cases of false accusation and proved innocence through retrial

Since the examination of Japan by the Committee in 2005, innocence of three persons who were originally sentenced to life imprisonment was proved through retrial, in so called "Ashikaga" case in 2010, "Fukawa" case in 2011, and in the "TEPCO employee murder" case in 2012. The persons concerned were detained for 17 and a half years in Ashikaga case, 29 years in Fukawa case and 15 years in TEPCO case under false accusation. In all cases, disclosure of the evidence kept by the prosecutor was the key for starting the retrial and eventual judgment of innocence, while the lack of transparency in interrogation process was another ground for false accusation.

In Fukawa case and TEPCO case, the court ordered disclosure of evidence kept by the prosecutor which led to the start of the retrial. In TEPCO case in particular, things left behind on site and attached to the corpse were disclosed by the prosecutor upon court order. Through the DNA examination of the newly disclosed evidence, the real offender was identified and the innocence of the person concerned was proved. However, late and partial disclosure of evidence by the prosecutor led to the delay in the process as well as the continuation of the detention of innocent persons. The prosecutor had all the evidence

found in the investigation on hand, while the defense even could not see what kind of evidences the prosecutor has at all. In order to avoid false accusation and realize fair trial, access of the defense to the evidence hold by the prosecutor should be guaranteed and the possibility of disclosure of the evidence at least the list of all the evidence held by the prosecutor must be ensured through introduction of due procedure. The Committee through its examination of the fourth periodic report of Japan has already expressed concern and issued recommendation on this matter.[1] Current procedure of pre-trial stage and the revision of the Code of Criminal Procedure was explained in the State report in this regard.[2] However, disclosure of evidence materials still highly depend on the discretion of the prosecutor and the defense does not yet have the right to know what evidence the prosecutor may have gathered in the course of investigation other than those indicated by the prosecutor.

2.2. "Sayama" case

In the "Sayama" case which examined the murder of female high school student in 1963, Mr. Kazuo Ishikawa who was originally accused by the prosecutor and convicted, has been appealing its innocence and requesting for the retrial for more than 50 years. In this case, one of the main issues is whether Mr. Ishikawa has actually wrote the threatening letter delivered by the offender. However, the prosecutor has been rejecting disclosure of evidence materials in the investigation regarding the handwriting analysis of the letter collected for the reason of protecting privacy. In addition, the defence has been requesting the disclosure of other evidence materials including documents produced in the investigation and the court has also been recommending the prosecutor to do so in trilateral meetings. However, the prosecutor has been rejecting it with the argument that it is "not necessary".

Moreover, to many of the requests of the defence for disclosure of evidence materials, the prosecutor responded that "they cannot find them". In the Sayama case the evidence materials held by the prosecutor can be piled up to 2 to 3 metres. However, most of them are not disclosed and no one except the prosecutor knows what they are dealing with at all. Against this backdrop, the defence has been requesting production of the list of evidence materials held by the prosecutor. However, the prosecutor has been continuously rejecting such action.

In the "Hakamada" case and "Osaki" case in which similarly the false accusation and retrial

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[1] CCPR/C/79/Add.102, para. 26

[2] CCPR/C/JPN/6, paras. 254 and 255

are currently dealt with, the court ordered disclosure of all relevant evidence materials by the prosecutor in the former, and production of the list of materials and its delivery to the defence by the prosecutor in the latter.

2.3. Suggestions for the List of Issues

Concerning the issue of false accusation and the needs for a system of general disclosure of evidence materials held by the prosecutor as documented above, following aspects should be included in the List of Issues to Japan:

- What is the view of the government of Japan on the recent cases which innocent persons were falsely accused, convicted and detained for decades and how things can be improved?
- What are all the rights of the defence guaranteed in view of prevention of false accusation including request for retrial? In particular, while in current justice system in Japan, discovery of new evidence materials is the pre-requisite for the retrial, whereby disclosure of the evidence materials held by the prosecutor becomes highly crucial, how and to what extent is it guaranteed in practice?
- What is the view of and steps taken by the government of Japan in order to ensure the access of the defence to all the evidence materials held by the prosecutor and the establishment of a system of disclosure of the list of evidence materials held by the prosecutor?

3. Article 17

3.1. Deficit of the Act on the Protection of Personal Information: lack of protection of sensitive information and insufficient application of international standards:

As stated in the State Report, the Act on the Protection of Personal Information (the Protection Act) was established in 2003 and enacted in 2005.[3] However, this Act has the crucial deficit of not covering sensitive personal information and thus failing to adequately apply and follow relevant international standards and instruments such as ICCPR, OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (OECD

[3] CCPR/C/JPN/6, para. 259

Guidelines)[4], the UN Guidelines for the Regulation of Computerized Personal Data Files (UN Guidelines)[5] as well as the General Comments of the Human Rights Committee. First of all, the Protection Act does not have, nor elaborate, the definition or categories of sensitive information. Second, the regulation of the Protection Act that "personal information must not be given to third party without the consent of the person concerned" does not apply to the information collected and kept in the Japanese Family Register System "Koseki Seido" (Koseki = Family Register, Seido = system, hereafter Koseki system), despite the fact that under the Koseki system, highly personal and sensitive information such as on family strain, genealogy and birth situation whether born in or out of wedlock is collected and kept for 150 years by the Government. Moreover, in contrary to the principles of purpose-specification and non-discrimination as enshrined in the above mentioned international standards and instruments, personal data is collected and kept by the government under the Koseki system without any specified purpose. In addition, information collected and registered in the "Koseki" (Family Register) had been treated as "public information" for a long time to which everyone had access. In light of protection of information registered in Koseki (Koseki information), the Family Registration Act (Koseki Act) was revised first in 1976 to impose some restrictions on the public access to the Koseki information, and in 2008 to strengthen the identification process of person requesting acquisition of this information. However, treatment and protection of personal and sensitive information is not yet adequately ensured and regulated in accordance with international human rights standards, mainly due to the two crucial facts that the Protection Act does not apply to Koseki information and the revision of the Koseki Act is not effective or thorough enough.

3.2. The Issue of Japanese Family Register System "Koseki Seido"

The Koseki system was first introduced in 1871 in which the social hierarchy developed under feudal system was reconstituted with "modern" names and the social rank of individuals were registered in Koseki. At the same time, it was ruled out by the Government to keep the information registered in Koseki (Koseki information) for at least 150 years, since the main purpose of the Koseki system is to collect and maintain information on family strain for inheritance. Although Koseki is translated as "Family" register, the Koseki

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[4] http://www.oecd.org/internet/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm

[5] General Assembly resolution 45/95 and E/CN.4/1990/72

information is more about the family strain, genealogy, social origin or birth circumstance of individuals. The information about actual "family" or household as to which family members live together and where is collected and registered under resident registration system administered by another authority and under different Act (the Ministry of Justice and the Koseki Act for Koseki system, and the Ministry of Internal Affairs and Communications and the Resident Registration Act for resident registration system).

While the registration of classification of social rank in the Koseki was abolished in 1947, the information about the social rank of one person's ancestor is still kept in Koseki system by the administration based on the 150-year rule. The Koseki information, however, had been treated by the administration as public information and could be acquired by third party upon request, quite often being causes of discrimination, especially against people of Buraku origin. Nevertheless, no measures to protect highly personal and sensitive information and privacy of individuals had been taken by the Government, even the concept of "privacy" was not properly recognized or respected. Only after facing severe criticism by the public that private information must be protected and the Koseki system and resident registration system must be reviewed from the perspective of protection of privacy, the respective Ministries started examining the treatment of information collected and kept under these systems. Against this backdrop the Family Registration Act (Koseki Act) was revised in 1976 and 2008. At the 2008 revision, it was announced by the Ministry of Justice that the one's Koseki information can be only given to the person concerned based on identification process. However, as in more detail described in next chapter, incidents were reported even after the revision of the Koseki Act that third party including judicial scriveners and administrative lawyers, who have "professional access" for such information, have still been "illegally" acquiring individuals' Koseki and other personal information, especially through request per post, whereby the personal identification process is not thorough.

3.3. Incidents of leaking personal information to third parties

Since personal and sensitive information of individuals collected and kept by respective authorities i.e. central and municipal governments under "Family Register (Koseki)" and Resident Registration system had been treated as "public" which anyone could acquire upon request at respective authority at municipal level, a number of incidents were reported that such information was acquired by third parties for the purpose of discrimination against certain groups of individuals such as those of Buraku origin, migrants and persons with disabilities. Against this backdrop of complete lack of protection

of privacy, personal and sensitive information maintained by the authorities, public criticism increased and the Family Registration Act (Koseki Act) was revised in 1976 to impose some restrictions on the public access to the Koseki information, and in 2008 to prevent acquisition and usage of private and sensitive information by third party for unlawful or unjustified purpose by introducing "strengthened" identification procedure of the person making requests. However, even after the revision of the Koseki Act, incidents were still reported in which personal and sensitive information was leaked to third parties having unjustified purposes. Quite often misconduct of those who have exceptional access to such information such as public servant, judicial scriveners and administrative lawyers was involved in these incidents. Continuation of these incidents today clearly shows that the protection of privacy, personal and sensitive information is not sufficient, the revision of the Koseki Act not effective enough, also concerning the fact that the Koseki information is excluded from the scope of the Act on the Protection of Personal Information. Even acquisition of the Koseki information is basically restricted to the person concerned or his/her endorsed representative and the "strengthened" identification process of the person requesting acquisition of information was introduced, there still are some crucial loopholes in the protection of personal and sensitive information. First of all, the "identification" process is not thorough especially in case of acquisition request per post. Second, there is a certain group of professions who, as a third party, has special access to the information kept in Koseki or Resident Registration on its professional capacity such as lawyers including judicial scrivener and administrative lawyers. Third, there is no nationally and legally ensured process of notification to the person concerned in case of acquisition of Koseki or Resident Register information of his or hers by third party. There are indeed some municipalities that have introduced procedures for notification. However, it is still based on voluntary and administrative measures taken by each municipality without any legal basis. Moreover, the modality of the notification procedure varies from one to another, in many cases upon individual request of the person concerned. At the same time, the Article 10 of the Koseki Act as well as Article 12 of Resident Registration Act regulate that request for acquisition of someone else's Koseki or Resident registration information can be made by certain groups of persons without identifying him- or herself such as lawyers if it is dealing with "confidential" matters. Therefore, there are some municipalities which set out some exceptions for their notification procedure that if request are made by lawyers for "confidential" purpose, the fact of the request and acquisition of Koseki or Resident registration information will not be notified at all to the person concerned, even if that person has already made request for notification. In this context, it is highly likely that the person concerned is not informed at all, even if his or her personal and sensitive

information was acquired by any third party for any purpose.

An example of such incidents was the case of the Prime Judicial Scriveners Office (hereafter Prime Office). In November 2011 the director of Prime Office, together with cooperated detective agent, judicial scrivener ("Shihou Shoshi" in Japanese) of the Prime Office and a graphic designer was arrested for unlawfully acquiring Koseki and Resident register of more than 10,000 individuals from municipal authorities for unjustified purposes over 3 years and reported to have gained about 235 million JPY. In this case, the Prime Office has forged official request forms reserved for judicial scrivener by using the name and qualification of its judicial scrivener, acquired personal and sensitive information of individuals from municipalities and sold it after the name of the Prime Office and the judicial scrivener from relevant documents were deleted by the graphic designer. As a result i.e. secondary damage caused by the act of Prime Office as reported by the police in the trial, in one case the information was sold to a man whose intention was to stoke one woman who in this case could not stay at home any more due to the stoking of the man.

The detective agent arrested in the Prime Office case had conducted same act in 2007 unlawfully acquiring information of about 500 individuals for unjustified purposes in cooperation with an administrative lawyer. In addition, 3 major cases were reported in 2011 of leaking i.e. trading personal and sensitive information of individuals by detective agents with their accomplice including police officers, and employees at employment bureau and mobile sales company. Information on employment history, mobile number (with the home addresses and landline numbers) and number plate of cars (with names and addresses) were among others the information traded in these cases.

3.4. Conclusion and suggestions to the List of Issues

As described above, protection of highly personal and sensitive information is not sufficiently ensured nor regulated in Japan, which being causes of various human rights violations. Against this backdrop, we would like to suggest the Committee to consider and include following aspects in its List of Issues to Japan.

- How far the Act on the Protection of Personal Information is applied in the practice and how the personal and sensitive information collected and kept under Koseki as well as the resident registration system is protected through this Act? And what are the reasons for the fact that Koseki and resident registration information is not thoroughly protected by the Act on the Protection of Personal Information?
- Whether and how personal and/or sensitive information to be protected under the

Act on the Protection of Personal Information is defined?

- Concerning the incidents of the leaking of personal and sensitive information, especially through misconduct of certain groups of persons with special profession i.e. having access to such information including judicial scrivener, administrative lawyers, police officers among others, whether and what kind of measures are taken or planned by the government of Japan for the prevention of such cases and comprehensive protection of personal and sensitive information?
- What and how the actual situation of leaking personal and sensitive information to third parties having unjustified purpose, misconduct of certain groups of persons, abuses of such information and the damage caused by those persons and abuses are grasped by the government of Japan?