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## U.S. Department of State

### Japan Report on Human Rights Practices for 1997

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#### JAPAN

Japan is a parliamentary democracy based on a 1947 Constitution. Sovereignty is vested in the people, and the Emperor is defined as the symbol of state. Executive power is exercised by a cabinet, composed of a prime minister and ministers of state, responsible to the Diet, a two-house parliament. The Diet, elected by universal suffrage and secret ballot, designates the Prime Minister, who must be a member of that body. The Government, formed in November, is a loose coalition led by the Liberal Democratic Party (LDP), in which the Social Democratic Party and the New Party Sakigake cooperate with the LDP from outside the Cabinet. The judiciary is independent of the Government.

A well-organized and disciplined police force generally respects the human rights of the populace and is firmly under the control of the civil authorities. However, there continued to be credible reports that police committed some human rights abuses.

The industrialized free market economy is highly efficient and competitive in world markets and provides residents with a high standard of living.

A just and efficient legal system generally assures observance of constitutionally provided human rights. There continue to be some credible reports that police physically and psychologically abused prisoners and detainees. Officials are sometimes dismissed for such abuse but are seldom tried, convicted, and imprisoned. The Burakumin (a group historically treated as outcasts), the Ainu (Japan's indigenous people), women, and alien residents experience varying degrees of societal discrimination, some of it

severe and longstanding. The Ministry of Justice handles complaints of discrimination by issuing instructions recommending that such practices be avoided. However, the Ministry's Human Rights Defense Bureau has a small staff and limited investigative or enforcement powers. Since the administrative system for combating human rights violations is weak, many cases end up in court. However, during the year, the Government passed legislation to promote Ainu culture, ameliorate women's working conditions, and promote employment of disabled persons. The Government also reversed its longstanding opposition to the employment of noncitizen civil servants by localities and municipalities.

In March a law establishing a Human Rights Commission within the Justice Ministry came into effect. The Commission's 5-year mandate is to develop measures to educate citizens with regard to human rights ideals, and to promote measures to ameliorate the effects of existing human rights violations. The Commission is also tasked with advising the Education Ministry and Management and Coordination Agency on how to educate citizens about the importance of respecting human rights. The Commission has 2 years to submit recommendations on rights-related education and 5 years to submit recommendations on relief measures.

## **RESPECT FOR HUMAN RIGHTS**

### **Section 1 Respect for the Integrity of the Person, Including Freedom From:**

#### **a. Political and Other Extrajudicial Killing**

There were no reports of political killings.

There was one reported suicide under suspicious circumstances of a Japanese man in police custody, and one reported death of a foreign national while in the custody of immigration officials (see Section 1.c.).

#### **b. Disappearance**

There were no reports of politically motivated disappearances.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The Constitution provides for freedom from torture and cruel, inhuman, or degrading treatment or punishment. However, reports by several Japanese bar associations, human rights groups, and some prisoners indicate that police sometimes use physical violence, including kicking and beating, as well as psychological intimidation, including threats and name calling, to obtain confessions from suspects in custody or to enforce discipline. There were also scattered allegations of beatings of detainees in immigration detention facilities.

In Japan confession is regarded as the first step in the rehabilitative process. Although under the Constitution no criminal suspect can be compelled to make a self-incriminating confession, roughly 90 percent of all criminal cases going to trial include confessions, reflecting the priority that the system places on admissions of guilt. The Government points out that the high percentage of confessions, like the high conviction rate, is reflective of a higher standard of evidence needed to bring about indictment in the Japanese system. Since a system of arraignment does not exist a suspect, if indicted, is brought to trial even if that person has confessed to the crime. This results in a higher conviction rate than would otherwise be the case.

Appellate courts have overturned several convictions in recent years on the ground that they were obtained as a result of forced confession. In addition, civil and criminal suits have been brought against some police and prosecution officials alleging abuse during interrogation and detention. In July two police officers were dismissed for fabricating a suspect's confession, and three other officers were accused of framing an innocent citizen on drug possession charges. Eight additional police officials, including a municipal police department superintendent, were reprimanded for failing to adequately supervise these policemen.

Prison conditions meet most minimum international standards. However, prisons in Japan are not heated and prisoners are given only minimal additional clothing to protect themselves against cold weather. There have been cases of frostbite among the prison population. For the past 2 years, the quantity of starch in the prison diet has been reduced, ostensibly with a commensurate increase in the quantity of side dishes. However, despite the fact that foreign prisoners receive a higher calorie allowance than Japanese prisoners, many foreign inmates complain that the quantity of food is insufficient and that they are constantly hungry. Prisoners may not purchase or be given supplementary food. Letters to and from prisoners may be read and censored, or confiscated. All visits from family and friends are monitored, and prisoners are strongly discouraged from complaining about conditions. Prison officials claim the "no complaining" rule is designed to keep family members from worrying about their loved ones.

The Japanese Federation of Bar Associations and human rights groups have criticized the prison system, with its emphasis on strict discipline and obedience to numerous rules. Prison rules are confidential, guards sometimes selectively enforce them and impose punishment, including "minor solitary confinement," which may be imposed for at least 1 and not more than 60 days and in which the prisoner is made to sit (for foreigners) or kneel (for Japanese) motionless in the middle of an empty cell.

In November a Japanese man died in police custody while being questioned for allegedly violating the Firearms and Swords Control Law. According to press reports, the officers handed the confiscated gun and bullets to the suspect, and then left the room. The suspect loaded the gun and shot himself.

In August an Iranian illegal immigrant awaiting deportation died while being held in Tokyo's immigration detention center. According to press reports, the man fought with immigration officials after they found a cigarette lighter in his cell. Eight immigration officials subdued the man by wrapping him in a blanket and taking him to another cell, where they made him sit on the floor. The man reportedly fell backwards and hit his head on the floor, dislocating his cervical vertebrae. He was pronounced dead at a local hospital. Police are investigating the death.

In December a Tochigi prefectural police officer was arrested and fired on suspicion of molesting a woman while she was in police custody. The officer admitted to the molestation, and the chief of the Tochigi Prefectural Police Personnel and Training Bureau apologized to the woman, who did not press charges.

Some human rights groups allege that physical restraints, such as leather handcuffs, have been used as a form of punishment and that prisoners have been forced to eat and relieve themselves unassisted while wearing these restraints. Ministry of Justice officials state that restraints are used inside the prison only when prisoners have been violent and pose a threat to themselves and others, or when there is concern that a prisoner might attempt to escape.

The Government restricts access to prisons and detention facilities by human rights groups.

d. Arbitrary Arrest, Detention, or Exile

Constitutional provisions for freedom from arbitrary arrest or imprisonment are respected in practice. The law provides for judicial determination of the legality of detention. People may not be detained without charge, and prosecuting authorities must be prepared to demonstrate before trial that probable cause exists in order to detain the accused. Under the Code of Criminal Procedure, a suspect may be held in police custody for up to 72 hours without judicial proceedings. Preindictment custody may be extended by a judge for up to 20 additional days. If an indictment follows, the suspect is transferred to a criminal detention facility. Bail is available in only about 25 percent of cases.

The bar associations and human rights groups have criticized the practice of "substitute detention." Although the law stipulates that suspects should be held in "houses of detention" between arrest and sentencing, a police detention facility may be substituted at the order of the court. This provision was originally added to cover a shortage of normal detention facilities. According to the most recent Ministry of Justice White Paper on Crime, published in 1995, normal detention facilities were filled to 53 percent of capacity in 1994. Critics charge that allowing suspects to be detained by the same authorities who interrogate them heightens the potential for abuse and coercion. The Government counters that adequate safeguards to prevent abuse, including strong judicial oversight, have been built into the system.

The length of time before a suspect is brought to trial depends on the nature of the crime but rarely exceeds 3 months from date of arrest; the average is 1 to 2 months. Critics charge that access to counsel is limited both in duration and frequency, although the Government denies that this is the case. The Criminal Procedure Code grants the prosecution and investigating police officials the power to control access to attorneys before indictment when deemed necessary for the sake of the investigation. As a court-appointed attorney is not approved until after indictment, suspects must rely on their own resources to hire an attorney before indictment, although local bar associations may provide detainees with a free counseling session prior to indictment. Counsel is provided at government expense after indictment if the arrested person cannot afford one. Counsel may not be present during interrogation at any time before or after indictment. With these exceptions, the Government affirms that the right of the accused to seek legal counsel is fully respected and that attorneys are almost always able to see clients without obstruction.

The Government does not use forced exile.

#### e. Denial of Fair Public Trial

The judiciary is independent and free from executive branch interference. The Cabinet appoints judges for 10-year terms, which can be renewed until judges have reached the age of 65. Justices of the Supreme Court can serve until the age of 70 but face periodic review through popular referendum.

There are several levels of courts, high courts, district courts, family courts, and summary courts, with the Supreme Court serving as the highest judicial authority. Normally a trial begins at the district court level, and a verdict may be appealed to a high court and then to the Supreme Court.

The Government respects in practice the constitutional provisions for the right to a speedy and public trial by an impartial tribunal in all criminal cases. There is no trial by jury. The defendant is informed of charges upon arrest and assured a public trial by an independent civilian court with defense counsel and the right of cross-examination. The Constitution provides defendants with the right not to be compelled to testify against themselves as well as to free and private access to counsel. The Government contends that the right to consult with attorneys is not an absolute one, and can be restricted if such restriction is compatible with the spirit of the Constitution. Access is sometimes abridged in practice. For example, the law allows prosecutors to control access to counsel before indictment, and there are persistent

allegations of coerced confessions. Defendants are protected from the retroactive application of laws and have the right of access to incriminating evidence after a formal indictment has been made. However, the law does not require full disclosure by the prosecutor, and material that the prosecution will not use in court may be suppressed. Critics claim that legal representatives of defendants do not always have access to all relevant material in the police record, in order to enable them to prepare the defense. A defendant who is dissatisfied with the decision of a trial court of first instance may, within the period prescribed by law, appeal to a higher court.

There are no guidelines mandating the acceptable quality of communications between judges, lawyers, and non-Japanese speaking defendants. There is no standard licensing or qualification system for certifying court interpreters, and a trial may proceed even if the accused does not understand what is happening or being said. The press reported that in a January murder case, the judge, attempting to save time, ordered the interpreter not to translate the verdict to the Thai accused, saying that the defense attorney could tell the accused later.

There were no reports of political prisoners.

#### f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

Under the Constitution, each search or seizure must be made upon separate warrant issued by a judge. Standards for issuing such warrants exist to guard against arbitrary searches. There were no reports that the Government or any other organization arbitrarily interfered with privacy, family, home, or correspondence. Settling a 10-year-old case, in June the intermediate appellate court held that the prefectural police had illegally wiretapped the home of a senior member of the Japanese Communist Party.

### **Section 2 Respect for Civil Liberties, Including:**

#### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government respects these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and of the press.

Academic freedom is protected, except in the case of school textbooks. The Education Ministry has the authority to censor or order revisions to elementary, middle, and high school textbooks. Settling a 13-year-old lawsuit brought by a textbook author, the Supreme Court ruled in August that the Education Ministry had, in this particular instance, illegally ordered the deletion or rewriting of a textbook's passages containing references to the Imperial Army's conduct during World War II. However, the Court also held that state censorship of textbooks did not violate the constitutional provisions for freedom of expression.

#### b. Freedom of Peaceful Assembly and Association

These freedoms are provided for in the Constitution and respected in practice.

In November the Tokyo High Court upheld a lower court ruling that Tokyo metropolitan police had unlawfully arrested three demonstrators and had assaulted a fourth demonstrator in 1989 and ordered the Tokyo municipal government to pay damages.

### c. Freedom of Religion

Freedom of religion and the separation of state and religion are provided for in the Constitution and are respected in practice. While Buddhism and Shintoism are the two major religions, there are many others, including several Christian denominations. Some temples and shrines receive public support as national historic or cultural sites. This situation may change, however, in the wake of an April ruling by the Supreme Court that a prefectural government may not contribute public money to only one religious organization, if the donations supported, encouraged, and promoted a specific religious group.

The Government does not require that religious groups be licensed. However, to receive official recognition as a religious organization, which brings tax benefits and other advantages, a group must register with local or national authorities as a "religious corporation." In practice, almost all religious groups register. In response to the Aum Shinrikyo terrorist attacks, a 1996 Amendment to the Religious Corporation Law gives governmental authorities increased oversight of religious groups and requires greater disclosure of financial assets by religious corporations. In December the Cultural Agency announced that nearly 5,000 religious groups across the country appeared dormant, and some of these may have been used for tax evasion.

In February the Public Security Commission rejected a Government proposal that the Aum Shinrikyo religious cult be outlawed.

### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens have the right to travel freely both within Japan and abroad, to change their place of residence, to emigrate, and to repatriate voluntarily. Japanese nationality may be lost by naturalization in a foreign country, or by failure of people born with dual nationality to elect Japanese nationality at the required age.

The Government has granted asylum to those claiming fear of persecution if they return to their homeland in only a small number of cases. It believes that most people seeking asylum in Japan do so for economic reasons. Between January 1996 and August 1997, only 2 of the 345 applicants met the required standard for and were granted asylum.

The Government has shown flexibility in dealing with visa extensions for Chinese student dissidents, although it continues to be reluctant to grant permanent asylum.

The Government's 60-day rule requires applicants to appear at an immigration office within 60 days of arrival or within 60 days of learning that they are likely to be persecuted in their home country. Individuals who do not present their applications within the 60-day time frame due to extenuating circumstances may apply as an exception to the rule, even after the 60-day period had passed. An alien who is recognized as a refugee has access to educational facilities, public relief and aid, and social welfare benefits. An alien who is denied refugee status may appeal the decision to the Ministry of Justice. In an effort to make procedures clearer to applicants, the Government distributes an English-language pamphlet to those interested in the asylum process.

While the Government sometimes grants first asylum, there are no standard procedures established, and the Justice Ministry and the Foreign Affairs Ministry decide upon such grants jointly on a case-by-case basis. In January an illegal alien Chinese prodemocracy activist was denied asylum status. He spent 18 months in a detention center before being released on condition that he agree to resettle in Denmark. In exchange for being granted a special permit enabling him to leave Japan legally, he had to withdraw

an administrative law suit asking the district court to order the State to recognize him as a refugee. There were no reports that persons were forcibly returned to a country where they feared persecution.

### **Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government**

Citizens have the right peacefully to change their government and are able to exercise this right in practice through frequent, free, and fair elections on the basis of universal suffrage by secret ballot. Citizens living overseas are not entitled to vote in local and national elections. In November 1996, a group of expatriates filed suit against the Government, claiming that the election law deprived them of the constitutionally provided right to vote. The case is still pending.

A parliamentary democracy, Japan is governed by the political party or parties able to form a majority in the lower house of its bicameral Diet. From 1955 until 1993, all prime ministers and almost all cabinet ministers were members of the Liberal Democratic Party, which enjoyed a majority in the lower house throughout this period. Since 1993, except for a brief period of non-LDP coalition government from August 1993 to June 1994, the LDP has been part of successive coalition governments.

There are no legal impediments to women's participation in government and politics, but cultural attitudes are not favorable to their participation. Women make up 7.7 percent of the Diet. Women hold 23 seats in the 500-member lower house of the Diet (4.6 percent), and 35 seats in the 252-member upper house (13.8 percent). As of November, the 21-member Cabinet had no female members.

There is one Ainu member of the Diet.

### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of local and international human rights organizations function freely, without governmental restrictions or impediments, investigating and publishing their findings on human rights cases. Government officials are generally cooperative and responsive to their views, although the Government restricts access to prisons and detention facilities by human rights groups (see Section 1.c.).

### **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

The Constitution prohibits discrimination on the basis of race, creed, sex, social status, or family origin, and, in general, the Government respects these provisions.

#### **Women**

According to the National Police Agency, 450 incidents of spousal abuse against women were reported to authorities in 1995. However, violence against women, particularly domestic violence, often may go unreported due to social and cultural concerns about shaming one's family or endangering the reputation of one's spouse or offspring. Typically, victimized women often return to the home of their parents rather than file reports with authorities. Therefore, National Police Agency statistics on violence against women undoubtedly understate the scope of the current situation. Many local governments are responding positively to a need for confidential assistance by establishing special women's consultation departments in police and prefectural offices.

The number of illegal female workers increased by 5.4 percent in 1996. According to the Ministry of Justice, 484 of the 20,325 illegal female workers deported from Japan in 1996 were prostitutes (2.4

percent). The Government is working to reduce the foreign prostitute problem by enforcing existing antiprostitution laws as well as provisions in the Immigration Control and Refugee Recognition Act directed against anyone encouraging a person to engage in illegal work. In recent years, police, especially in Tokyo, have conducted a number of sweeps against both foreign prostitutes and their employers.

Sexual harassment in the workplace is widespread, as evidenced by a 1996 report compiled by the Japanese Trade Union Confederation, RENGO, in which 40 percent of working women reported that they had experienced some form of sexual harassment. Sexual harassment occurs in a range of actions, including sexually charged jokes, comments about physical features such as breast size, the display of pornographic photos, molestation, direct requests for sexual favors, and unwanted bodily contact. Two percent of the survey respondents said that they were forced to have a sexual relationship. A government white paper released in July, using a narrower definition, reported that 25.7 percent of women had been sexually harassed at work.

Public awareness of discrimination against women and sexual harassment has increased, but there is no indication that incidents of discrimination and sexual harassment are decreasing. Women make up 39.2 percent of the Japanese labor force, and women age 15 to 64 have a labor force participation rate of 50 percent. However, according to a Management and Coordination Agency survey conducted from April to June 1996, 92.5 percent of Japanese companies surveyed had not taken any preventive measures against sexual harassment. Seventy-five percent of the firms said that they felt no need to take such measures. A growing number of government entities are establishing hot lines and designating ombudsmen to handle complaints of discrimination and sexual harassment.

The Constitution prohibits sexual discrimination and stipulates individual dignity and the essential equality of the sexes in the family. The Labor Standard Law forbids wage discrimination against women. The Government passed several additional pieces of legislation designed to equalize employment and promotion opportunities and combat sexual harassment. In May the Government passed a law allowing women to work overtime shifts for the first time. Under the previous laws, in effect since 1947, women were prohibited from working between 10:00 p.m. and 5:00 a.m., with only a few exceptions. Also in May, the Government passed a new Equal Employment Opportunity (EEO) Law banning employers from discriminating against women. This law was designed to strengthen the 1986 EEO Law, which instructed employers to make efforts to stop discrimination in recruiting, hiring, assignments, and promotion of workers. However, the new law's only penalty is that names of companies that practice sexual discrimination can be publicized. The Ministry of Labor does not enforce compliance through fines or other punitive penalties. Also in May, the Government revised the Labor Standard Law to allow an arbitration committee to initiate procedures to help ensure the rights of female workers at the worker's request, without first having to obtain approval from both management and an employee's union.

Although as noted the law prohibits discrimination against women in wages, female workers on average earned only 62 percent of average male earnings. Much of this disparity results from the "two-track" personnel administration system found in most larger companies. Under this system, newly hired employees are put into one of two categories: Managerial track (those engaged in planning and decisionmaking jobs and with the potential to become top executives), or clerical track (those engaged in general office work). According to a 1995 Ministry of Labor survey, 72 percent of companies responding said that they hired only male workers for managerial track jobs. Female workers have also suffered disproportionately from the continued sluggishness of the economy. Because married women are designated as spouses on the family income tax return, women who earn more than \$8,500 (1.03 million yen) per year face the loss of income tax benefits and their husbands may lose corporate family allowances.

According to the National Personnel Authority, as of March 1995, women made up 16.4 percent of all national government workers, but held only 3.8 percent of top (director level and higher) government posts. According to the Home Ministry, women constituted 31.4 percent of all local government workers, but held only 3.2 percent of top local government positions.

In addition to discrimination, traditional male/female division of labor at home place disproportionate burdens on working women. According to a 1995 Japan Institute of Labor survey, in double income households where the wife works full time, the wife performs 64 percent of all household duties. In households where the wife works part-time, she performs 85 percent of all household duties.

In September the Government acknowledged that nearly 16,500 disabled women were sterilized without their consent between 1949 and 1992. In its acknowledgment the Government stated that it did not plan to apologize or pay compensation to these women, or to further investigate the program, despite the demands of National Federation for the Mentally Handicapped and several other groups representing women and the disabled. A Ministry of Health official said that no apology was planned because the procedure was legal at the time. The Eugenic Protection Law, revoked only in 1996, allowed doctors to sterilize people with mental or physical disabilities or certain hereditary diseases without their consent, after the approval of committees appointed by local governments. Women's and disabled persons advocacy groups are still pressing for a government investigation into all sterilization cases and for a formal apology and compensation.

In 1993 the Prime Minister publicly acknowledged and apologized for the former Imperial Government's involvement in the army's practice of forcing an estimated 200,000 women (including Koreans, Filipinas, Chinese, Indonesians, Burmese, Dutch, and Japanese) to provide sex to soldiers between 1932 and 1945. Five cases concerning the "comfort women" problem are pending in the Tokyo District Court. In four cases the plaintiffs are seeking monetary compensation; in one case the plaintiff is seeking an official apology from the Government.

The Asian Women's Fund was established in July 1995 as a private, government-sponsored fund to compensate former comfort women. The fund supports three types of projects: Providing direct compensation payments to individual victims; providing medical and welfare assistance to individual comfort women; and funding projects to improve the general status of women and girls in Asia. Projects in the first category are funded by private donations, the second and third types of projects are financed by the Government and administered by the fund. As of December, the fund had collected donations totaling approximately \$4 million (480 million yen), and given lump-sum payments of almost \$18,600 (2 million yen) each and a letter of apology signed by the Prime Minister to over 50 Filipina, Korean, and Taiwanese former comfort women. These women also received medical and welfare assistance from the fund. More than 50 applications were pending as of December.

## Children

The Government is committed to children's rights and welfare, and in general, the rights of children are adequately protected. Boys and girls have equal access to health care and other public facilities. Education is free and compulsory through the lower secondary level. Education is free and universally available at the upper secondary level through the age of 18.

Despite heightened media attention and public expressions of disapproval, the Government and society in general appear to take a lenient attitude toward teenage prostitution and dating for money, which may or may not involve sexual activities. Sex with those under 13 years of age is prohibited, but consensual sex with a 13-year-old is not prosecutable under the Criminal Code. According to current laws, in order

to prove rape and forcible sexual contact with a minor age 13 or over, the prosecution must prove that the attacker threatened or used violence against the victim. Currently, laws regarding prostitution with minors over 13 years of age are covered only by prefectural government ordinances. Under the present Prostitution Prevention Law, selling the sexual services of children is illegal, but purchasing those services is not. There is no law that directly prohibits the production and sale of child pornography. In 1996, 5,378 teenage girls were taken into police custody for sexual misconduct, of whom 562 were engaging in prostitution. According to a police survey of those girls, 46.8 percent said that they wanted spending money, while 29.6 percent said that they acted out of curiosity.

The National Police Agency reported in December that 139,867 teenagers were arrested between January and November on suspicion of committing criminal offenses, about 6,000 more than in 1996. In September the Government lifted the 2-year limit on detention in juvenile reformatories, and it issued a directive stating that juveniles can be detained until the age of 23 if they have not been deemed to have reformed and until the age of 26 if they need psychiatric treatment.

In recent years, the problem of severe bullying, or "ijime," has received greater public attention. At elementary and junior high schools, bullying most often involves verbal abuse, with physical abuse occurring more often at the high school level. The Ministry of Education reported that in 1996 there were 51,544 reported cases of bullying in elementary, junior high, and senior high schools, representing a 14.2 percent drop in incidents from previous year. However, many cases go unreported and the actual number of cases is probably higher. Moreover, incidents of violence against fellow students, teachers, and school property increased 31.7 percent from the previous year, to 10,575 cases. Education experts suggest that pressures at home and school to excel academically may be contributing to the increase in student violence and long-term (30 to 150 days) absenteeism, which rose 15.6 percent from 1995. According to the Ministry report, there are cases in which students intentionally attacked teachers, knowing that the teachers were prohibited by law from inflicting physical punishment on students. In August 1994, the Ministry of Justice established the Office of Ombudsman for Children's Rights to cope with bullying and other children's issues. In addition to compiling statistics on bullying and consulting with various groups concerned with children's welfare, the Office of Ombudsman provides counseling services for children 18 years of age and younger who have been victims of bullying.

Although the Constitution prohibits discrimination based on social status or family origin, the Civil Code stipulates that the statutory inheritance share for illegitimate children is half that of legitimate children. The Government does not view this statutory distinction as constituting unreasonable discrimination against illegitimate children.

### People with Disabilities

The law does not mandate accessibility to buildings for the disabled. Although not generally subject to overt discrimination in employment, education, or in the provision of other state services, the disabled face limited access to public transportation, "mainstream" public education, and other facilities. The Deliberation Panel on the Employment of the Handicapped operates within the Ministry of Labor. Since 1976 private companies with 300 or more employees have been required to hire a fixed proportion of disabled people. The penalty for noncompliance is a fine. In September the Government issued a cabinet directive, effective July 1, 1998, ordering private companies to raise the proportion of physically disabled persons in their work force from 1.6 to 1.8 percent, and raising the percentage of disabled persons among civil servants from 2 to 2.1 percent.

In April the Diet amended the Law To Promote the Employment of the Handicapped to include the mentally disabled. The revision takes effect on July 1, 1998. The amendment also loosened the licensing requirements for community support centers which promote employment for the disabled, and it

introduced government subsidies for the employment of mentally disabled persons in part-time jobs. These provisions are scheduled to take effect on April 1, 1998.

In May 1995, the Headquarters for Promoting the Welfare of Disabled Persons, set up by the Prime Minister's Office, issued a directive to the nation's municipalities to draw up formal plans for care of disabled citizens by the end of March 1997. In November 1996, the Ministry of Health and Welfare also instructed local governments to set numerical targets for the number of home helpers and care facilities allocated to the disabled. However, according to newspaper reports, fewer than one-fifth of the nation's municipalities currently have formal care plans for disabled citizens.

### Indigenous People

The Ainu are a people descended from the first inhabitants of Japan. The Ainu Association of Hokkaido estimates the total number at 50,000, less than 0.05 percent of the country's 124 million population. Almost all of them live on Hokkaido, the northernmost of Japan's four main islands. Their primary occupations are fishing, small-scale farming, and jobs in the tourism industry. Under a 1899 law, the Government pursued a policy of forced assimilation, imposing mandatory Japanese education and denying the Ainu their right to continue traditional practices. The law also left the Ainu with control of only approximately 0.15 percent of their original holdings

In May 1993, two Ainu filed a suit against the Government, challenging its right to expropriate their land, which the Ainu consider sacred, to build a dam. In March the Sapporo District Court ruled that the Government had illegally expropriated the land, but did not order the Government to return the land to the plaintiffs because the dam had already been completed. However, the Court ruled that the Ainu were a minority aboriginal race.

Ainu Diet member Shigeru Kayano was instrumental in the Diet's passage of the Law To Promote Ainu Culture and Disseminate Knowledge of Ainu Traditions in May. The law officially recognized the Ainu as an ethnic minority, and required all prefectural governments to develop basic programs for promoting Ainu culture and traditions. It canceled a series of previous laws that discriminated against the Ainu including the 1899 law. With the new law, the Government for the first time acknowledged the existence of an ethnic minority in Japan. However, the law stopped short of recognizing the Ainu as the indigenous people of Hokkaido, and also failed to address whether they deserved special rights as a distinct ethnic group. The new law did not mandate civil rights protection for the Ainu. A nonbinding accompanying resolution referred to the Ainu as a legal Japanese minority. In March the first Ainu-language newspaper went to press. The Ainu continue to face societal discrimination while engaging in an uphill struggle against complete assimilation.

### National/Racial/Ethnic Minorities

The ethnocentric nature of Japanese society, reinforced by a high degree of cultural and ethnic homogeneity and a history of isolation from other cultures, has impeded the integration of minority groups. This primarily affects Burakumin, Koreans, and alien workers.

The Burakumin (descendants of feudal era "outcasts" who practiced "unclean" professions such as butchering and undertaking), although not subject to governmental discrimination, are frequently victims of entrenched societal discrimination, including restricted access to housing and employment opportunities. They are estimated to number approximately 3 million, but most prefer to hide their identity. Beginning in 1969, the Government introduced with some success a number of social, economic, and legal programs designed to improve conditions for the Burakumin and hasten their

assimilation into mainstream society. In recent years, however, some within the Burakumin community have questioned whether assimilation is an appropriate goal. When the basic legislation to provide funding for Burakumin programs expired in March, the Government enacted legislation effective for 5 years that retains 15 of the original 45 programs for Buraku communities. One of these programs is aimed at completing housing plans already in progress.

In May the Buraku Liberation League rewrote its manifesto for the first time in 13 years, placing less emphasis on class struggle and more emphasis on civil rights, social welfare, and the environment. The new platform also replaced the term Burakumin (hamlet people) with Buraku Jumin (hamlet residents), to try to debunk the false concept that these people are a different race from other Japanese. The platform was adopted at a national convention.

There are more than 650,000 Korean residents, although the number has been steadily decreasing as Korean nationals naturalize or marry Japanese which allows their children to gain Japanese citizenship automatically. Despite improvements in legal safeguards against discrimination, Korean permanent residents (most of whom were born, raised, and educated in Japan) are still subject to various forms of deeply entrenched societal discrimination. By law, aliens with 5 years of continuous residence are eligible for naturalization and the simultaneous acquisition of citizenship rights, including the right to vote. In practice, however, most eligible aliens choose not to apply for citizenship, in part due to fears that their cultural identity would thereby be lost. De facto obstacles to naturalization include broad discretion available to adjudicating officers and great emphasis on Japanese language ability. Naturalization procedures also require an extensive background check, including inquiries into the applicant's economic status and assimilation into Japanese society. A Korean may also be required to adopt a Japanese surname. According to press reports, many applications are routinely turned down. The Government defends its naturalization procedures as being necessary to ensure the smooth assimilation of foreigners into Japanese society. Alien permanent residents may live abroad up to 5 years without losing their right to permanent residence. In February 1995, the Supreme Court ruled that the Constitution does not bar permanent foreign residents from voting in local elections. However, the Court also ruled that existing laws denying voting rights to foreign residents are not unconstitutional.

Under the School Education Law, students attending Chinese, Korean, or other non-Japanese schools are not eligible to take national university examinations. In December Nagano University declared that it had mistakenly admitted and subsequently awarded degrees to four ethnic Chinese students who had studied at a Chinese school. Although the University did not invalidate the degrees already awarded, it announced that it would accept no more students from that high school. Also in December, the Ministry of Education, claiming that non-Japanese students are not treated unfairly, rejected the petition of a Korean residents advocacy group containing over 1,300 signatures, which asked that national universities be allowed to accept non-Japanese school graduates.

In 1993 the Government halted the fingerprinting of permanent foreign residents. Instead of fingerprinting, the Government has established a family registry system that uses the resident's picture and signature and contains information on parents and spouses living in Japan, a system similar to that used for Japanese nationals. The current law leaves intact the requirement that all foreign residents carry alien registration certificates at all times.

In 1953 the Government decreed that public servants with administrative authority and the ability to influence public opinion must be Japanese. Noncitizens were prohibited from taking examinations for local government positions. Nevertheless, some municipal governments began lifting restrictions on noncitizen civil servants. In December 1996, the Home Affairs Ministry reversed the long-held national policy of opposition to localities lifting the nationality clause and instructed local governments to decide at their own discretion. However, the Ministry instructed local governments to restrict noncitizens'

access to jobs that involved the exercise of public authority and formation of public intent. The directive also required local governments to clearly state which jobs were closed to noncitizens. Some of the jobs considered off limits include tax collection, construction permit issuance, sanitation inspection, and fire fighting.

Several local governments have already changed their rules in response to the Government's new position. The cities of Kawasaki, Yokohama, Osaka, Kobe, and Hisai, and Kanagawa and Koichi Prefectures have opened many jobs to noncitizens. In May the Osaka municipal government introduced new guidelines allowing noncitizens with permanent residency to engage in jobs in 276 fields, including public relations, engineering, and social welfare services. Under the new guidelines, noncitizens can be promoted to section chief or higher within the specified fields. In June, for the first time, noncitizens took the employment exams for these city and prefectural governments. In August two Korean resident women passed the Kobe city exam, making them the first noncitizens eligible for employment under the new rules. According to a joint survey conducted by the All Japan Prefectural and Municipal Workers Union and the Korean Residents Association in Japan, 19.8 percent of local governments still forbid the hiring of noncitizens.

Critics complain that opening some but not all jobs to noncitizens perpetuates institutional discrimination and the perception that noncitizen residents cannot be trusted to act in the community's best interest. The system also allows each local government to develop its own rules without uniformity being imposed by the national government.

The Immigration Bureau of the Justice Ministry estimated that, as of January 1, there were 282,986 foreign nationals residing illegally in Japan, a decrease of 0.6 percent from the previous year. Illegal immigrants come primarily from: South Korea, the Philippines, Thailand, China, Peru, Iran, Malaysia, and Taiwan.

While many illegally resident foreigners came in search of better paying manufacturing and construction jobs, these opportunities decreased during the economic slowdown. Thus, more of the foreign workers are unemployed or marginally employed. Some illegal alien workers have been exploited (see Section 5).

Activist groups claim that employers can easily discriminate against foreign workers, who often have little or no knowledge of the Japanese language or their legal rights. The Government attempts to deal with the problem of illegal workers within the bounds of existing law. It has tried to reduce the inflow of illegal foreign workers by prosecuting employers. Recent revisions of the Immigration Law provide for penalties against employers of undocumented foreign workers. Suspected foreign workers may also be denied entry for passport, visa, and entry application irregularities. The Government continues to study the foreign worker issue, and several citizens' groups are working with illegal foreign workers to improve their access to information on worker rights.

## **Section 6 Worker Rights**

### **a. The Right of Association**

The Constitution provides for the right of workers to associate freely in unions. Almost 12.3 million workers, 22.6 percent of all employees, belong to labor unions. Unions are free of government control and influence. Most unions are involved in political activity as well as labor relations, but they are not controlled by political parties. The Japanese Trade Union Confederation (RENGO), which represents 7.6 million workers and was formed in 1989 through the merger of several confederations, is the largest

labor organization. There is no requirement for a single trade union structure, and there are no restrictions on who may be a union official. Members of the armed forces, police, and firefighters are not permitted either to form unions or to strike. These restrictions have led to a long-running dispute before the International Labor Organization's (ILO) Committee on the Application of Conventions and Recommendations over observance of ILO Convention 98 concerning the right to organize and bargain collectively. The Committee has observed that these public employees have a limited capacity to participate in the process of determining their wages and again in June 1996 asked the Government to consider any measures it could take to encourage negotiations with public employees.

The right to strike, implicit in the Constitution, is exercised. During 1995, 77,000 work days were lost to strikes. The law prohibits retribution against strikers and is effectively enforced. Public employees do not have the right to strike, although they do have recourse to mediation and arbitration.

Unions are free to affiliate internationally and are active in international bodies, most notably the International Confederation of Free Trade Unions and maintain extensive international contacts.

#### b. The Right to Organize and Bargain Collectively

The Constitution provides unions with the right to organize, bargain, and act collectively. These rights are exercised freely, and collective bargaining is practiced widely. The annual "Spring Wage Offensive," in which individual unions in each industry conduct negotiations simultaneously with their firms, involves nationwide participation. Management usually consults closely with its enterprise union. However, trade unions are independent of management and aggressively pursue the interests of their workers. Antiunion discrimination is prohibited by law, and adequate mechanisms exist for resolving such cases as do occur, including the reinstatement with back wages of any workers fired for union activities. However, the collective bargaining rights of public employees are limited. The Government determines the pay of government employees based on a recommendation by the independent National Personnel Authority.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

The Constitution provides that no person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited. This legal prohibition against forced or compulsory labor applies equally to adults and to children, and there are presently no known cases of forced or bonded labor.

Before and during World War II the Government conscripted both Chinese and Korean workers who were forced to work in Japanese factories and mines. This practice ended in 1948 when the last of these workers was returned home. Survivors and families of these workers continue to press claims for damages and compensations for their forced labor, both in Japanese civil courts and in complaints to the ILO. In September the Nippon Steel Corporation reached an out-of-court settlement with the families of 11 Koreans who had performed forced labor in the company's mine in Kamaishi, the first reported payment by a Japanese firm for using forced labor during the war. Another forced labor suit against Nippon Steel filed by two South Korean men is pending in Osaka District Court. However, in December district courts in both Nagasaki and Tokyo ruled against such claimants, in cases involving the Kajima Corporation and Mitsubishi Heavy Industries, on the basis that the 20-year statute of limitations for claims against illegal acts had expired.

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution bans the exploitation of children. Both societal values and the rigorous enforcement of the Labor Standards Law protect children from exploitation in the workplace. The Government prohibits forced or bonded child labor and enforces this prohibition effectively (see Section 6.c.).

Child labor is virtually nonexistent. By law, children under the age of 15 may not be employed and those under age 18 may not be employed in dangerous or harmful jobs. The Labor Inspection Division of the Ministry of Labor, which vigorously enforces the Labor Standards Law, reports no violations. Society places an extremely high value on education, which is compulsory through the lower secondary (i.e. ninth grade) level. Enrollment levels for both boys and girls through the free and universally available upper secondary level (age 18) exceed 95 percent.

Under the revised Labor Standards Law of 1987, minors under 15 years of age may not be employed, and those under the age of 18 years may not be employed in dangerous or harmful work. The Labor Inspection Division of the Ministry of Labor rigorously enforces child labor laws.

#### e. Acceptable Conditions of Work

Minimum wages are set on a regional (prefectural) and industry basis, with the input of tripartite (workers, employers, public interest) advisory councils. Employers covered by a minimum wage must post the concerned minimum wages, and compliance with minimum wages is considered widespread. Minimum wage rates, effective in fiscal year 1997 (starting April 1), ranged from \$47 (5,368 yen) per day in Tokyo and Osaka to \$40 (4,625 yen) in Okinawa Prefecture and are considered sufficient to provide workers and their families with a decent living. The Labor Standards Law provides for a 40-hour workweek for most industries and mandates premium pay for hours worked over 40 in a week, or 8 in a day. However, labor unions frequently criticize the Government for failing to enforce maximum working hour regulations in smaller firms.

The Ministry of Labor effectively administers various laws and regulations governing occupational health and safety, principal among which is the 1972 Industrial Safety and Health Law. Standards are set by the Ministry of Labor and issued after consultation with the Standing Committee on Safety and Health of the Tripartite Labor Standards Commission. Labor inspectors have the authority to suspend unsafe operations immediately, and the law provides that workers may voice concerns over occupational safety and remove themselves from unsafe working conditions without jeopardizing their continued employment.

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