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## U.S. Department of State

### Japan Country Report on Human Rights Practices for 1998

Released by the Bureau of Democracy, Human Rights, and Labor, February 26, 1999.

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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 Liberal Democratic Party (LDP) formed the current Government in July. 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. Violence against women is a problem.

The Justice Ministry's Human Rights Commission continued to work on a 5-year mandate 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 is to submit recommendations on rights-related education by 1999, and to submit recommendations on relief measures by 2002.

## **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.

In February Tokyo police concluded that there was no criminal case against eight immigration officers under investigation for the 1997 death of an Iranian national being held in detention while awaiting deportation. In July the Osaka High Court upheld a lower court ruling sentencing a former police officer to 6 months in prison, suspended for 2 years, for beating a teenage suspect to death in 1988.

In May a court sentenced Ikuo Hayashi, a leader of the Aum Shinrikyo cult, to life imprisonment for the killing of 12 persons on the Tokyo subways in 1995. In October a court sentenced to death another leader of the Aum Shinrikyo cult Kazuaki Okazaki for the 1989 killings of four persons including an antisect lawyer, his wife, and their 1-year-old son. Cases still are pending in district courts against two dozen senior Aum members, including cult leader Shoko Asahara.

#### **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, 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 process results in a higher conviction rate than would otherwise be the case. There are persistent allegations of coerced confessions.

Appellate courts have overturned several convictions in recent years on the grounds that they were obtained as a result of forced confession. In addition, civil and criminal suits alleging abuse during interrogation and detention have been brought against some police and prosecution officials. In February the Osaka High Court ordered the prefectural government to pay compensation to five persons forced by police to confess to the 1979 murder of a housewife. In June following a struggle between prison guards and an inmate in Oita prison, the Fukuoka regional correction headquarters of the Justice Ministry instructed facilities within the region to prevent violence against prisoners.

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. In June the Tokyo District Court ruled that the use of metal and leather handcuffs was not a violation of the Constitution. 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. 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 Justice Ministry usually does not inform a death-row inmate's family prior to the execution.

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 a minimum of 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.

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 the date of arrest; the average is 1 to 2 months (see Section 1.e.). 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. An attorney 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 almost always are 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 reach 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. Although the Constitution also provides for a speedy trial and most criminal trials are completed within a reasonable length of time (see Section 1.d.), cases also may take several years to work their way through the trial and appeals process. For example, more than 3 years after the Aum Shinrikyo cult's sarin gas attack in the Tokyo subway killed 12 people, cult leader Shoko Asahara's initial trial is still under way. In March, 24 years after the death of a child and more than 20 years after court proceedings were first initiated, the Kobe District Court for the second time acquitted a former teacher accused of the child's murder. The teacher initially was indicted in 1977. The prosecution had appealed the first not-guilty verdict in 1985 and the Osaka High Court had ordered a retrial. Critics of the Kobe district public prosecutors' office, which is again appealing the verdict, note that the case has dragged on longer than the 13-year prison sentence the prosecution originally sought, and longer than the 15-year statute of limitations on murder 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 (see Section 1.c.). 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, needed to prepare their 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, although the Supreme Court publishes handbooks explaining legal procedures and terms for court interpreters. 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. In March the Takamatsu High Court dismissed the appeal of a Thai woman convicted in 1997 of murder, ruling that the verdict and the 8-year sentence should stand despite the fact that the presiding lower court judge had not allowed the interpreter to translate the reasons for the sentence to the defendant.

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.

### **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.

However, recent cases appear to indicate that certain types of professionals, such as teachers and jurists, are subject to limitations on their freedom of speech. In February the Fukuoka District Court rejected a primary school teacher's lawsuit to invalidate a reprimand he received 10 years earlier for expressing support for students who refused to sing the de facto national anthem at their graduation ceremony in 1988. In August the Sendai High Court reprimanded an assistant District Court judge for speaking in an unofficial capacity at an April 18 meeting organized by citizens' groups opposing a controversial wiretapping bill. The Sendai High Court, at the recommendation of the Sendai District Court, reprimanded the judge under the Court Law, which bans judges from engaging in "aggressive political activity," saying a judge's presence at the meeting "created a clear impression there is a judge opposing the bill." According to a Supreme Court official, this was the first case of a judge being reprimanded for political activity. The judge planned to appeal the decision to the Supreme Court.

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. In 1997 the Supreme Court ruled 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.

#### 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. However, this situation may change in the wake of a 1997 Supreme Court ruling 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. In July the Kochi District Court ruled that using village government money to repair two Shinto shrines was tantamount to allocating public funds to a religious group, and therefore unconstitutional.

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. The Cultural Affairs Agency estimates that nearly 5,000 religious groups across the nation appear dormant. In May the Matsuyama District Court ordered the dissolution of a registered Shinto religious group that had been dormant since 1982. This was the first time a court had accepted the Cultural Affairs Agency's request to dissolve a religious body since the Religious Corporation Law went into effect in 1951. However, in June the Nagoya High Court upheld a lower court ruling ordering the Toyama prefectural government to pay monetary damages to 88 followers of a Buddhist sect for violating their rights by ignoring for more than 10 years their application for certification as a religious sect.

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

Citizens have the right to travel freely both within the country and abroad, to change their place of residence, to emigrate, and to repatriate voluntarily. Citizenship may be lost by naturalization in a foreign country, or by failure of persons born with dual nationality to elect Japanese citizenship 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 the country do so for economic reasons. Between January 1997 and July 31, 1998, only 4 of the 311 applicants met the required standard for asylum and were granted that status.

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. Rejected applicants also may take their cases to court if ministry authorities do not recognize their objections. 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 August the United Nations High Commissioner for Refugees asked the Justice Ministry to

release two Burmese nationals who were taken into custody in July after having been denied refugee status. They were being held on suspicion of overstaying their visas, which had expired while their refugee applications were pending. In April a pregnant Chinese woman accused of illegally entering the country filed for refugee status on the grounds that she would be forced to undergo an abortion if she returned to China, in accordance with China's one-child family policy. In July the Matsue District Court rejected the prosecution's request that she be imprisoned for 1 year for illegal entry. Her asylum application was pending at year's end. 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. Under legislation passed in April, citizens living overseas may vote for proportional representation candidates in national elections, but may not vote in single-seat races or local elections. Expatriates are pressing for voting rights to be extended.

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. The Liberal Democratic Party formed the current Government in July.

There are no legal impediments to women's participation in government and politics, but cultural attitudes are not favorable to their participation. As of August, women held 23 seats in the 500-member lower house of the Diet (4.6 percent), and 43 seats in the 252-member upper house (17.1 percent). There is 1 woman in the 21-member Cabinet.

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 a July report issued by the Prime Minister's Office of Gender Equality, there were 1,755 rapes and 4,398 indecent assaults reported in 1997. 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.

According to the Ministry of Justice, the number of illegal female workers decreased slightly from 127,047 at the end of 1996 to 126,982 at the beginning of 1998. Japan is a destination country in the international trafficking of women for purposes of sexual exploitation. Brokers in source countries (e.g., the Philippines and Thailand) recruit women and "sell" them to Japanese intermediaries, who in turn coerce them into the sex trade by subjecting them to excessive debts and seizing their passports. Reliable statistics on the number and origin of women trafficked to the country are unavailable, but according to the Ministry of Justice 395 (2.5 percent) of the 15,823 women deported in 1997 were prostitutes.

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. According to the survey, 2 percent of respondents said that they were forced to have a sexual relationship. A 1997 survey from the Ministry of Labor's working group on the implementation of the revised Equal Employment Opportunity (EEO) Law reported that 62 percent of working women claimed to have experienced at least one act of sexual harassment.

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 40 percent of the labor force, and women between the ages of 15 and 64 have a labor force participation rate of 51 percent. According to a National Personnel Authority survey conducted in the winter of 1997, roughly 36 percent of female civil servants reported being sexually harassed by their direct superiors, and over 50 percent reported being harassed by bosses of other sections. One in six women said that their bosses had pressured them into a sexual relationship. More than 20 percent of the women surveyed said that they were unable to work efficiently as a result of harassment and wanted to move to another office or change jobs. However, according to a Management and Coordination Agency survey conducted in 1996, 93 percent of 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. In March the National Personnel Authority distributed 60,000 pamphlets to civil servants in all ministries and agencies in an effort to curb sexual harassment at government offices. 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 Standards 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 1997 the Government passed a law allowing women to work overtime shifts for the first time. Under 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 1997, the Government passed a new 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. The revised EEO Law is scheduled to go into full effect in April 1999. 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 1997, the Government revised the Labor Standards 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 the worker's union.

Although as noted the law prohibits discrimination against women in wages, female workers on average earned only 63 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 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 1995 women made up 16 percent of all national government workers, but held only 4 percent of top (director level and higher) government posts. According to the Home Ministry, women constituted 31 percent of all local government workers, but held only 3 percent of top local government positions.

In addition to discrimination, traditional male/female division of labor at home places disproportionate burdens on working women. According to a 1997 report from the Prime Minister's Office on Gender Equality, women do 90 percent of the housework and child rearing, while men do 10 percent. The report found that there was little difference in the time spent on housework by men whose wives had jobs and those whose wives did not work outside the home. On March 3, women across the country participated in the second annual "women's general strike," taking the day off from work and domestic chores to promote equal rights for men and women.

In 1997 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, Filipinos, Chinese, Indonesians, Burmese, Dutch, and Japanese) to provide sex to soldiers between 1932 and 1945. The Government consistently has refused to pay government compensation to individual victims, arguing that postwar treaties already have settled all war claims.

The Asian Women's Fund (AWF) was established in 1995 as a private, government-sponsored fund to compensate former "comfort women." The AWF 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 AWF. As of August, the AWF had collected donations totaling approximately \$4.24 million (500 million yen) and given lump-sum payments of almost \$16,949 (2 million yen) each and a letter of apology signed by the Prime Minister to more than 70 women mostly from the Philippines. These women also received medical and welfare assistance from

the AWF. In July the AWF reached an agreement with a Dutch affiliate to start compensation payments to former Dutch comfort women. Government officials estimate that up to 100 Dutch women were forced to provide sexual services during World War II.

The Government's refusal to take more than "moral responsibility" and the AWF's role resulted in considerable criticism during the year. In February five Filipino women who previously had accepted money from the AWF rejected letters of apology from the Prime Minister, as well as the offer of government-funded medical and welfare assistance, saying that the letters were not sincere unless accompanied by direct government compensation. In April the Yamaguchi District Court ordered the Government to pay \$2,542 (300,000 yen) in state compensation to three Korean former comfort women for neglecting its constitutional duty to enact compensation legislation following the Government's 1993 admission. However, the Court denied the plaintiffs demand for an official government apology. This was the first court judgment rendered in favor of foreign war victims. Five other cases concerning former comfort women are pending in Tokyo District Court. The plaintiffs are seeking \$169,492 (20 million yen) each in damages and an official apology from the Government. In May the South Korean Government made a lump-sum payment of \$27,072 (35.6 million won) to over 130 documented Korean victims on condition that they not receive redress from the AWF (although more than 10 of these victims accepted AWF money afterwards). The South Korean program excluded the seven Korean women who had already received compensation from the AWF. In June the AWF project was suspended in South Korea. As of July, the Government was considering shifting compensation payments in South Korea to other types of programs, such as constructing medical and welfare facilities in Korea. In August the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities issued a report that included a recommendation that the Government provide state compensation to these women and prosecute those responsible for setting up and operating "comfort stations" during World War II.

## 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 the law, 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. Only prefectural government ordinances cover prostitution with minors over 13 years of age. Under the present Prostitution Prevention Law, selling the sexual services of children is illegal, but purchasing those services is not. According to an April study conducted by the AWF, less than 50 percent of high school girls object to the idea of dating for money or presents, and 1 in 20 actually dates men for money. There is no law that directly prohibits the production and sale of child pornography.

In June the U.N. Committee on the Rights of the Child recommended that Japanese children be protected from corporal punishment and bullying at school and from exposure to violence and pornography in the media and on the Internet. In August the Government revised the law regulating "adult" entertainment to require operators of pornographic home pages and suppliers of images to register with local safety commissions and to ban offering such pages to persons under age 18. The revisions are to take effect on April 1, 1999.

Under juvenile law, juvenile suspects are tried in family court and are not allowed a retrial. The National Police Agency reported in February that 152,825 minors were arrested in 1997 on suspicion of committing criminal offenses, over 13,000 more than in 1996. A total of 17,981 minors were arrested violent crimes, including murder, rape, and robbery, an increase of 15.5 percent from 1996 and accounting for 44.5 percent of all violent crimes. In addition, the number of juvenile victims of violent crime also increased 23.3 percent overall. In May the director of the National Police Agency instructed local police officials nationwide to strengthen support programs to aid juvenile crime victims. Family court proceedings are not open to the public, a policy that has been criticized by family members of juvenile crime victims. Teachers also are increasingly becoming the targets of student violence.

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. However, because many cases go unreported, it is difficult to determine the exact number. According to a Management and Coordination Agency study released in April, one in three elementary and junior high school students has been bullied but more than one-third did not report the bullying to anyone. At least two teenage suicides that occurred in the spring were linked directly to bullying. 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 for the sixth consecutive year in fiscal year 1997. In 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.

#### People with Disabilities

The law does not mandate accessibility to buildings for the disabled, however, a 1994 law on construction standards for public facilities allows operators of hospitals, theaters, hotels, and similar enterprises to receive low-interest loans and tax breaks if they build wide entrances and elevators to accommodate those with disabilities. There are an estimated 2.9 million physically disabled and roughly 2 million mentally disabled persons in Japan. 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. Under civil law, persons with hearing problems or speech impediments cannot create valid wills because they cannot "convey orally" to a notary the contents of a will, or affirm that the text the notary reads back to them is correct. In May the Ministry of Health decided not to set standards for dogs and for trainers of dogs for the disabled or to subsidize the activities of dog training organizations, stating the efficacy of such dogs was clear.

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 persons. The penalty for noncompliance is a fine. A cabinet directive, effective on July 1, ordered private companies to raise the proportion of physically disabled persons in their work force from 1.6 to 1.8 percent, and raised the percentage of disabled persons among civil servants from 2 to 2.1 percent. However, there is evidence that only half of the nation's eligible companies comply with the law, and, as of September, an estimated 1 in 12 disabled persons had lost jobs during the previous year.

An amendment to the Law to Promote the Employment of the Handicapped to include the mentally disabled took effect on July 1. 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. In 1997 a former factory owner in Ibaraki prefecture who had received generous government subsidies was sentenced to 3 years'

imprisonment for physically abusing mentally disabled workers at his plant and for withholding portions of their salaries. Also in 1997, a rehabilitation facility for the mentally disabled was closed after its operator and employees were accused of using corporal punishment and sexually abusing disabled residents.

In 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 1996 the Ministry of Health and Welfare also instructed local governments to set numerical targets for the number of home help providers and care facilities allocated to the disabled. However, according to newspaper reports, less 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 of Ainu at 50,000, less than 0.05 percent of the country's 124 million population. Almost all live on Hokkaido, the northernmost of the country's four main islands. Their primary occupations are fishing, small-scale farming, and jobs in the tourism industry. Under an 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 land holdings.

In 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 1997 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 1997. 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 the country. 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 July a report submitted by the U.N. Special Rapporteur to the 16<sup>th</sup> U.N. Working Group on Indigenous Populations said that the Ainu had never entered into a consensual juridical relation with any state, and stated that the lack of such an agreement deprived them of their rights. Many Ainu criticize the Law to Promote Ainu Culture for not advancing Ainu political rights and criticize the Government for not providing funds for noncultural activities that would improve Ainu living conditions or financial status.

The Ainu continue to face societal discrimination while engaging in an uphill struggle against complete assimilation. An Ainu-language newspaper was established in 1997. In April a local Hokkaido radio station began broadcasting a weekly 15-minute Ainu-language program. In July the Japan Ainu Association, a nationwide organization of Ainu, was established to lobby the Government for economic assistance and greater social welfare benefits for Ainu throughout the country.

### 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 1997, the Government enacted legislation effective for 5 years that retains 15 of the original 45 programs for Burakumin communities. One of these programs is aimed at completing housing plans already in progress.

In 1997 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.

According to the Ministry of Justice, there were over 1.4 million legal foreign residents as of December 31, 1997, accounting for 1.18 percent of the nation's population. Of these approximately 645,400 were ethnic Koreans, followed by 252,200 Chinese, and 233,300 Brazilians. The number of Korean residents has been decreasing steadily 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. In July the Osaka High Court, overturning a decision of the Osaka District Court, ordered a condominium owner to pay monetary damages to a Korean family because the owner had instructed the family not to tell its neighbors that they were Korean residents and not to go around the condominium grounds wearing traditional Korean clothes.

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 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. In recent years, several local governments have expressed support for foreign residents' right to vote, but others have passed resolutions against foreign resident suffrage. In June the Gifu District Court dismissed a damages suit filed by nine Korean residents who were barred from voting in a local plebiscite because they were not citizens. Foreign residents also are

barred from running in national elections. In March the Supreme Court dismissed a suit filed by 11 Korean residents who had not been allowed to run in the 1992 House of Councilors election. All 11 had been born and raised in Japan, but the Supreme Court ruled that the right to run in a Diet election did not apply to foreigners. In June local election authorities in Koichi prefecture rejected the application of a third-generation Korean born in Japan to run in the July House of Councilors election on the grounds that he lacked a Japanese family register. Similar applications have been rejected previously by Hokkaido, Tokyo, Osaka, and Okinawa prefectures.

According to a survey by a Korean group, 30 of the 57 prefectural and municipal universities and 220 of the 431 private universities allow Korean senior high school graduates to take their entrance exams, provided that the students first take a college entrance qualification test. However, under the School Education Law, students attending Chinese, Korean, or other non-Japanese schools are not eligible to take national university examinations. Although a number of local governments provide subsidies to Korean schools, the central Government does not. In February the Japan Federation of Bar Associations urged the Government to change its policy. Recently some private national universities and graduate schools and at least one public national university have defied the Education Ministry by admitting foreign-school students.

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 the country, 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 March the Osaka District Court ordered the prefectural governments of Osaka, Hiroshima, and Kanagawa to pay compensatory damages to six foreign residents after ruling that they had been arrested unjustly and detained after refusing to be fingerprinted between 1982 and 1985. In May the Osaka District Court rejected a request by 10 foreign residents that fingerprints they provided under the Alien Registration Act no longer be kept on file and denied their claim to damages.

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 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. In 1997 the cities of Kawasaki, Yokohama, Osaka, Kobe, and Hisai, and Kanagawa and Koichi Prefectures opened many jobs to noncitizens, and in June 1997 noncitizens took the employment exams for these cities and prefectural governments for the first time. 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 the Hakodate municipal government announced that in fiscal year 1999 it would allow foreign residents to take employment tests for all city jobs except firefighters. According to a 1997 joint survey conducted by the All Japan Prefectural and Municipal Workers Union and the Korean Residents Association in Japan, 20 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 276,810 foreign nationals residing illegally in the country, a decrease of 2.2 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. Activist groups claim that employers can exploit or 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. RENGO, which represents 7.8 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 has 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 1997, 110,000 workdays involving 47,000 employees 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. The law prohibits antiunion discrimination, 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. The 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 1997 the Nippon Steel Corporation reached an out-of-court settlement with the families of 11 Koreans who had performed forced labor in 1 of the company's mines. However, this is the only reported payment by a Japanese firm for using forced labor during the war. In more than 20 rulings, the courts have developed a pattern of dismissing the suits. In most cases, the judges rule that the 20-year statute of limitations for civil claims had expired. In other cases the courts acknowledged that the plaintiffs suffered injuries from their forced labor but ruled that damages need not be paid because of the extraordinary circumstances of war.

#### 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 (ninth grade) level. Enrollment levels for both boys and girls through the free and universally available upper secondary level (age 18) exceed 95 percent.

#### 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 from September 1, ranged from \$40 (5,465 yen) per day in Tokyo and Osaka to \$35 (4,712 yen) in Miyazaki 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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