



[Home](#) » [Under Secretary for Democracy and Global Affairs](#) » [Bureau of Democracy, Human Rights, and Labor](#) » [Releases](#) » [Human Rights Reports](#) » [2009 Country Reports on Human Rights Practices](#) » [East Asia and the Pacific](#) » [Japan](#)

2009 Human Rights Report: Japan

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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Japan is a parliamentary democracy with a population of approximately 127.7 million. In elections held in August, the Democratic Party of Japan ended the Liberal Democratic Party's half-century dominance of the government when it captured a majority in the legislature's lower house, adding to the plurality it captured in the upper house in 2007. Yukio Hatoyama became the prime minister in August, replacing Taro Aso. The elections were generally considered free and fair. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the rights of its citizens. Human rights nongovernmental organizations (NGOs) reported problems with the country's detention facilities and legal system. There were several reports of government corruption during the year. Reported cases of violence and other abuse against women and children increased. Sexual harassment and employment discrimination continued to be reported. Trafficking in persons remained a problem. Discrimination against children born out of wedlock and minorities were problems.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits such practices, and the government generally respected these provisions in practice.

NGOs and foreign diplomats reported instances of alleged physical abuse in some prisons. In February, in the civil case against Wakayama Prefecture and the state regarding three police officers convicted for the 2004 death of a suspect, the court found Wakayama Prefecture responsible and ordered compensation.

The government continued to deny death-row inmates and their families information about the date of execution. Families of condemned prisoners were notified of the execution after the fact. The government stated this policy was to spare the prisoners the anguish of knowing when they were going to die. Condemned prisoners, although held in solitary confinement for an average of almost eight years until their execution, were allowed visits by their families, lawyers, and other persons. An NGO reported that prisoners facing the death penalty were sometimes kept in solitary confinement for decades and concluded that a number of these prisoners had become mentally ill as a result.

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NGOs continued to report that prison management regularly abused the rules on solitary confinement. Punitive solitary confinement may be imposed for a maximum of 60 days, but procedures allow wardens to keep prisoners in "isolation" solitary confinement indefinitely. Officials at Fuchu Prison used such procedures to keep a foreign prisoner in isolation for the past four years. Prison officials said that solitary confinement was an important tool to maintain order in prisons that were at or above capacity.

Hazing, bullying, and sexual harassment were increasingly reported as problems in the Japanese Self Defense Forces.

Prison and Detention Center Conditions

Prison conditions generally met international standards. However, several facilities were overcrowded and lacked heating. NGOs also reported that some facilities provided inadequate food and medical care. Foreign diplomatic officials confirmed numerous cases in which the prison diet was inadequate to prevent significant weight loss, including muscular mass. Cases of slow and in some cases inadequate medical treatment were documented, including in detainees and prisoners with preexisting medical conditions. Police and prison authorities were particularly slow providing treatment of mental illness. In some institutions clothing and blankets were insufficient to protect inmates against cold weather. Most prison facilities did not provide heating during nighttime hours in winter despite freezing temperatures. The lack of heating subjected the prison population to a range of preventable cold injuries, from chilblains to more severe forms of cold injury. Foreign prisoners in the Tokyo area presented to visiting diplomatic officials chilblains-affected fingers and toes of varying severity, the direct result of long-term exposure to deleteriously cold and at times freezing conditions in prison and detention facilities during the winter months. NGOs, lawyers, and doctors also criticized medical care in police-operated preindictment detention centers and immigration detention centers.

In 2008 there were 67,672 prisoners. Men and women prisoners were held in separate facilities in prisons and detention centers. Minors were held separately from adults in prisons and regular detention centers, but regulations do not require that minors be held separately in immigration detention centers.

Prison management regulations stipulate that independent committees inspect prisons and detention centers operated by the Ministry of Justice (MOJ) and police-operated detention facilities. The committees included physicians, lawyers, local municipal officials, representatives of local communities, and other local citizens. Prisoner rights advocates reported that the committees visited MOJ prisons throughout the year. In 2008 these committees visited a total of 207 prisons and detention facilities (not including pretrial detention facilities) and interviewed 598 detainees. The committees made 659 recommendations to the prison or detention facility superintendants, of which 366 were considered implemented or in the process of being implemented. In addition, 198 recommendations were considered as requiring either further discussion or follow-up inspections, and 95 were referred to the Ministry of Justice.

In July an amendment to the Immigration Control and Refugee Recognition Law was passed establishing an independent inspection process for immigration detention facilities.

During the year the International Committee of the Red Cross did not request any prison visits.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions. NGOs continued to report instances of what appeared to be arbitrary detentions.

Role of the Police and Security Apparatus

Civilian authorities maintained effective control over the National Police Agency (NPA) and local police forces, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year. However, some NGOs criticized local public safety commissions for lacking independence from or sufficient authority over police agencies.

Arrest Procedures and Treatment While in Detention

Persons were apprehended openly with warrants based on sufficient evidence and issued by a duly authorized official, and detainees were brought before an independent judiciary. NGOs claimed that warrants were granted at high rates and that detention sometimes occurred even though the evidentiary grounds were weak.

The law provides detainees the right to a prompt judicial determination of the legality of the detention, and authorities respected this right in practice. The law requires authorities to inform detainees immediately of the charges against them. Authorities usually held suspects in police-operated detention centers for an initial 72 hours. A judge must interview a suspect prior to further detention. The judge may extend preindictment custody by up to two consecutive 10-day periods. Prosecutors routinely sought and received these extensions. Prosecutors may also apply for an additional five-day extension in exceptional crimes such as insurrection, foreign aggression, and disturbance. NGOs pointed out that because extensions were routinely granted, the intent of the law--prompt judicial determination of the legality of the detention--was in fact undermined.

The code of criminal procedure allows detainees, their families, or representatives to request that the court release an indicted detainee on bail. However, bail is not available during preindictment to persons detained in either police or MOJ detention facilities. Because judges customarily granted prosecutors requests for extensions, the system of pretrial detention, known as "daiyou kangoku" (substitute prison), usually continued for 23 days. Suspects in pretrial detention are legally required to face interrogation. NPA guidelines limit interrogations to a maximum of eight hours. Overnight interrogations are prohibited.

Preindictment detainees had access to counsel, including court-appointed attorneys. Prisoner advocates said that in practice this access improved in terms of the duration and frequency. However, counsel may not be present during interrogations. Family members were allowed to meet with detainees, but only in the presence of a detention officer. Article 81 of the code of criminal conduct may, regardless of the charge, prohibit detainees from having interviews with persons other than their counsel only if there is probable cause that the suspect may flee or may conceal or destroy evidence. Detainees charged with drug offenses are routinely held incommunicado until indictment and are allowed only consular and legal access. Prosecutors at their discretion may partially record suspects' confessions, but NGOs pointed out that partial and discretionary recordings could be misleading. Police in Tokyo and 46 prefectures continued testing supervised interrogations.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence in practice. In July the country began a lay judge (jury) system for serious criminal cases.

Trial Procedures

The law provides the right to a fair trial for all citizens and ensures that each charged individual receives a public trial by an independent civilian court, has access to defense counsel, and has the right to cross-examine witnesses. A defendant is presumed innocent until proven guilty in a court of law, and defendants cannot be compelled to testify against themselves.

The UN Committee Against Torture (UNCAT), NGOs, and lawyers questioned whether defendants were presumed innocent in practice. According to NGOs, the majority of indicted detainees confessed while in police custody. Safeguards exist to ensure that suspects cannot be compelled to confess to a crime or be convicted when a confession is the only evidence. In the past NGOs documented techniques used to extract confessions that include beating, intimidation, sleep deprivation, questioning from early morning to late at night, and making the suspect stand or sit in fixed positions for long periods. New NPA guidelines were created in January 2008. On April 1, the National Public Safety Commission issued regulations prohibiting the police from touching suspects (unless unavoidable), exerting force, threatening them, keeping them in fixed postures for long periods, verbally abusing them, or offering them favors in return for a confession. Defense counsel is not allowed to be present during interrogations. However, NGOs continued to report long interrogation sessions of eight to 12 hours in length, in which the detainee was handcuffed to a chair for the entire period, and aggressive questioning techniques were used.

The use of police-operated detention centers was criticized because it puts suspects in the custody of their interrogators. The government stated that article 16 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees separates the function of investigation from the function of detention. According to government statistics, more than 98 percent of arrested suspects were sent to police detention facilities. The other 2 percent were held in MOJ-operated preindictment detention centers. More than 99 percent of cases that reached a trial court resulted in conviction. Independent legal scholars alleged that the judiciary gives too much weight to confessions, although the government disputed the assertion.

There were media reports of persons convicted on the basis of police-obtained confessions who were later proved innocent. During the year a man sentenced to life imprisonment after DNA tests led to his conviction in 1990 for the murder of a four-year-old girl in Ashikaga, Tochigi Prefecture, was released after more-accurate DNA tests exonerated him. Despite errors in the basic investigation, including autopsy findings that conflicted with the suspect's confession, the prosecutors and the courts dismissed the possibility that the confession was coerced. The same questionable DNA testing methods contributed to guilty rulings in other cases, including some involving the death penalty.

According to some independent legal scholars, trial procedures favor the prosecution, although the government disputed the claim. The law provides for access to counsel; nevertheless, a significant number of defendants reported that this access was insufficient. The law does not require full disclosure by prosecutors unless the defending attorney is able to satisfy disclosure procedure conditions. In practice this sometimes resulted in the suppression of material that the prosecution did not use in court. As a result, the legal representatives of some defendants claimed that they did not receive access to relevant material in the police record. In appeal attempts in some cases, defense attorneys were not granted access to possible exculpatory DNA evidence. The police's response in those cases was that all evidence was destroyed after the initial trial. The government's official position regarding the disclosure of evidence to defense attorneys is that any evidence, including DNA, can be disclosed through the disclosure procedure in accordance with the code of criminal procedure "if the conditions are met" (see section 4).

The language barrier was a serious problem for foreign defendants. No guidelines exist to ensure effective communication between judges, lawyers, and non-Japanese-speaking defendants. Several foreign detainees claimed that police urged them to sign statements in Japanese that they could not understand and that were not translated adequately. No standard licensing or qualification system existed for court interpreters, and trials proceeded even if no translation or interpretation

was provided, despite the government's claims that trials cannot proceed unless translation or interpreting is provided. In Gunma Prefecture, police recruited volunteers to translate for the police during investigations.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. Persons have access to a court to bring lawsuits seeking damages for, or cessation of, a human rights violation. There are administrative remedies as well as judicial remedies for alleged wrongs.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Approximately 75 percent of the population used the Internet.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events. The Ministry of Education's approval process for history textbooks continued to be a subject of controversy, particularly regarding the treatment of certain subjects pertaining to the 20th century. Some textbook authors accused the Ministry of Education of editing their writing in ways that distort the intended meaning. The national anthem and national flag continued to be controversial symbols. Since 2003 almost 400 teachers have been disciplined for refusing to sing the national anthem in front of the flag.

b. Freedom of Peaceful Assembly and Association

The law provides for the freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice. However, the Unification Church continued to report that authorities did not intercede in reported cases of "forced deprogramming" and confinement.

Societal Abuses and Discrimination

Relations among religious groups were generally amicable. However, since September 2008, according to NPA authorities, more than 50 incidents of vandalism were reported at churches and other religious facilities belonging to Protestant groups in Osaka, Hyogo, Kyoto, and Shiga prefectures. At year's end authorities had not apprehended anyone or discovered the motive.

An estimated 200 Jewish families live in the country. There were no reports of anti-Semitic acts. Advertisements for anti-Semitic books appeared in the media.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

The law prohibits forced exile, and the government did not use it.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol. Its laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government also announced a small-scale third country resettlement program.

In practice the government provided some protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The Partial Amendment to the Immigration Control and Refugee Act, promulgated on July 15, includes language that forbids deportation in breach of conventions, including the Convention Against Torture.

Refugee and asylum applicants could ask lawyers to participate in their appeal hearings before the system of refugee examiners; however, in practice refugee and asylum seekers had limited access to legal representatives due to the limited amount of legal aid available and the small number of lawyers working on asylum matters. Although there was a free counseling service for foreigners, including asylum seekers and refugees, at the Japan Legal Support Center established by the MOJ, there was no public financial assistance to pay legal costs for asylum seekers outside of this center. Lawyers working for asylum seekers who lacked financial means could apply for financial assistance from the Japan Federation of Bar Associations.

The UNCAT, NGOs, and lawyers criticized the indefinite and often long period of detention between the rejection of an application for asylum and deportation. NGOs in particular expressed concern over an increase in the number of asylum seekers detained after rejection of their initial application and while the appeal decision was pending.

Applicants for refugee status normally are not allowed to work unless they meet certain conditions. Persons applying for refugee status to obtain the legal right to work must be in need and completely dependent on government shelters or NGO support. In the interim the Refugee Assistance Headquarters provides small stipends. However, because of budget shortfalls caused by the increase in applications, stricter criteria eliminated this aid to many applicants.

Refugees faced the same patterns of discrimination that ethnic minorities did in the country: reduced access to housing, education, and employment. Except for those who met the conditions stated above, persons whose refugee status was

pending or on appeal did not have the legal right to work or receive social welfare, rendering them completely dependent on overcrowded government shelters or NGO support.

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

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

In August the country held elections for the lower house of the Diet, which brought an opposition party into power for only the second time in 54 years. The elections were considered generally free and fair, as were the July 2007 elections for the upper house of the Diet.

Political parties operated without restriction or outside interference.

As the result of the August elections, women held a record-high 54 of 480 seats in the lower house of the Diet and 42 of the upper house's 242 seats. At year's end there were three female governors. There were two women in the 18-member cabinet. Because some ethnic minorities are of mixed heritage and do not self-identify, it was difficult to determine the number of minorities that served in the Diet. There were three Diet members who acknowledged being naturalized Japanese citizens.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. During the first half of the year, the NPA reported 27 cases of bribery and 11 cases of bid rigging. There were regular media report of financial and accounting irregularities involving politicians and government officials, including Prime Minister Yukio Hatoyama and Democratic Party of Japan Secretary General Ichiro Ozawa (both cases ended up with no indictments against the two officials but several of their aides were indicted). According to NPA figures for 2008, there were 50 cases involving bribery and 27 cases of bid rigging.

Independent academic experts stated that ties between politicians, bureaucrats, and businessmen were close and that corruption remained a problem. Academics cited the large entertainment industry and the business and government practices that make use of it, along with their large and frequently undisclosed entertainment budgets, as an example of a practice that could have a corrupting influence on government. In one case, considered typical, a leading member of the Diet upper house registered 2.4 million yen (approximately \$26,580) spent at 11 nightclubs between 2004 and 2007 as "political activities costs."

Although financial disclosure laws exist, they were laxly enforced. Cooperation with international law enforcement officials investigating suspicious financial transactions and money laundering also was poor.

The public has the legal right to access government information. There were no reports that the government denied legal requests for information or required information seekers to pay prohibitive fees to gain access. A recent study by a nonprofit body disclosed that the Foreign Ministry destroyed approximately 1,280 tons of what it termed "sensitive records" in fiscal year (FY) 2000 (ending in March 2001), ostensibly in anticipation of the information disclosure law that went into effect in April 2001. The Finance Ministry was second in the quantity of material destroyed, eliminating approximately 620 tons.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without governmental restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

The government cooperated with international governmental organizations and permitted visits by UN representatives and representatives of other international governmental organizations, including the International Organization for Migration (IOM) and International Labor Organization.

Human rights groups pointed out that the country had not established an independent national human rights institution. The Human Rights Commission reports to the MOJ. There were no official human rights committees in the Diet. However, there were unofficial groups that covered human rights-related matters. For example, there was a group focused on democratization in Burma and another focused on abolishing the death penalty.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination on the basis of race, gender, disability, language, and social status. Although the government generally enforced these provisions, discrimination against women, ethnic minority groups, and foreigners remained a problem.

Women

The law criminalizes all forms of rape, including spousal rape, and the government generally enforced the law effectively. According to government statistics, 1,582 rapes were reported in 2008 and 676 during the first half of 2009. Many police stations had female officers to provide confidential assistance to female victims.

Although prohibited by law, domestic violence against women remained a problem. MOJ statistics showed that 51 perpetrators were prosecuted in 2008 under the antisposal violence law. District courts may impose six-month restraining orders on perpetrators of domestic violence to protect threatened or abused spouses and their children under the age of 20 years and may also impose sentences of up to one year in prison or fines of up to one million yen (approximately \$10,000). In 2008 courts granted 2,525 of 3,143 petitions for protection orders, with 450 withdrawals and 168 dismissals. The law, which covers common-law marriages and divorced individuals, includes protection for relatives of victims and persons threatened with violence. According to NPA statistics, in 2008 there were 25,210 reported cases of domestic violence involving women as victims, more than 98 percent of the total. Spousal violence consultation assistance centers reported 66,936 consultation cases in 2008, with women the victims in more than 99 percent of the cases.

Prostitution is illegal but narrowly defined. Many sexual acts for pay that would be considered prostitution in other countries are legal.

Sexual harassment in the workplace remained widespread. In FY2008 the Ministry of Health, Labor, and Welfare (MHLW) received 13,529 consultations, mostly from female workers (60 percent of the total number of consulters). The law includes measures to identify companies that fail to prevent sexual harassment, but it does not include punitive measures to enforce compliance other than publicizing the names of offending companies. The government established hotlines in prefectural labor bureau equal employment departments and charged them with the duty of handling consultations concerning sexual harassment.

Despite apologies by successive Japanese political leaders, a number of NGOs continued to criticize the country's apologies to and compensation for "comfort women" (the victims of forced prostitution during World War II) as inadequate. The government provided compensation payments through a government-initiated private fund, expressed remorse, and extended apologies to the victims.

Couples and individuals could decide freely and responsibly the number, spacing, and timing of their children, and they had the information and means to do so free from discrimination, coercion, and violence. Women had access to contraception and skilled attendance during childbirth, including essential obstetric and postpartum care. Men and women received equal access to diagnosis and treatment for sexually transmitted infections, including HIV.

The law prohibits sexual discrimination and generally provides women the same rights as men. The Gender Equality Bureau, a cabinet office in the Ministry of Consumer Affairs and Food Safety, Social Affairs, and Gender Equality, continued to examine policies and monitor progress on gender equality. Its "White Paper on Gender Quality 2009" reviewed 10 years of efforts since the passage of the Basic Law for a Gender-Equal Society and concluded that the situation had "somewhat progressed." However, the white paper concluded that women's participation remained low by international standards, the most frequent obstacle cited being "there are no, or insufficient, systems to support the balance of work and household activities." Other NGOs, such as the National Women's Education Center, were active in efforts to combat employment discrimination based on gender by focusing on training women leaders.

Inequality in employment remained a problem in society. Women composed 41.9 percent of the labor force, slightly up from 2008, and their average monthly wage was 226,100 yen (approximately \$2,500), about two-thirds of the monthly wage earned by men (333,700 yen, or \$3,692).

In August the Committee on the Elimination of Discrimination against Women termed the country's efforts to implement antidiscrimination measures as insufficient. The committee pointed to discriminatory provisions in the civil code, unequal treatment of women in the labor market, and low representation of women in high-level elected bodies. The committee urged the country to abolish a six-month waiting period stipulated in the civil code for women but not men before remarriage, to adopt a system allowing for the choice of surnames for married couples, and to repeal civil code and family registration law provisions that discriminate against children born out of wedlock. The government pointed to changes in its nationality law and civil code that address some of these concerns, including a resolution of the surnames matter, the establishment of women's rights to their husbands' pensions, and improved legal protection for women in child custody issues.

Children

A child becomes a Japanese citizenship if the father of a child in wedlock is a Japanese citizen, if the mother of a child in or out of wedlock is a Japanese citizen, if the father who died before the birth of a child in wedlock was a Japanese citizen at the time of his death, or if a child is born in Japan and both parents are unknown or do not have nationality. On January 1, a revision to the nationality law went in effect enabling a child born out of wedlock to a citizen father and noncitizen mother, but whose paternity was recognized by the father after birth, to obtain citizenship.

Reports of child abuse continued to increase. In FY2008 there were 42,662 possible cases of child abuse by parents or guardians reported to the National Child Discussion Center, an increase of approximately 2,000 from the previous 12-month period. According to the NPA, 319 children were abused and 45 were killed as a result of abuse by parents or guardians. To better ensure secure children's safety, municipal governments require that suspected abusive parents or guardians be interviewed by child welfare officials and provided with assistance as required. When necessary, suspected homes must also be inspected with the police in a supporting role. The law grants child welfare officials the authority to prohibit abusive parents from meeting or communicating with their children. The law also bans abuse under the guise of discipline and mandates that anyone aware of suspicious circumstances must report the information to a local child-counseling center or municipal welfare center.

Child prostitution is illegal, with a penalty of imprisonment with labor for not more than three years or a fine of not more than one million yen (\$10,000) for offenders, including the intermediary and the person involved in solicitation. However, the practice of "enjo-kosai" (compensated dating) and easy facilitation by means of on-line dating, social networking, and "delivery health" (call girl or escort service) sites made de facto domestic child sex tourism a problem. There are statutory rape laws. The minimum age for consensual sex varies with jurisdiction and ranges from 13 to 18. The penalty for statutory rape is not less than two years' imprisonment at forced labor.

The distribution of child pornography is illegal; the penalty is imprisonment with labor for not more than three years or a fine not exceeding three million yen (\$30,000). Although the distribution of child pornography is illegal, the law does not criminalize the simple possession of child pornography, which often depicts the brutal sexual abuse of small children. The absence of a statutory basis makes it difficult for police to obtain search warrants, preventing them from effectively enforcing existing child pornography laws or participating in international law enforcement efforts in this area. Along with child pornography involving real victims, some law enforcement and pedophilia experts stated that child molesters used cartoons and comics depicting child pornography to seduce children. The role of commonly available sexually explicit comics and anime in the sexual endangerment of children remained controversial, with the NPA stating the link had not been proved. However, other experts believed the situation could be harmful to children by creating a culture that appears to accept sexual intercourse with children or violence against children. Internet service providers acknowledged that the country was a hub for child pornography, leading to greater victimization of children both domestically and abroad.

Trafficking in Persons

The law establishes human trafficking both for sexual and labor exploitation as a criminal offense. Nonetheless, human trafficking remained a significant problem despite government efforts. The relatively small number of identified victims led some in the police and Immigration Bureau to conclude that trafficking in persons was not a problem. The lack of reliable data on the scale of human trafficking made this controversy difficult to resolve.

The country remained a destination and transit country for men, women, and children trafficked for commercial sexual exploitation and other purposes. Victims came from China, the Republic of Korea, Southeast Asia, Eastern Europe, and to a lesser extent Latin America. There were also reports of an increase in the internal trafficking of girls for sexual exploitation. The majority of identified trafficking victims were foreign women who migrated to the country seeking work but upon arrival were subjected to debt bondage and forced prostitution. Male and female migrant workers from China, Indonesia, the Philippines, Vietnam, and other Asian countries were sometimes subjected to conditions of forced labor.

Agents, brokers, and employers involved in trafficking for sexual exploitation often had connections with organized crime syndicates (the Yakuza), at a minimum in terms of "protection money" paid to organized crime figures or their associates. Some in the NPA pointed out that the identified trafficking cases did not appear to have connections with organized crime. Some NGOs also reported that the sexual exploitation cases appeared to be handled by individuals running prostitution businesses. However, many experts believed that the Yakuza were heavily involved in their traditional businesses, which include prostitution. Reports also showed an increase in former trafficking victims becoming traffickers.

Most women trafficked into the sex trade had their travel documents taken away and their movements strictly controlled by their employers. Victims were threatened with reprisals to themselves or their families if they tried to escape. Employers often isolated the women, subjected them to constant surveillance, and used violence to punish them for disobedience. NGOs reported that in some cases brokers used drugs to subjugate victims.

Debt bondage was another means of control. Before arrival in the country, trafficking victims generally did not understand the size of the debts they would owe, the amount of time it would take them to repay the debts, or the conditions of employment to which they would be subjected upon arrival. Women faced debts of up to 4.5 million yen (\$45,000). In

addition, they had to pay their employer for their living expenses, medical care (when provided by the employer), and other necessities. "Fines" for misbehavior added to the original debt, and the process that employers used to calculate these debts was not transparent. Employers also sometimes "resold," or threatened to resell, troublesome women or women found to be HIV positive, thereby increasing the victims' debts and often leading to even worse working conditions.

In response to increased police enforcement, many sex business operators shifted from storefront businesses to "delivery" escort services. The shift to Internet-based solicitation and procurement made it much harder to measure the extent to which employers exploited victims of trafficking.

There was no significant improvement in the country's prosecution of sex trafficking. The government reported 29 prosecutions and 13 convictions in 2008 under the antitrafficking law, compared with 11 prosecutions and 12 convictions in 2007. However, since prosecutors chose to prosecute under the crime they were most assured of getting a conviction, there may have been prosecutions and convictions of traffickers under other laws. Most authorities attributed a decline in numbers from a peak in 2005 as the result of a crackdown on the "entertainment" visa category, forcing traffickers to use other means. Eleven of the 13 convicted offenders in 2008 received suspended sentences, however, and were not punished with imprisonment beyond time served in detention.

Labor exploitation was widely reported by labor activists, NGOs, shelters, and the media (see section 7.e.). There were two convictions for labor trafficking during the past three years, although Labor Standard Inspection Bodies identified more than 1,209 violations of labor laws in 2006 alone. The NPA identified 36 victims in 2008, down from 43 victims in 2007. This number was considered disproportionately low relative to the suspected magnitude of the trafficking problem. Despite reports by both official and private entities of labor exploitation, the government identified only one victim of labor trafficking in 2008, associated with a sex trafficking case. However, the prosecution of labor traffickers in fact took place under a variety of other labor laws.

There were media reports of government officials using their influence to facilitate trafficking, including a report at the end of 2008 of a secretary to a minister who used his influence to obtain short-term visas for 300 Filipinas to sing at charity concerts but who in fact ended up working as hostesses in pubs. Low-level persons were arrested, but the charges against the secretary and his minister were dropped. In another case a senior immigration officer reportedly received a 5.8 million yen (\$58,000) bribe to facilitate the issuance of "entertainer visas" between July 2007 and November 2009. At year's end the case was under investigation.

There continued to be reports that police and immigration officers failed to identify victims adequately. Although antitrafficking education efforts for police and immigration officials continued, the country did not use formal victim identification procedures, although it cooperated with the IOM in victim identification.

The country did not dedicate government law enforcement or social services personnel specifically to human trafficking, but there were individuals in various branches of the government and police whose main emphasis was human trafficking. NGOs continued to assert that the government was not proactive in searching for victims among vulnerable populations such as foreign women in the sex trade or migrant laborers. NGOs reported that police and immigration officers occasionally neglected to classify women working in exploitative conditions as victims because they willingly entered the country to work illegally. The government stated that although initially individuals may be identified as having broken a law, once they were recognized as trafficking victims, they received protection and were not held liable for any immigration laws they may have broken or any laws dealing with the type of employment they were forced to undertake.

The MHLW encouraged police and immigration officers to use its preexisting network of shelters for domestic violence victims as temporary housing for foreign trafficking victims awaiting repatriation. The government repatriated 18 of 36 identified trafficking victims without referring them to the IOM for risk assessment and formal repatriation processing in

2008. According to the government, these early repatriations were at the request of the victim. The remaining 18 received services from government shelters. A significant percentage of the foreign women listed as victims of domestic violence may have been trafficking victims and were provided shelter. The government paid for victims' medical care and subsidized repatriation through a grant to the IOM.

Typically, government shelters lacked the resources needed to provide the specialized services that trafficking victims often require. NGO shelters that specialized in assisting victims did not have full-time staff able to speak other languages at the level required for adequate counseling. The MHLW shelters had to rely on interpretation services from outside providers. While some victims received psychological care in government facilities, the large majority did not have adequate access to trained psychological counselors with native language ability. In cooperation with the IOM, the government began a program to train interpreters in appropriate counseling skills. However, due to the lack of such counseling, the isolation of victims from fellow nationals and other trafficking victims, and the lack of alternatives—particularly any option to work or generate income while in the country—foreign women staying at government shelters elected to repatriate as quickly as possible. Although the government reserved funds to subsidize victims' stays in private shelters, the majority of victims were referred to public shelters. While the government claimed that victims were eligible for special stay status as a legal alternative to repatriation in cases where victims would face hardship or retribution, there were very few cases of a victim staying in country for more than a few months, and these usually were victims in private shelters or who had found NGO support.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in employment, education, and access to health care, and the government generally enforced these provisions; however, the Federation of Bar Associations complained that discrimination is undefined and thus not enforceable through judicial remedies.

Persons with disabilities generally were not subject to overt discrimination in employment, education, or provision of other state services; however, in practice they faced limited access to these services.

The law mandates that the government and private companies hire minimum proportions of persons with disabilities (including mental disabilities). Companies with more than 300 employees that do not comply must pay a fine of 50,000 yen (approximately \$425) per vacant position per month. Public employment of persons with disabilities exceeded the minimum, but according to MHLW statistics the private sector lagged despite increases over previous years. In a survey of private companies with more than 56 workers, 1.6 percent of their employees had disabilities.

Accessibility laws mandate that new construction projects for public use must include provisions for persons with disabilities. In addition, the government grants low-interest loans and tax benefits to operators of hospitals, theaters, hotels, and other public-use facilities if they upgrade or install features to accommodate persons with disabilities.

According to NGOs there were an estimated 20,000 homeless persons who could not receive old-age pensions, disability pensions, and livelihood protection allowances because they were considered to be without residence. NGOs reported that as a result, due to inadequate protection by the social safety net and the social stigma against homelessness, a significant number of elderly citizens and homeless individuals committed petty crimes to obtain the food and shelter provided by life in prison. Surveys showed that persons with mental disabilities may have accounted for up to 60 percent of the repeat-offender population in some prisons. Surveys also showed a significant percentage of repeat offenders were homeless persons who were not receiving social services.

According to NGOs and physicians, persons with mental illnesses also faced stigmatization and both educational and occupational barriers. Mental health professionals said that insufficient efforts were being made to reduce the stigma of mental illness and to inform the public that depression and other mental illnesses were treatable, biologically based illnesses.

National/Racial/Ethnic Minorities

Burakumin (descendants of feudal era "outcasts") and ethnic minorities experienced varying degrees of societal discrimination. The approximately three million burakumin, although not subject to governmental discrimination, frequently were victims of entrenched societal discrimination, including restricted access to housing, education, and employment opportunities. Discrimination persisted extensively, mostly outside the major metropolitan areas.

Despite legal safeguards against discrimination, the country's large populations of Korean, Chinese, Brazilian, and Filipino permanent residents--many of whom were born, raised, and educated in Japan--were subject to various forms of deeply entrenched societal discrimination, including restricted access to housing, education, and employment opportunities. There was a widespread perception among citizens that "foreigners," often members of Japan-born ethnic minorities, were responsible for most of the crimes committed in the country. The media fostered this perception, although MOJ statistics showed that the rate of "foreigner"-committed crimes, excepting crimes such as illegal entry and overstay, was lower than the crime rate for citizens. Long-term foreign residents, including naturalized Japanese citizens, continued to report occasional instances of being targeted, particularly by the police. Independent observers reported that police asked foreigners to give urine samples on several occasions for no other reason than that they appeared to be foreign.

Many immigrants struggled to overcome obstacles to naturalization, including the broad discretion available to adjudicating officers and the great emphasis on Japanese-language ability. Aliens with five years of continuous residence are eligible for naturalization and citizenship rights. Naturalization procedures also require an extensive background check, which includes inquiries into the applicant's economic status and assimilation into society. The government defended its naturalization procedures as necessary to ensure the smooth assimilation of foreigners into society.

There were approximately 600,000 ethnic Koreans who were permanent residents or citizens. In general their acceptance by society was steadily improving. As a result there was a continuing increase in the number of ethnic Koreans applying for and being granted citizenship (approximately 10,000 a year). Ethnic Koreans who chose not to naturalize faced difficulties in terms of civil and political rights.

Representatives of some ethnic schools continued to press the government to have their schools recognized as educational foundations and to accept the graduates of their high schools as qualified to take university and vocational school entrance exams. The Ministry of Education stated that the graduates of ethnic schools certified as being equivalent to a 12-year program could take the entrance exam.

The courts ruled against the decisions of authorities to reject the use of city halls and municipal facilities by North Korean-affiliated groups. Isolated acts of threats and violence against Koreans continued to be reported, especially after North Korean missile tests.

Indigenous People

Although the Ainu enjoyed the same rights as all other citizens, when clearly identifiable as Ainu they faced discrimination. In June 2008 the Diet unanimously passed a resolution recognizing the Ainu as an indigenous people. In August the government opened the Ainu Affairs Comprehensive Policy Office, an interagency organization in charge of launching, steering, and promoting Ainu policies as a successor to the governmental advisory panel on Ainu issues. The Ainu law, enacted in 1997, emphasizes preservation of Ainu culture, but it lacks some provisions that a few Ainu groups have

demanded, such as land claims, reserved seat(s) for Ainu in the Diet and local assemblies, and a government apology to the Ainu people.

The UN Human Rights Committee submitted a report to the government in October 2008 advising it to designate both the Ainu and the Ryukyumin (a term that includes residents of Okinawa and portions of Kagoshima Prefecture) as indigenous peoples and give assistance to protect and promote their culture and traditions. The government replied that regardless of whether the "Ryukyumin/Okinawans" are recognized as an indigenous people, it had made efforts to preserve and draw on Okinawan traditions and promote Okinawan culture in line with its plan for development and promotion in Okinawa.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

No laws criminalize homosexual practices or protect against discrimination on the basis of sexual orientation. However, NGOs that advocate for gay, lesbian, bisexual, and transgender persons noted that on some occasions such persons suffered from bullying, harassment, and violence.

Other Societal Violence or Discrimination

There were no reports of societal violence or discrimination against persons with HIV/AIDS.

Many foreign university professors, especially women, complained of discrimination, noting that there were few tenured foreign professors. With few exceptions, the majority of universities, including national universities, hired foreign academics on short-term contracts without the possibility of tenure.

Section 7 Worker Rights

a. The Right of Association

The law allows workers to form and join unions of their choice without previous authorization or excessive requirements, and the government effectively enforced the law. Unions were free of government control and influence; however, public service employees' basic union rights, governed by a separate law, are restricted in ways that "effectively require prior authorization" to form unions. Approximately 18.1 percent of the total workforce was unionized.

Except for public sector workers and employees of state-owned enterprises, the law allows unions to conduct their activities without interference, and the government protected this right.

In general, unions in the private sector have the right to strike, and workers exercised this right in practice. However, workers in sectors providing essential services, including electric power generation and transmission, transportation and railways, telecommunications, medical care and public health, and postal service, must give 10 days' advance notice to the authorities. Public sector employees do not have the right to strike, but such employees are able to participate in public employee organizations, which can negotiate collectively with their public employers on wages, hours, and other conditions of employment. They are not able to enter into collective bargaining agreements.

b. The Right to Organize and Bargain Collectively

Collective bargaining is protected by law and was freely practiced. However, public employees and employees involved in providing essential services (approximately 5.5 percent of the total workforce of 66.5 million) are exempt from this right. Moreover, an increasing number of businesses were choosing to change their form of incorporation and moving to a holding company structure. Investment fund "companies," which are not legally considered employers, also appeared to be playing a larger role. In addition to changes in corporate structure, there were labor market changes affecting corporate activities. Approximately one third of workers were part-time or nonregular and difficult to organize for collective bargaining

purposes. The result was that a significant proportion of the workforce did not enjoy the right to collective bargaining because they were in prohibited public employee or essential service jobs, worked for a form of company not legally considered an employer, or were in part-time jobs that made collective bargaining difficult.

There were no reports of antiunion discrimination or other forms of employer interference in union functions. The increased use of short-term contracts, often in violation of the Labor Standards Law, not only undermined regular employment but also frustrated organizing efforts. According to a 2008 official survey, 34.5 per cent of all employees were nonregular workers.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor; however, there were reports that such practices occurred. Most trafficking victims were foreign women who migrated to the country seeking work but were subjected to debt bondage and forced prostitution (see section 6). Workers who entered the country illegally or who overstayed their visas also were at risk for these practices, including nonpayment or underpayment of wages. Some companies forced foreign laborers in the trainee visa program to work illegal overtime, refused to pay them allowances, controlled their movement and travel documents, and forced them to deposit paychecks into company-controlled accounts. The law and MOJ guidelines prohibit these practices. In July the government passed an amendment to the Immigration Control and Refugee Recognition Act that grants full labor law protection to foreign trainees in the first year of their program following an initial three-month internship period. The Labor Standard Inspection Bodies monitored workplace compliance with the labor laws. Its normal response was to issue warnings and advisories; legal recourses normally were not pursued except in the most serious cases.

d. Prohibition of Child Labor and Minimum Age for Employment

The law bans the exploitation of children in the workplace, and the government effectively implemented the law. The MHLW is responsible for enforcement. By law children between the ages of 15 and 18 may perform any job that is not designated as dangerous or harmful. Children between the ages of 13 and 15 may perform "light labor" only, and children under 13 may work only in the entertainment industry. Other than victims of human trafficking and child pornography, child labor was not a problem.

e. Acceptable Conditions of Work

Minimum wages are set on a prefectural and industry basis, with the input of tripartite (workers, employers, and public interest) advisory councils. Employers covered by a minimum wage must post the concerned minimum wages, and compliance with minimum wages was considered widespread. Minimum wage rates varied according to prefecture, from 618 yen (\$5.74) to 739 yen (\$6.54) per hour. The minimum daily wage provided a decent standard of living for a worker and family.

The law provides for a 40-hour workweek for most industries and mandates premium pay for hours worked above 40 in a week or eight in a day. However, it was widely accepted that workers, including those in government jobs, routinely exceeded the hours outlined in the law. Labor unions frequently criticized the government for failing to enforce maximum working hour regulations. According to the Ministry of Labor, between 2004 and the end of 2008, 1,608 applications were made by survivors seeking recognition of a deceased as a "karoshi" (death from overwork) victim. The ministry officially recognized 1,576 of these applications as karoshi victims.

According to the Japanese Trade Union Confederation, companies increasingly hired workers on a part-time, contract, or nonregular basis. Such workers made up one-third of the labor force and worked for lower wages, often with less job

security and benefits than career workers and sometimes in precarious working conditions. Other groups argued that the labor system had been too rigid before regulations changed to allow this type of work. One of the ostensible goals of the Revised Part-Time Work Law, which came into force in April 2008, was to provide equality for part-time workers, the majority of whom are women, in terms of wages and training. However, to qualify, the part-time workers must have parity with full-time workers in terms of tasks, overtime, and transfers. In practice only 4 to 5 percent of part-time workers qualified under these terms.

Activist groups claimed that employers exploited illegal foreign workers, who often had little or no knowledge of the Japanese language or their legal rights. By law, students are allowed to work only 28 hours per week. However, foreign students, particularly self-sponsored students, in the country, the majority of whom were Chinese, often held two or three low-wage jobs and as a result were moderately to severely sleep-deprived, with the concomitant greater risk of injury and illness.

NGOs and the media reported abuses of the "foreign trainee" program, a government-sponsored training program facilitated by the Japan International Training Cooperation Organization. In some companies trainees reportedly were forced to work unpaid overtime and received less than the minimum wage or even the legally required stipend level for their first "trainee" year. Moreover, their wages were automatically deposited in company-controlled accounts, despite the fact that "forced deposits" are illegal. According to NGOs, trainees sometimes had their travel documents taken from them and their movement controlled to "prevent escape." In 2008 the Justice Ministry confirmed that 452 companies and other organizations that accepted foreign trainees were involved in illegal practices, of which an estimated 60 percent involved violations of labor-related laws, including unpaid wages and overtime allowances. However, there are no criminal penalties for companies found in violation of laws and regulation. Although Labor Standard Inspection Bodies identified more than 1,200 violations of labor laws in 2006 alone, there were only two convictions for labor trafficking during the past three years. NGOs and labor unions working with foreign workers noted no noticeable improvement in companies' treatment of foreign workers. A survey conducted by the Japan International Training Cooperation Organization found that 34 trainees died in FY2008. Sixteen of them died of brain and heart diseases often caused by long working hours. Experts in *karoshi* said that there was a high possibility that they died from overwork.

The government sets occupational health and safety standards, and the Ministry of Labor effectively administered the various laws and regulations governing occupational health and safety. 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.