

# JAPAN

## EXECUTIVE SUMMARY

Japan is a constitutional monarchy with a parliamentary government. Prime Minister Yoshihiko Noda, leader of the Democratic Party of Japan, derives his authority to govern from the constitution. July 2010 upper-house elections were considered free and fair. Security forces reported to civilian authorities.

The leading human rights problems included the lack of due process for pretrial detainees; the exploitation of children; and societal discrimination against women in employment, children born out of wedlock, ethnic minority group members, persons with disabilities, and foreigners, including permanent residents.

Other human rights problems included prison and detention center conditions, prosecutorial misconduct, journalistic self-censorship, domestic violence and sexual harassment against women, corruption, trafficking in persons, and the exploitation of foreign trainee workers.

The government enforced laws prohibiting human rights abuses and prosecuted officials who committed them.

### **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.

On December 27, an Okazaki Medical Prison official resigned after being sanctioned for physically abusing a patient. According to press reports, he grabbed, kicked, and beat the prisoner with a slipper when the prisoner refused to take oral medication.

On August 5, the widow and the mother of a Ghanaian man, who died in March 2010 while being forcibly restrained during a deportation attempt, sued the government. Although an official autopsy did not determine the cause of death and noted no sign of physical harm, his widow stated she saw bruises when identifying the body, and immigration officials testified in the Diet (parliament) that he was gagged by a towel and forced into his seat by 10 officers. Police sent an investigation report to Chiba Prefecture prosecutors in 2010, but no charges were filed by the end of the year.

The government continued to deny death-row inmates advance information about the date of execution and notified family members of executions after the fact. The government stated this policy was designed to spare prisoners the anguish of knowing when they were going to die. Some respected psychologists agreed; others demurred.

Following the 2010 conviction of four instructors for abusing residents at a reform facility for juvenile offenders and subsequent allegations of abuse at other facilities, the government reported that it implemented human rights training for mid-level supervisors at the country's 52 juvenile training schools.

Hazing, bullying, and sexual harassment continued to be reported as problems in the Japanese Self-Defense Forces (JSDF) during the year; the JSDF leadership penalized offenders, according to information received.

### **Prison and Detention Center Conditions**

Prison conditions generally met international standards, except that several facilities were overcrowded, did not provide prisoners in solitary confinement with adequate access to potable water, or lacked sufficient heating in the winter or air conditioning in the summer. In some institutions, clothing and blankets were insufficient to protect inmates against cold weather. Most prisons did not provide heating during nighttime hours in winter despite freezing temperatures, subjecting inmates to a range of preventable cold injuries. Foreign prisoners in the Tokyo area presented to visiting diplomats during the year chilblains-affected fingers and toes of varying severity, the direct result of long-term exposure to cold. On

September 8, Kobe District Court ordered the government to pay 43 million yen (approximately \$558,000) to the family of a man who died in 2006 while a prisoner in the Kobe Detention House, finding the facility at fault for failing to seek medical assistance for the man, who family members claimed froze to death.

Credible nongovernmental organizations (NGOs) continued to report that prison management regularly abused solitary confinement rules, which set a maximum of three months, but with the possibility of extension every month thereafter if deemed necessary. Prison officials stated that solitary confinement is important in maintaining order in prisons at or above capacity. An NGO noted that during the year officials became more sensitive to the needs of ill detainees held in isolation in the wake of two deaths in 2010.

Authorities reportedly held prisoners condemned to death in solitary for an average of almost eight years until their execution--and according to Amnesty International (AI) in March, some of these prisoners were kept in solitary for decades--although authorities allowed them to receive visits by their families, lawyers, and others. AI also concluded that a number of death-row inmates had become mentally ill as a result of the isolation, although authorities summarily denied requests for their mental health records so no independent determination could be made. The law states that a prisoner's insanity is grounds for suspending an execution, but the government reported that there has never been such a case.

Reliable NGOs and foreign diplomats also reported that some facilities continued to provide inadequate food and medical care. Foreign diplomats confirmed numerous cases in which the prison diet was inadequate to prevent significant weight loss, including loss of muscle mass. Cases of slow and inadequate medical treatment were documented, including in detainees and prisoners with preexisting medical conditions. Police and prison authorities were particularly slow in providing treatment of mental illness and continued to have no protocol for offering psychiatric therapy. NGOs, lawyers, and doctors also criticized medical care in police-operated pre-indictment detention centers and immigration detention centers. Poor sanitary and health conditions in the latter continued to result in complaints of common fungal infections among detainees. In the July 4 report of her July 2010 visit, the UN special rapporteur on the human right to safe drinking water and sanitation raised concern about prisoner sanitation in protection cells.

As of October there were 70,624 prisoners, a slight decrease from 2010. This figure, which counts detained defendants and suspects as well as sentenced prisoners and convicts, included 5,330 female prisoners and 29 minors. Men and

women prisoners were held in separate facilities in prisons and detention centers. Although the national prison population was significantly less than the country's facility capacity of 90,182 (in 2010), 13 prison facilities experienced overcrowding. Sentenced female prisoners, more than 120 percent of capacity nationwide, experienced the most constrained conditions. 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. Having acknowledged that overcrowding was a problem, the government expanded prison capacity by approximately 7,400 persons between 2007 and 2010.

Reliable NGOs and foreign diplomats reported throughout the year that pretrial detainees routinely were held incommunicado for up to 23 days before being allowed access to persons other than their attorneys or, in the case of foreign arrestees, consular personnel. Authorities often limited prisoners' access to visitors to immediate family members. The law allows for broad religious observance within prisons, as long as these activities do not interfere with prison management. Prisons are also required to allow for consultations with prison chaplains, but the frequency of visits and the range of religions represented varied widely by prison. As a result, routine access to religious observance was not guaranteed, and foreign diplomats stated that prison officials repeatedly rejected some prisoners' requests to join religious meetings by citing limits on group size.

While authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions, they provided the results of such investigations to prisoners in a letter offering little detail beyond a final determination. Alternative and suspended sentences were commonly used for first-time and nonviolent offenders.

There were no ombudsmen serving on behalf of prisoners and detainees, although prison management regulations stipulate that independent committees inspect prisons and detention centers operated by the Ministry of Justice and detention facilities operated by police. The committees--which included physicians, lawyers, local municipal officials, representatives of local communities, and other local citizens--conducted visits and interviews and made recommendations during the year.

By law there is also an inspection process for immigration detention facilities, but it was not completely independent. Domestic and international NGOs and international organizations noted throughout the year that this process failed to

meet international prison inspection standards, citing the Ministry of Justice's provision of all logistical support for the inspection committee, the use of ministry interpreters during interviews with detainees, the lack of repeat visits to the same facilities, the ability of prison officials to screen lists of detainees to be interviewed, and the ability of ministry officials to access a locked mailbox where detainees may submit complaints to the committee.

There is no inspection procedure for observing the country's 52 juvenile reform 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, but credible NGOs and journalists continued to allege that police in large cities employed racial profiling to harass and sometimes arrest "foreign-looking" persons, particularly dark-skinned Asians and persons of African descent, without cause.

#### **Role of the Police and Security Apparatus**

The National Public Safety Commission, a cabinet-level entity, oversees the National Police Agency (NPA) and prefectural public safety commissions have responsibility for local police forces. 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**

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

The use of police-operated detention centers placed suspects in the custody of their interrogators, although the law separates investigation from detention even when

the same agency is responsible for both functions. The vast majority of arrested suspects were sent to police detention facilities, with a much smaller proportion sent to Justice Ministry-operated preindictment detention centers.

The law provides detainees the right to a prompt judicial determination of the legality of their detention and requires authorities to inform detainees immediately of the charges against them. In practice, however, detained persons were often held for up to 23 days with no charges filed.

The law 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 Justice Ministry detention facilities. Reliable NGOs also stated that, although the practice is illegal, interrogators sometimes offered bail to a detainee in exchange for a confession.

Suspects in pretrial detention are legally required to face interrogation, although NPA guidelines limit interrogations to a maximum of eight hours and prohibit overnight interrogations. Pre-indictment detainees had access to counsel, including at least one consultation with a court-appointed attorney. Prisoner advocates stated that in practice this access continued to improve during the year in terms of duration and frequency. However, counsel may not be present during interrogations.

Family members usually were allowed to meet with detainees, but only in the presence of a detention officer. The law allows police to prohibit detainees from having interviews with persons other than their counsel if there is probable cause that the suspect may flee or may conceal or destroy evidence. Many detainees, including most of those charged with drug offenses, were held incommunicado until indictment and were allowed only consular and legal access.

Prosecutors at their discretion may partially record suspects' confessions, but respected NGOs pointed out that partial and discretionary recording could be misleading. While internal police supervisors increasingly are present during interrogations, there is no independent oversight. In response to the UN Committee against Torture's (UN CAT) 2007 recommendation that defense counsel be present during interrogations, in July the government rejoined that such a presence would inhibit the ability of an interrogator expeditiously to obtain true statements from a suspect.

National Public Safety Commission regulations prohibit 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. According to credible NGOs, however, the rules were not adequately enforced, and authorities continued to subject detainees to eight- to 12-hour interrogation sessions during which authorities handcuffed them to a chair for the entire period and used aggressive questioning techniques.

The NPA announced on March 24 that it had referred 30 cases of possible violations of interrogation guidelines for review (but it does not release review results). The NPA also stated that it had received 474 complaints regarding interrogations during the same period. In April a court convicted Osaka police officer Kazuya Takahashi of illegal intimidation and fined him 300,000 yen (approximately \$3,900), after a man in his custody surreptitiously recorded his September 2010 interrogation and subsequently filed a complaint with prosecutors. All prefectures have trial programs to record limited sections of some interrogations; some prefectural governments began pilot programs to record entire interrogations.

Pretrial Detention: Authorities usually held suspects in police-operated detention centers for an initial 72 hours. By law, this preindictment detention is allowed only where there is probable cause to suspect that a person has committed a crime and is likely to conceal or destroy evidence or flee, but it is used routinely in practice. After interviewing a suspect at the end of the initial 72-hour period, a 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 cases such as insurrection, foreign aggression, and disturbance. Because judges customarily granted prosecutorial requests for extensions, the system of pretrial detention, known as daiyou kangoku (substitute prison), usually continued for 23 days. Nearly all persons detained during the year were held in daiyou kangoku.

### **e. Denial of Fair Public Trial**

The law provides for an independent judiciary, and the government generally respected judicial independence in practice.

### **Trial Procedures**

The law provides the right to a fair trial for all citizens and 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. There is a lay judge (jury) system for serious criminal cases. A defendant is presumed innocent until proven guilty in a court of law, and defendants cannot be compelled to testify against themselves.

Respected NGOs and lawyers continued to question whether defendants were presumed innocent in practice. According to NGOs, the majority of indicted detainees confessed while in police custody, although the government asserted in its July reply to the UN CAT that convictions were not based primarily on confessions and that interrogation guidelines ensure that suspects cannot be compelled to confess to a crime.

In 2010 more than 99 percent of cases that reached trial resulted in conviction. Independent legal scholars alleged that the judiciary gives too much weight to confessions, although the government disagreed.

Persons convicted on the basis of police-obtained confessions were later proved innocent. For example, on May 24, in a retrial ordered by the Supreme Court in light of new evidence, including revelations that police tampered with interrogation tapes, a court found two men not guilty who had confessed to and were convicted of murder in Ibaraki Prefecture in 1967. Paroled in 1996, they had insisted the confessions were coerced and sought exoneration.

According to some independent legal scholars, trial procedures favor the prosecution, although the government demurred. 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 difficult 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. Police responses in those cases were that all evidence was destroyed after the initial trial. On April 12, a court convicted and sentenced senior Osaka prosecutor Tsunehiko Maeda to 18 months in prison for falsifying evidence and then concealing that criminal act in the case of a public servant on trial for alleged postal fraud. Chief Prosecutor Hiromichi Otsubo and Deputy Chief Prosecutor Motoaki Saga, who oversaw the investigation, were



charged with knowingly concealing a crime, and their trial was ongoing at year's end.

### **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 both administrative and 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**

#### **Status of Freedom of Speech and Press**

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

Censorship or Content Restrictions: As reported by Freedom House and other NGOs during the year, press clubs continued to encourage noncritical and similar news coverage by fostering close relationships among media personnel, officials, and politicians that in turn led journalists to practice self-censorship in exchange for access. On April 25, a group of freelancers launched the privately funded Free Press Association of Japan to seek broader journalistic access to press conferences and information.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible 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.

### **Academic Freedom and 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 20th century subjects. Some textbook authors accused the ministry of editing their writing in ways that distorted the intended meaning.

The national anthem and flag continued to be controversial symbols. Teachers continued to be disciplined for refusing to sing the national anthem in front of the flag. On May 30, the Supreme Court ruled that requiring teachers to stand and sing the national anthem is constitutional. The Federation of Bar Associations and human rights organizations protested the ruling.

There were no government restrictions on cultural events.

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

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

### **c. Freedom of Religion**

See the *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **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 UNHCR and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, asylum seekers, and other persons of concern.

### **Internally Displaced Persons**

On March 11, one of the strongest earthquakes ever measured--followed by a devastating tsunami and a nuclear power plant disaster in Fukushima Prefecture--displaced more than 470,000 persons from their homes for varying lengths of time. The government generally provided adequate shelter and other protective services and sought to provide permanent relocation or reconstruction options, but there were public complaints regarding tardy evacuation orders and temporary resettlement subsidies. Although only 678 persons remained in evacuation centers as of December 15, approximately 334,000 persons were in nonpermanent housing.

### **Protection of Refugees**

Access to Asylum: The country's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government continued a small-scale, pilot resettlement program; in the second year of this three-year program, 18 Burmese refugees arrived in Japan from Thailand during the year.

Refugee and asylum applicants may ask lawyers to participate in their appeal hearings before refugee examiners. Although government-funded legal support was not available for most refugee and asylum seekers requesting it, the Federation of Bar Associations funded a program that provided free legal assistance to those applicants who lacked financial means.

In his March 21 report on a 2010 visit, the UN special rapporteur on the human rights of migrants expressed concern about the policy of detaining asylum seekers and other irregular migrants for prolonged periods. A Justice Ministry policy begun in 2010 to streamline the asylum petition process and reduce time spent in detention led to significant improvement during the year: The number of immigrants detained for more than one year fell from 115 in 2009 to 47 during 2011. The policy stipulates that the cases of all detained asylum seekers must be reviewed quarterly and first-instance decisions must be completed within six months of application. Authorities completed first-instance decisions within approximately five months on average, more than 60 percent faster than in 2010.

NGOs believed that inadequate explanation of the cause for rejecting an asylum application made appealing the decision difficult. Refugee groups reported that some asylum seekers received preferential consideration. Of the 402 individuals whom authorities in 2010 granted some form of humanitarian protection, 356--

more than 88 percent--were from Burma; Burmese made up fewer than 30 percent of all asylum seekers.

Nonrefoulement: 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. However, refugee groups expressed concern during the year that, due to the government's high threshold for proof in adjudicating asylum applications, some asylum seekers may have been forcibly returned to situations of risk.

Employment: Applicants for refugee status normally are not allowed to work unless they meet certain conditions. To obtain the right to work, they must be in need and dependent on government shelters or NGO support. In the interim the Refugee Assistance Headquarters, a government-funded foundation, provides small stipends. However, budget limitations prevented many applicants from accessing this aid during the year.

Access to Basic Services: Refugees faced the same discrimination patterns that other foreigners did: reduced access to housing, education, and employment. Except for those who met the right-to-work conditions stated above, individuals whose refugee status was pending or on appeal also did not have the right to receive social welfare, rendering them completely dependent on overcrowded government shelters, illegal employment not subject to labor-law oversight, or NGO assistance. In his March 21 report, the UN special rapporteur on migrants expressed concern about the difficulties for migrant children to access education either in Japanese or foreign schools.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees and provided it to 363 persons in 2010.

### **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**

Recent Elections: In July 2010 the country held national elections for the House of Councillors, the upper house of the Diet, which were considered free and fair.

Participation of Women and Minorities: Women held 52 of 480 seats in the House of Representatives, the lower house of the Diet, and 44 of 242 seats in the upper house. At year's end there were three female governors and one woman 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. Three Diet members 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. Independent academic experts stated that ties between politicians, bureaucrats, and businessmen were close and that corruption remained a concern. NGOs criticized the frequent practice of retired senior public servants who took high-paying jobs with private firms that rely on government contracts. During the first half of the year, the NPA reported arrests in eight cases of bribery and one case of bid rigging. There were regular media reports of investigations into financial and accounting irregularities involving high-profile politicians and government officials, and the trial of a former senior party leader continued at year's end.

Laws requiring financial disclosure for public officials were laxly enforced.

The public has the legal right to access government information. There were no reports that the government denied such requests.

#### **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 usually were cooperative and responsive to their views.

Government Human Rights Bodies: The national Human Rights Commission reports to the Justice Ministry. Human rights groups did not believe it was independent or effective and reported that it lacked public trust.

There was no ombudsman office per se at the national level, although the Administrative Counseling System, a department of the Ministry of Internal Affairs and Communications, provided many of the same functions as a national ombudsman office and its director general represented Japan on international ombudsman bodies. Nevertheless, it lacked independence from the government and had weak investigative powers.

## **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 enforced these provisions, discrimination against women, ethnic minority group members, and foreigners remained problems.

### **Women**

Rape and Domestic Violence: The law criminalizes all forms of rape involving force against women, including spousal rape, and the government generally enforced the law effectively. Evidence of force and physical resistance by the victim are necessary, however, for a sexual encounter to be considered rape. For example, Yamagata Prefecture prosecutors dropped gang-rape charges against three men in October 2010, citing a lack of objective evidence of force strong enough to overcome resistance, such as ripped clothing or bruises on the victim. According to NPA statistics, 1,289 rapes against women and girls were reported in 2010, and 542 were reported during the first half of the year. According to records maintained by the Supreme Court, 222 persons were convicted on rape charges during the year, with punishments ranging from suspended sentences to 20 years in prison. Many police stations had female officers to provide confidential assistance to female victims.

Although prohibited by law, domestic violence against women remained a problem. According to NPA statistics, in 2010 there were 33,852 reported cases of domestic violence, with women constituting more than 98 percent of the victims. Statistics maintained by the Supreme Court showed that 15 persons were convicted of violating spousal violence protection orders, with punishments ranging from suspended prison sentences to two years in prison.

Faced with continued calls for apology and compensation for “comfort women” (foreign and citizen victims of forced prostitution during World War II), government officials continued to express remorse and pointed to previously provided compensation payments.

Sexual Harassment: The law includes measures to identify companies that fail to prevent sexual harassment, and prefectural labor offices and the Ministry of Health, Labor, and Welfare provide these companies with advice, guidance, and recommendations. The ministry reported 51 such cases identified and addressed from April 2010 to March of the current year. Companies that fail to comply with government guidance may be publicly identified, but officials reported that this has never been necessary. Sexual harassment in the workplace remained widespread, however, and from April 2010 to March 2011, the ministry reported receiving 11,749 consultations, 62.6 percent of which were from female workers. The ministry received consultations from employees in more than 10 percent of all the companies in Japan, with complaints per sector registered as high as 30 percent of the companies in the financial sector. On May 29, the Japanese Trade Union Confederation released survey results indicating that approximately 17 percent of female employees have suffered sexual harassment in the workplace, although most did not file a complaint or seek consultation. Government hotlines in prefectural labor bureau equal employment departments handle consultations concerning sexual harassment and mediate disputes when possible.

Reproductive Rights: 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 maternal health services, including skilled attendance during childbirth, prenatal care, and essential obstetric and postpartum care. Men and women received equal access to diagnosis and treatment for sexually transmitted infections.

Discrimination: 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 Equality 2011* concluded that the participation of women in society remained inadequate and called for a quota system to boost the number of women in senior positions in business, government, and elected office.

Inequality in employment remained a societywide problem. Women constituted 42 percent of the labor force in 2010, and their average monthly wage was 227,600 yen (approximately \$2,950), approximately two-thirds of the monthly wage earned by men (328,300 yen, or approximately \$4,260). Women held just 11 percent of managerial positions, and 70 percent of employed women resigned after the birth of their first child.

NGOs alleged that the country's efforts to implement antidiscrimination measures was insufficient, pointing to discriminatory provisions in the law, unequal treatment of women in the labor market, and low representation of women in high-level elected bodies. NGOs urged the country to abolish a six-month waiting period stipulated in the law for women but not men before remarriage, eliminate different age minimums for marriage depending on sex, adopt a system allowing for the choice of surnames for married couples, and repeal legal provisions that discriminate against children born out of wedlock.

## **Children**

Birth Registration: The nationality law grants citizenship at birth to the child of the following: a Japanese father who is either married to the child's mother or recognizes his paternity, a Japanese mother, or a child born in the country to parents who are both unknown or do not have nationality.

Child Abuse: Reports of child abuse continued to increase. From April 2010 through March 2011, local Child Guidance Centers acted on 55,152 reports of child abuse by parents or guardians, an increase of more than 12,000 from the previous year, despite the latest statistics not including two prefectures that failed to report data because they were affected by the tsunami. The Ministry of Health, Labor, and Welfare commented that the jump in mistreatment reports reflected broadening public awareness of child abuse. According to the NPA, during the year 384 child abuse cases resulted in the arrest of 409 people while 39 children were killed as a result of abuse by parents or guardians.

To ameliorate the situation, municipal governments require that suspected abusive parents or guardians be interviewed by child welfare officials and provided with assistance as required. When necessary, suspect homes must also be inspected with 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 or municipal welfare center. On May 27, authorities revised the law to allow for suspending parental rights for two years; previously, parental rights could be suspended only indefinitely or not at all. Children's rights activists welcomed the more flexible rules.

Sexual Exploitation of Children: Child prostitution is illegal, with a penalty of imprisonment with labor for up to five years or a fine of up to three million yen (approximately \$39,000) for adult offenders and penalties of up to seven years imprisonment and fines of up to 10 million yen (\$130,000) for intermediaries. Nonetheless, the continued practice of enjo kosai (compensated dating) and the existence of Web sites for online dating, social networking, and "delivery health" (call-girl or escort services) facilitated child prostitution.

There are statutory rape laws. The minimum age for consensual sex varies by jurisdiction and ranges from 13 to 18 years. The penalty for statutory rape is no less than two years' imprisonment with mandatory labor.

The country continued to be an international hub for the production and trafficking of child pornography. The commercialization of child pornography is illegal, and the penalty is imprisonment with labor for not more than three years or a fine not exceeding three million yen (approximately \$39,000); police continued to crack down on this crime during the year. Although the distribution of child pornography, which often depicted the brutal sexual abuse of small children, is also illegal, the law does not criminalize its simple possession--a situation that continued to hamper police efforts to enforce the law effectively and participate fully in international law enforcement. Police reported 1,455 child pornography investigations involving 638 child victims during the year, a more than 55-percent increase of both statistics compared with those in 2009.

No national law addresses the unfettered availability of sexually explicit cartoons, comics, and video games, some of which depict scenes of violent sexual abuse and the rape of children. While the NPA maintained that no link has been established between these animated images and child victimization, other experts suggested children are harmed by a culture that appears to accept child sexual abuse. During the year the Tokyo Municipal Government implemented an ordinance to restrict the sale of such material to minors.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's report on compliance at

[http://travel.state.gov/abduction/resources/congressreport/congressreport\\_4308.html](http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html) as well as country-specific information at [http://travel.state.gov/abduction/country/country\\_3781.html](http://travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

The Jewish population is approximately 2,000 persons. There were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, access to health care, and the provision of other state services, and the government in the main enforced these provisions. However, in practice such persons faced limited access to these services, and the Federation of Bar Associations complained that discrimination was undefined and thus not enforceable through judicial remedies. The 2009 government-established advisory committee to help develop laws to enable Japan to ratify the UN Convention on the Rights of Persons with Disabilities did not attain its objective by year's end.

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 \$650) per vacant position per month. Public employment of persons with disabilities exceeded minimum proportions, but according to Ministry of Health, Labor, and Welfare statistics, the private sector lagged despite increases over previous years.

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. In the July 4 report of her July 2010 visit, the UN special rapporteur on the human right to safe drinking water and sanitation raised concern

about housing discrimination that negatively affected the accessibility of persons with disabilities to water and sanitation.

According to NGOs an estimated 20,000 homeless persons could not receive disability pensions and livelihood protection allowances, because they were considered to be without residence. As a result, due to inadequate protection by the social safety net and the social stigma against homelessness, a significant number of homeless individuals committed petty crimes to obtain the food and shelter provided by living in prison.

Mental health professionals criticized as insufficient government efforts to reduce the stigma of mental illness and inform the public that depression and other mental illnesses are treatable and biologically based. Police and prison authorities were particularly slow in providing treatment of mental illness and have no protocol for offering psychiatric therapy.

### **National/Racial/Ethnic Minorities**

Ethnic minorities experienced varying degrees of societal discrimination.

Although not subject to governmental discrimination, Buraku (the descendants of feudal era “outcasts”) frequently were victims of entrenched societal discrimination. Buraku advocacy groups reported that despite the socioeconomic improvements achieved by many Buraku, widespread discrimination persisted in employment, marriage, housing, and property assessments. While the Buraku label is no longer officially used to identify people, the family registry system can be used to identify them and facilitate discriminatory practices. Buraku advocates expressed concern that employers, including many government agencies, which require family registry information from job applicants for background checks, may use this information to identify and discriminate against Buraku applicants.

Despite legal safeguards against discrimination, the country’s populations of Korean, Chinese, Brazilian, and Filipino permanent residents--many of whom were born, raised, and educated in Japan--were subjected to various forms of entrenched societal discrimination, including restricted access to housing, education, health care, and employment opportunities. Other foreign nationals resident in Japan as well as “foreign-looking” Japanese citizens reported similar discrimination and also said they were prohibited entry, sometimes by signs reading “Japanese Only,” to privately owned facilities serving the public, including hotels and restaurants. Noting that the discrimination is usually open and direct, respected NGOs

complained of government inaction in prohibiting it. In addition, the March 21 report on the March 2010 visit by the UN special rapporteur on the human rights of migrants criticized Japan for lacking legislation to protect migrant rights and prohibit discrimination on the basis of ethnicity or nationality and for inadequately addressing the persistence of racial discrimination and xenophobia regarding migrants.

In general, societal acceptance of ethnic Koreans who were permanent residents or citizens continued to improve steadily. In 2010, 6,668 ethnic Koreans naturalized as Japanese citizens. Although authorities approved most naturalization applications, advocacy groups complained of excessive bureaucratic loopholes that complicated the naturalization process and a lack of transparent criteria for approval. Ethnic Koreans who chose not to naturalize faced difficulties in terms of civil and political rights, and according to Japan's periodic submissions to the UN Committee on the Elimination of Racial Discrimination, regularly encountered discrimination in access to housing, education, government pensions, and other benefits.

A Japanese Social Insurance Agency enforcement directive explicitly makes it easier for employers to avoid paying pension and insurance contributions on behalf of their foreign employees who teach languages as compared with Japanese employees in similar positions. A labor union representing the teachers stated during the year that the directive provides impunity to employers who illegally fail to enroll foreign teachers in the system.

Many foreign university professors, especially women, were hired on short-term contracts without the possibility of tenure.

There was a widespread perception among citizens that "foreigners," including members of Japan-born ethnic minorities, were responsible for most crimes committed in the country. The media fostered this perception by heavily reporting crimes committed by non-Japanese citizens, although Justice Ministry statistics showed that the crime rate for foreigners, excepting immigration violations, was lower than that for citizens.

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.

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 by international school associations as being equivalent to a 12-year program could take the entrance exam.

Marches by nativist groups declined in frequency and intensity during the year compared with 2010, and there were fewer significant incidents.

### **Indigenous People**

Although the Ainu enjoyed the same rights as all other citizens, when clearly identifiable as Ainu they faced discrimination. The law emphasizes preservation of Ainu culture, but it lacks some provisions that a few Ainu groups have demanded, such as recognition for land claims, reserved seats in the Diet and local assemblies, and a government apology.

Although the government does not recognize "the Ryukyu" (a term that includes residents of Okinawa and portions of Kagoshima Prefecture) as indigenous people, it officially acknowledges their unique culture and history and has made efforts to preserve and show respect for these traditions.

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

Laws governing rape, sexual commerce, and other actions involving sexual intercourse do not apply to same-sex sexual activity, since sex is defined in Japanese law exclusively as male-to-female vaginal intercourse. This definition leads to lower penalties for perpetrators of male rape and greater legal ambiguity surrounding same-sex prostitution.

NGOs that advocate for gay, lesbian, bisexual, and transgender persons reported some instances during the year of bullying, harassment, and violence.

There is no national law that protects individuals against discrimination on the basis of sexual orientation and gender identity, although some local governments have enacted laws prohibiting employment discrimination based on sexual orientation.

### **Other Societal Violence or Discrimination**

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

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law allows private sector workers to form and join unions of their choice without previous authorization or excessive requirements, provides the right to strike, and protects collective bargaining rights.

The law places some limitations on public sector workers and employees of state-owned enterprises. Workers in sectors providing essential services, including electric power generation and transmission, transportation and railways, telecommunications, medical care and public health, and the postal service must give 10 days' advance notice to authorities prior to organizing a strike. Public sector employees do not have the right to strike but are permitted to participate in public employee organizations, which may negotiate collectively with their employers on wages, hours, and other conditions of employment. Employees involved in providing essential services are not afforded the right to collective bargaining. The law prohibits antiunion discrimination and provides for the reinstatement of workers fired for union activities.

The government effectively enforced the law on forming and joining unions. Unions were free of government control and influence, although public service employees' basic union rights are governed by a separate law and restricted in ways that effectively require prior authorization to form unions. The government protected the right of unions to conduct activities. However, the continued increased use of short-term contracts, at times in violation of the law, undermined regular employment and frustrated organizing efforts.

Collective bargaining was freely practiced, although some businesses changed their form of incorporation to a holding-company structure, not legally considered

employers, to circumvent employee protections under the law. Similarly, Japanese employers increasingly hired part-time, short-term contract, or nonregular workers rather than permanent employees. Such workers made up more than one-third of the labor force. They worked for lower wages and often with less job security and benefits or in more precarious working conditions than career workers did. Many of these workers, who lost their jobs during the year, sought damages from their employers, alleging that the repeated renewals of their short-term contracts obligated their employers to convert them to career employees. To qualify for parity in wages and training with full-time workers, part-time workers must have parity with full-time workers in terms of tasks, overtime, and transfers, and in practice only 4 to 5 percent of part-time workers qualified.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor, but there were reports that such practices occurred. Workers who entered the country illegally or who overstayed their visas risked nonpayment or underpayment of wages. Some companies illegally restricted the movement, communications, and travel documents of foreign laborers in the Industrial Trainee and Technical Internship Program and forced them to deposit paychecks into company-controlled accounts. The UN special rapporteur on the human rights of migrants stated in his March 21 report that the program's structure fails to protect its participants from exploitation. Some Chinese trainees were illegally required to pay fees and deposits valued at the equivalent of more than \$5,000 before leaving for Japan. According to worker advocates, if victims reported mistreatment or exited the program early, brokers seized these assets.

The law and Justice Ministry guidelines prohibit these practices, and Labor Standards Offices monitored workplace compliance with the law. The normal governmental response was to issue warnings and advisories and ban companies from future participation in the trainee program.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

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. These laws were effectively enforced in practice.

Child labor was concentrated in the areas of trafficking in persons and child pornography (see section 6, Children).

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

Minimum wages ranged from 645 yen (approximately \$8.40) to 837 yen (\$10.85) per hour, depending on the industry and prefecture. The law imposes a fine of up to 500,000 yen (\$6,500) for employers who fail to pay a minimum wage. In 2009, 16 percent of the population earned an annual income below the poverty line of 1.12 million yen (approximately \$14,500).

The law provides for a 40-hour workweek for most industries, mandates premium pay for hours worked above 40 in a week or eight in a day, sets limits on the number of overtime hours permitted in a fixed period, and prohibits excessive compulsory overtime. The law mandates paid leave on national holidays as well as at least 10 days of paid leave accrued per year following six months of full-time employment. The government sets occupational safety and health (OSH) standards.

The Ministry of Health, Labor, and Welfare is responsible for the enforcement of laws and regulations governing wages, hours, and OSH in most industries. The National Personnel Authority covers government officials. The Ministry of Economy, Trade, and Industry covers OSH for the mining industry, and the Ministry of Land, Infrastructure, Transport, and Tourism is responsible for OSH in the maritime industry. A total of 3,970 Labor Standards Inspectors enforced these laws and regulations. Labor unions frequently criticized the government for failing to enforce the law regarding maximum working hours, and it was widely accepted that workers, including those in government jobs, routinely exceeded the hours outlined in the law. From April 2010 to March 2011, surviving family members filed 802 applications with the Ministry of Health, Labor, and Welfare seeking recognition of a deceased individual as a *karoshi* (death-from-overwork) victim. The ministry officially recognized 285 *karoshi* victims during the year, but worker rights NGOs claimed that the number of victims was in reality much higher and



overwork and other work conditions contributed to many of the 30,513 suicides during the year.

The government effectively administered applicable OSH law and regulations in all sectors. Inspectors have the authority to suspend unsafe operations immediately. According to one-time data compiled for the Diet, they responded in 2009 to 48,448 complaints, inspected 146,860 workplaces, ordered 4,553 places of business to suspend operations and correct OSH problems, and referred 1,110 cases to prosecutors.

The number of workplace fatalities nearly doubled during year, largely resulting from the March 11 earthquake and tsunami which caused 1,057 on-the-job deaths. From January 1 through November 30, there were 845 workplace fatalities unrelated to the March 11 disasters, primarily in the construction and manufacturing sectors. Falls, automotive accidents, and injuries caused by heavy machinery were the most common causes of workplace fatalities during the year.

Inspectors noted that foreign nationals participating in the Industrial Trainee and Technical Internship Program were frequently forced to work unpaid overtime and receive less than the minimum wage, among other labor violations. In August a press report stated that the Fukui Prefecture Labor Standards Office found all 54 companies participating in the program within the prefecture to be in violation of the law. NGOs and labor unions working with foreign workers reported noticeable improvement during the year in how companies treated foreign workers, in response to new rules governing the program and increased scrutiny of the labor standards of participating companies, but also stated that problems remained.