

HUMAN RIGHTS COMMISSIONERS (JINKEN YOGO IIN)  
AND LAY PROTECTION OF HUMAN RIGHTS IN JAPAN

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International Ombudsman Institute  
OCCASIONAL PAPER #31

October 1985

Prepared for the symposium "Human Rights:Third World Dilemmas" Colombo December,  
1984

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## HUMAN RIGHTS COMMISSIONERS (JINKEN YOGO IIN) and LAY PROTECTION OF HUMAN RIGHTS IN JAPAN

### Introduction

How best protect the rights of citizen's on a day-to-day basis? What is necessary for rights protection, in terms of resources and human skills and institutions? Wherever in the world one may live, whatever the nature of a given socioeconomic system, political culture, or legal tradition, such questions reflect serious practical concerns. The public and private origins of a rights problem are various but the goal of rights protection systems is low cost, efficient, just, and timely solution in accordance with law and community standards.

Formal legal mechanisms and procedures, presided over by law-trained professionals, are of course necessary at the State level; but, I would suggest, in terms of the proportion of rights cases handled and in terms of determining the status of individual rights within a national legal system, less formal modalities for solution, in which professionals utilize clear but simple procedures in a manner responsive to local circumstances and culture can be and should be more important than law enforcement agencies, lawyers and the courts. Of course reasonably effective operation of the latter is an essential part of the backdrop.<sup>1</sup> In offering this broad hypothesis, I must add the important caveat that less formal systems are valuable in the cause of individual rights protection only insofar as related lay people and officials are deeply committed to rights protection and not in fact part of the problem of rights violation. For example, the local leader and the face-to-face community may in their autonomy and grass-roots identification with individual rights problems be a major force for or against human rights; only empirical research can tell us which in a given instance.

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<sup>1</sup> See C.L. Pe and A.F. Tadiar, International Survey of Conciliation Systems(Manila: UST Press, 1982); Lawrence W. Beer, Freedom of Expression in Japan (Tokyo and New York: Kodansha International, 1984 (hereafter cited as Freedom; and Marc Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," Journal of Legal Pluralism, No. 19, 1981, p.1.

In this paper I will describe some roles of lay people in the protection and promotion of human rights in Japan, with particular emphasis on the Civil Liberties Commissioner system. The Japanese term for these volunteers is "Jinken Yogo Iin," which can be literally translated as "Human Rights Protectors"; but, for historical reasons, they are usually referred to, in Japan and elsewhere, as "Civil Liberties Commissioners,"<sup>2</sup> and the related government agency is referred to as the "Civil Liberties Bureau" (Jinken Yogo Kyoku). "Human Rights Commissioners" is linguistically and functionally more accurate; I will hereafter refer to them generally as "Commissioners." There are today about 11,500 men and women serving as Commissioners in virtually every town and city in Japan. Before saying more about the Commissioner system and how it has worked, I will briefly explain its origins, its social setting, and its legal and constitutional context.

### Constitutional Rights in Japan

The human rights of Japanese citizen's received unprecedented legitimation and protection as constitutional and legal rights when the present Constitution of Japan (Nihonkoku Kempo) came into effect in the spring of 1947.<sup>3</sup> Japan had entered into creative dialogue with the West on new ideas of law and politics such as human rights (jinken) in the 1850's, and lived under a monarchical, parliamentary constitutional system from around 1890 through the disastrous years of World War II.<sup>4</sup> Unlike most non-Western peoples, the Japanese have had an independent, indigenous national legal system since they ended almost 50 years of colonialist encroachments on their legal sovereignty at the turn of the century.

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<sup>2</sup>"Civil Liberties Commissioners" is the term used in English language publications of the Bureau, based on the creation of the term during the predominantly American Occupation (1945-1952). However, the human rights guaranteed by the Constitution encompass much more than civil liberties. See, for example, Civil Liberties Bureau, "The Organization and Functions of the Organs for the Protection of Human Rights and the Legal Aid System in Japan," Ministry of Justice, Japan, January, 1983 (hereafter referred to as "Organization and Functions").

<sup>3</sup>The text of the Constitution of Japan can be found in Hiroshi Itoh and Lawrence W. Beer, The Constitutional Case Law of Japan (Seattle: University of Washington Press, 1978), p.256.

<sup>4</sup>Freedom, chapter 2.

Modern law heavily derived from Western Europe took hold and gave currency to an untraditional emphasis on equal rights under the law (except for women and a very small aristocracy) credence among a sizeable minority to democratic understandings of individual rights.<sup>5</sup> The early modern revision of the imperial tradition bestowed uncharacteristic constitutional centrality on the Emperor and, in practice, increasingly repressive power on functionaries who restricted rights in the name of the Emperor's modern law.<sup>6</sup> The present Constitution is technically an amendment, but actually a replacement of the Meiji Constitution, the 1889 Constitution of the Empire of Japan.<sup>7</sup>

The 1947 Constitution was clearly influenced by strong democratic and American "New Deal" forces within the apparatus of the Occupation of Japan (1945-1952); but the human rights revolution wrought during that period was and still is strongly supported by the overwhelming majority of Japanese.<sup>8</sup> The origins of a system of constitutionally protected rights are much less important than the question of whether the government and the overwhelming majority of the citizenry are united behind and contented with those democratic rights. In Japan, perhaps no other locus of sociopolitical theory or document carries such great popular legitimacy as the Constitution of Japan.

The conception of "eternal and inviolate" human rights (Articles 11 and 97) embodied in the constitution is comprehensive and is rooted in the transcendent intrinsic value of each person: "All of the people shall be respected as individuals"<sup>9</sup> (Article 13). The Emperor is now powerless; the people have sovereignty. The general and specific rights provisions of Chapter 3 (Articles 10 to 40) are not simply rhetorical or didactic pronouncements; they

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<sup>5</sup>Lawrence W. Beer, "Constitutional Revolution in Japanese Law, Society, and Politics," Modern Asian Studies, Vol. 16, No. 1, 1982, p. 33; Dan Fenno Henderson, "Law and Political Modernization in Japan," in Robert E. Ward (ed.), Political Development in Modern Japan (Princeton: Princeton University Press, 1968).

<sup>6</sup> David A. Titus, Palace and Politics in Prewar Japan (New York: Columbia University Press, 1974).

<sup>7</sup> Itoh and Beer, op. cit., p.3.

<sup>8</sup> Beer, "Constitutional Revolution "; Prime Minister's Office, "Jinken Yogo," Gekkan Yoron Chosa January, 1984. p.33.

<sup>9</sup>Itoh and Beer; p.258.

mandate national policies and laws and are enforceable in the courts.<sup>10</sup> Most rights contained in the 1948 Universal Declaration of Human Rights were guaranteed to Japanese a year earlier. Among their constitutional rights are freedoms of expression, conscience, and religion, freedoms of mobility and occupation, equality under the law, socioeconomic rights, educational rights, worker rights, property rights, and rights to equal procedural safeguards in criminal justice. Such rights are to be "the supreme consideration in legislation and in other governmental affairs" unless they interfere with the "public welfare" (Articles 12 and 13); but the Supreme Court has defined the public welfare as "the maintenance of order and respect for the fundamental human rights of the individual." <sup>11</sup>

On balance, Japan's human rights record is very good; most rights problems arise from customary biases and the darker side of social culture (e.g. ingroup violation of member rights) rather than from government policy or law.<sup>12</sup> The breadth and depth of support for human rights in Japan are due to many factors: to memories of prewar repression and the horrors attending defeat in 1945, to the earlier acceptance of human rights ideas by many influentials, to decades of internal peace, to an unusual ethnic homogeneity along with vigorous intellectual heterogeneity, to the absence of deep political divisions grounded in competing religious or ideological legitimacies, to an era of exceptional economic prosperity, and to the simple fact that humans enjoy being treated with seriousness and respect more than having their dignity ignored and their rights violated. Unanswerable questions, as for any democracy, are whether economic disaster might lead to an overthrow of the human rights protection system, and whether the young (in Japan, the postwar generations) will be wary enough of aspects of the social and political culture inimical to democratic constitutionalism to avoid drift towards a mood of tolerance and/or passivity in the face of human rights violations. A large majority has little or no memory and often slight knowledge of the militarist and ultra-nationalist

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<sup>10</sup>For many examples, see Freedom ; Itoh and Beer; and Dan Fenno Henderson (ed.), The Constitution of Japan: Its First Twenty Years, 1947-67 (Seattle: University of Washington Press, 1968).

<sup>11</sup>Japan v. Sugino, 4 Keishu 2012, 2014 (Sup. Ct., Grand Bench, 1950).

<sup>12</sup>Lawrence W. Beer, "Group Rights and Individual Rights in Japan," Asian Survey, April, 1981, p.437.

infringements on rights, in and by Japan, before her surrender of August 14, 1945.

On the other hand, the legitimizing organs of a constitutional culture, such as the education system, the family, the mass media, opinion elites, the bureaucracy, and most political parties stand clearly behind comprehensive protection of human rights in most respects. In addition, the Constitution of Japan (Article 12) requires that human rights "shall be maintained by the constant endeavor of the people, who shall...be responsible for utilizing them for the public welfare";<sup>13</sup> hence, the establishment of the Human Rights Commissioner system, by which laypeople join directly in human rights protection, promotion, and education, is firmly grounded in the basic law.

#### The Beginnings and Development of the Commissioner System

During the massive administrative reorganization of Japan's government under the 1947 Constitution of Japan, a "Civil Liberties Bureau"; Jinken Yogokyoku; lit., "Human Rights Protection Bureau" (hereafter referred to as the Bureau) began functioning within the Justice Ministry (Homusho) on February 15, 1948.<sup>14</sup> The idea for the Bureau derived from the nascent Civil Rights Section, Criminal Division, United States Department of Justice, which grew over the decades into the important Civil Rights Division; however, the Bureau's powers differ. Neither the Bureau nor the Commissioners who work under its aegis have police powers or authority to prosecute; but the scope of the human rights cases they handle is much wider than that of the American counterpart.<sup>15</sup>

The Bureau has never been a large government agency; in 1984, only 220 professionals staffed its national (15) and local (205) offices. The Commissioner system was established by a 1948 Cabinet Order<sup>16</sup> as a way to expand the Bureau's rights protection capacities by

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<sup>13</sup> Itoh and Beer, p.258 The full text is: "Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare."

<sup>14</sup> "Organizations and Functions," p.3.

<sup>15</sup> Ibid., p. 2.

<sup>16</sup> Cabinet Order No. 168 of July, 1948.

involving qualified lay volunteers. It should be noted in passing that the Commissioners system is only the most important of a number of officially sanctioned modes of lay involvement in problem solving and service.<sup>17</sup> Under this Cabinet Order the number of Commissioners nationally never exceeded 150; but the Civil Liberties Commissioner Law (hereafter, the Commissioner Law)<sup>18</sup> which went into effect on June 1, 1949, raised the authorized number to the present level of about 20,000 (19,915 in 1984).<sup>19</sup>

Although Japan's Commissioner system is in some ways unique, in the broader history of the international movement for human rights protection, the Commissioner Law represents an important positive instance of creative national legislation institutionalizing a system which, in at least some of its features, may well have relevance to other countries. The Law's purposes are "to ensure the full protection of human rights by the appointment of Human Rights Commissioners throughout the country... and to promote and make widely known the ideal of human rights in order to protect the fundamental rights guaranteed to the people" under the Constitution.<sup>20</sup>

Commissioners are appointed for each town, village and city but a Commissioner may also operate beyond his/her assigned boundaries if need arise. They serve for renewable three-year terms without pay. Towns have at least three Commissioners; cities up to 100; Tokyo 360. The duties of the Bureau and Commissioners include: <sup>21</sup> 1) to make human rights ideals better known and appreciated by the public through public information and education activities; 2) to foster the active involvement of others in community human rights activities; 3) to investigate and collect information regarding human rights violations such as giving advice or warning, to report such to the Bureau, and to recommend action by other

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<sup>17</sup> See Freedom, chapter 4.

<sup>18</sup>Law No. 139 of May 31,1949. See 59 nen Jinken Yogo Roppo ( The 1984 Compendium of Human Rights Protection Laws, hereafter, 1984 Compendium ) (Tokoyo: Nihon Kajoshuppan, 1984). p.31.

<sup>19</sup> Hoso Jiho, Vol. 36, No.4, 1984, p.137; and materials kindly provided to the author by the Civil Liberties Bureau, Tokyo, August, 1984.

<sup>20</sup>1984 Compendium, pp.31-34; "Organizatio n and Functions," pp.2-5.

<sup>21</sup>Article 11, Ministry of Justice Establishment Law, Law No. 193 of December 17,1947; 1984 Compendium, p.91.

agencies, if needed and appropriate; 4) to promote human rights efforts among the poor, such as legal aid.

To summarize, the Commissioners are to popularize human rights thought, to educate, and to involve themselves in the conciliatory settlement of disputes arising close to home. Although they can be quite effectively conscious of their rights when acting in groups, and although high valuation of harmony has not implied a weak rights consciousness, Japanese have tended to be reluctant to "selfishly" assert their rights as individuals in a way that could bother others or challenge the authority of those with social or governmental power.<sup>22</sup> The Commissioner system has significantly eased for the ordinary citizen the expression of grievances and the assertion of individual rights without resort to courts or other distasteful forms of prolonged, costly and/or public confrontation.

The number of Commissioners has only gradually increased over the years; in 1984, for a population of approximately 120 million there were 11,421 (1,546 women; 13.5%), while on January 1, 1978 they totalled 10,626 (1,215 women; 11.4%).<sup>23</sup> As Table 1 indicates, Commissioners are ordinary people from a broad range of working and living environments.

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<sup>22</sup> Freedom, chapters 3 and 9.

<sup>23</sup> L.W. Beer and C.G. Weeramantry, "Human Rights in Japan: Some Protections and Problems," Universal Human Rights (now Human Rights Quarterly), Vol. 1, No. 3, 1979, p.7; "Organization and Functions," pp.3-4. The context of Japan's law personnel within which Commissioners fit is presented below. The source for the charts is Michael K. Young in "The Role of Law and Lawyers in Japan and the United States," Occasional Paper No. 16, East Asia Program, The Wilson Centre, Washington, D.C., 1983, p.10.

Table 1. Occupations of Human Rights Commissioners as of January 1,1983.

		<u>percent 1/1/83</u>	<u>percent 1/1/78</u>
agriculture, forestry, fisheries	3,171	27.7%	29.9%
no full-time occupation (e.g., housewives, retired people)	2,794	24.4%	19.3%
religious leaders	1,059	9.3%	10.3%
shopkeepers	764	6.7%	7.4%
company executives	792	6.9%	6.7%
officers of organizations	456	4.0%	3.8%
practising attorneys	360	3.1%	3.4%
company white collar employees	287	2.5%	3.0%
public employees	225	2.0%	2.6%
manufacturing and processing workers	218	1.9%	2.2%
professors and school teachers	253	2.2%	2.3%
doctors and medical personnel	178	1.6%	1.8%
judicial scriveners, tax accounts, etc.	235	2.1%	1.9%
various kinds of government commissioners	195	1.7%	1.6
legislators	120	1.0%	1.0%
press and television employees	27	0.2%	0.3%
others	30.	2.7	2.5%

### Human Rights Commissioners: Their Selection and Organization

#### Organization

A brief look at the organization context within which the Commissioners work and the procedures by which they are chosen will set the stage for a description of some of their activities.

## 1. Organizational Structure

The Civil Liberties Bureau of the Justice Ministry is headed by a Director-General and is divided into three parts:<sup>24</sup> the General Affaires Division, which promotes nongovernmental human rights activities and handles the Commissioner system; the Investigation Division, which looks into alleged rights violations and gathers information on such cases; and the office of the Human Rights Administrator, which promotes public information and education activities and coordinates legal aid for the financially disadvantaged.<sup>25</sup>

Helping the national Civil Liberties Bureau supervise the Commissioner system and the other human rights activities are the local Civil Liberties Departments within Legal Affaires Bureaus located in the eight major regional cities of Tokyo, Osaka, Fukuoka, Nagoya, Hiroshima, Takamatsu, Sendai, Sapporo, and Civil Liberties Divisions within 42 District Legal Affaires Bureaus. Although law and constitution provide for a significant degree of local autonomy in some matters,<sup>26</sup> Japan has a unitary, not a federal system of government. District courts ( chihosaibansho ) are the courts of original jurisdiction in most noteworthy human rights cases, and high courts ( koto saibansho ), the principal appellate level under the Supreme Court. The accompanying map shows the cities where one finds high courts and district courts and where regional Bureaus and the lower tier of forty-five Civil Liberties Divisions within District Legal Affairs Bureaus are located. <sup>27</sup> With the exception of the large northern island of Hokkaido, which has three districts, the sites of these district offices are also the seats of prefectural government. There are 260 additional "Branch Bureaus" connected to the regional and district legal affaires bureaus, and it is in relation to these offices that the Commissioners are organized into 319 Consultative Assemblies of Human Rights Commissioners(Jinken Yogo Iin Kyogikai).<sup>28</sup>

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<sup>24</sup> "Organization and Functions," p.2.

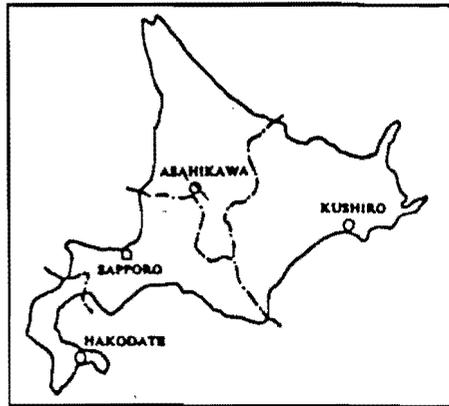
<sup>25</sup>Ibid., pp.2, 11-20. This legal aid system is geared to help the poor in civil cases; in criminal cases, the court assigns defence council for the poor upon application after indictment.

<sup>26</sup> Articles 92-95, Constitution of Japan, Itoh and Beer, pp. 267-268.

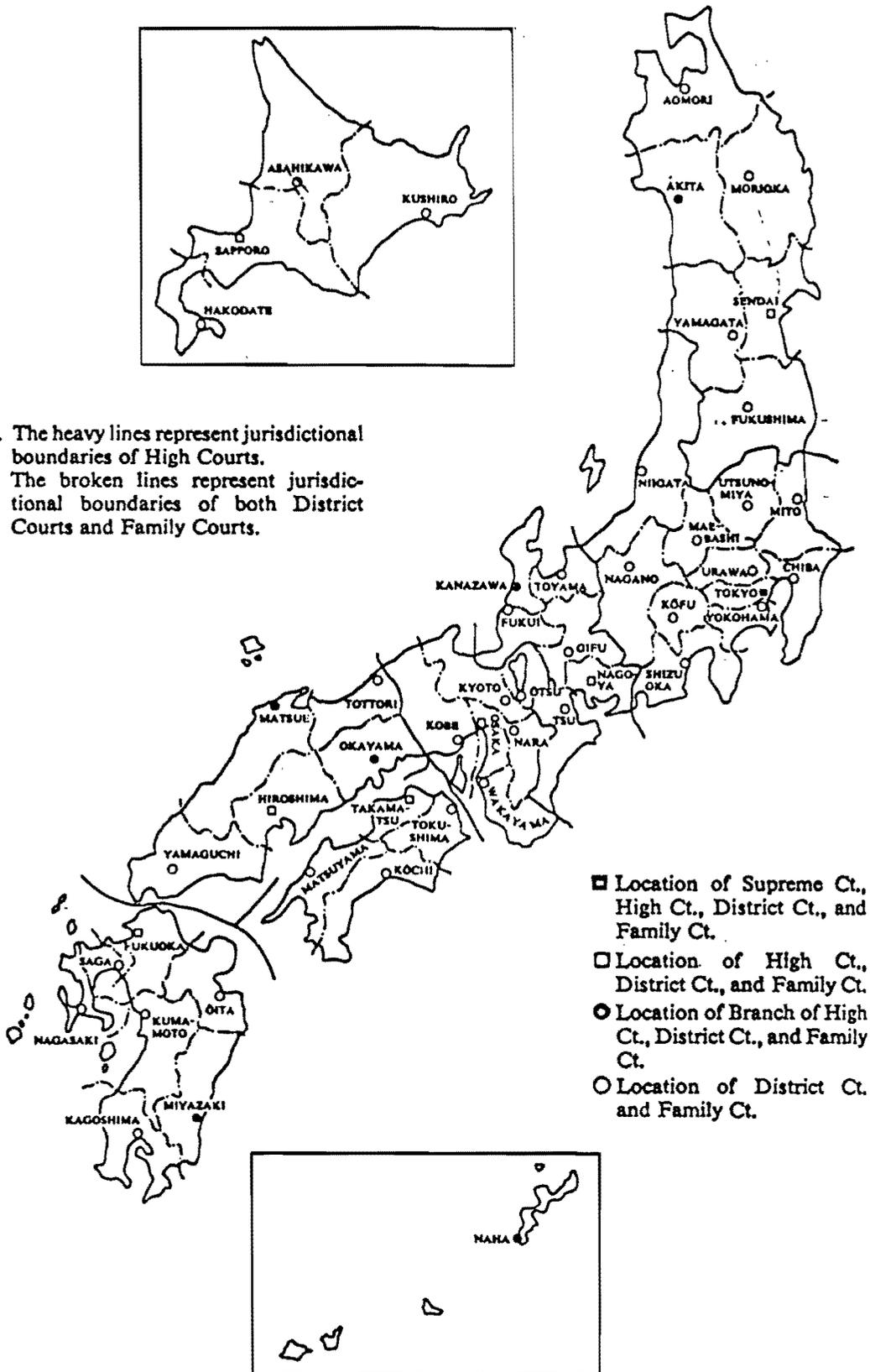
<sup>27</sup>"Organization and Functions," pp.2-6.

<sup>28</sup> Ibid.,p.5.

Map of Court Jurisdictions In Japan



1. The heavy lines represent jurisdictional boundaries of High Courts.
2. The broken lines represent jurisdictional boundaries of both District Courts and Family Courts.



- Location of Supreme Ct., High Ct., District Ct., and Family Ct.
- Location of High Ct., District Ct., and Family Ct.
- Location of Branch of High Ct., District Ct., and Family Ct.
- Location of District Ct. and Family Ct.

Source: Supreme Court of Japan, Justice in Japan, 1978, Tokyo, 1978, p. 46.

These local assemblies have in turn formed fifty Federations at the prefectural level. Capping the organizational hierarchy since 1953 has been the National Federation of Human Rights Commissioners (Zenkoku Jinken Yogo Iin Rengokai). Each Commissioner must belong to a local assembly, and must attend meetings and training sessions. The lay Commissioner carries out official duties on a part-time basis, but receives no recompense.<sup>29</sup> However, out-of-pocket expenses incurred in the line of duty (e.g., the costs of telephone, travel, and attendance at training sessions) are paid by the government. The functions of the consultative assemblies and their federations are mutual liaison and coordination of work among Commissioners, collection and exchange of information, research and publication on their work, and preparation of advisory opinions for interested agencies. Since they provide valued social services, the activities of local Commissioner organizations have been subsidized by related cities, towns and villages. National honors have been accorded outstanding Human Rights Commissioners.<sup>30</sup>

## 2. The Commissioner Selection Process

We have seen their occupational backgrounds and organizational framework; we now turn to what is most crucial to this system of lay volunteers, the way they are chosen and the work that they do in every man's neighborhood or village.<sup>31</sup> A position as Human Rights Commissioner is prestigious, but not elitist. To preserve the prestige of the office and to enable the commissioner to function with a broad base of public support, great pains are taken in the selection procedures to pick outstanding individuals. What is sought is not one filled with self-importance or one who can sway an audience with eloquence, but one who has proven by word and action in his/her community an understanding of and commitment to human rights. Under Article 6, paragraph 6 of the Commissioner Law, discrimination in the selection of candidates on the basis of race, beliefs, sex, social position, or political view or .....

<sup>29</sup> Article 8, Commissioner Law, 1985 Compendium, p. 32.

<sup>30</sup> "Organization and Functions," p.5.

<sup>31</sup> Ibid., and materials provided the author by the Bureau, 1984; discussions with Commissioner, 1979, Beer and Weeramantry, pp.9-10.

affiliation is forbidden. Excluded from eligibility for commissioner status (Article 7) are those known for attitudes and conduct contrary to human rights principles (e.g., a person favoring discrimination), anarchists, the legally incompetent, those convicted of crime meriting incarceration until such time as the term has passed,<sup>32</sup> those who form or belong to political organizations which advocate the violent overthrow of the constitutional system. The basic positive requirements for candidacy are substantial residence and qualified voter status in the area to be served, broad knowledge of local conditions, high moral character, the respect of the local community, and reasonable knowledge of and demonstrated support for human rights protection and promotion.

When a vacancy occurs, the Director-General of the Civil Liberties Bureau, on behalf of the Justice Minister, calls for a recommendation from the mayor of the affected city, town, village, or ward (as in the case of Tokyo). The mayor invites nominations, one each from a sometimes wide range of community organizations and agencies, such as the education committee, labor unions, the bar association, the mass media organization, and the political parties.<sup>33</sup> The mayor sorts out the nominees and brings a nomination to the elected local assembly of the city, ward, town, or village. With the advice and consent of the assembly, the mayor then submits a name to the Justice Minister for consideration. The Director-General must then solicit opinion on the candidate from the Justice Minister, the bar association, and the Federation of Consultative Assemblies of Human Rights Commissioners of the prefecture affected. The process is completed when the Justice Minister makes the appointment and informs the mayor and the individual. If a person recommended is deemed unsuitable by the Ministry, a call is made for submission of another recommendation within a -----

<sup>32</sup> Only a few percent of those convicted of crime actually go to prison; much more common are fines and suspension of the execution of sentence (shikko yuyo). The person's attitude towards the crime and the probabilities with respect to recurrence of criminal behavior are primary determinants of penological decisions in Japan. See Government of Japan, Summary of the White Paper on Crime, 1979 Research and Training Institute, Ministry of Justice, 1980, pp.23-28.

<sup>33</sup> The major political parties are the perennially ruling Liberal Democratic Party, the relatively weak perennial second Japan Socialist Party, Komeito (Clean Government Party), the Democratic Socialist Party, and the peaceable Japan Communist Party.

given time period, using the original list of nominees; should this not issue in a satisfactory candidate, the Director-General may directly seek the advice of the prefectural bar and Federation on other persons nominated at the first stage of the process.<sup>34</sup>

### The Works and Days of Human Rights Commissioners

#### A. Dealing with Violations of Human Rights

The Commissioner is someone nearby, who can be identified by a smart lapel badge and a plaque posted in a conspicuous place outside his/her home. Most Japanese live in cities; in cities most houses are close together, and most streets are narrow. It is easy to notice the location of the local commissioner walking to and from shopping, school and work, and posters giving the name, address and phone number of the commissioner are put up in neighborhood post offices, local government offices, meeting halls, and other well-frequented places.

The Commissioner is not a distant or threatening authority figure, but one who understands well the local scene and works easily with agencies and ordinary people to solve concrete problems in a quiet, flexible way on a day-to-day basis. Although Commissioners are commonly very generous in making themselves available to talk with people about their human rights problems, the actual hours they work under their "part-time" appointment varies from week to week and month to month, depending on the nature and number of cases that arise and the sorts of human rights educational activities on schedual.

The cases handled are divided generally into alleged rights violations by public officials and rights infringements by private individuals or organizations. Some examples of official infringements of rights are unlawful physical constraint, search, seizure, coerced confession, or assault by law enforcement agencies, improper treatment of inmates by prison officials, and corporal punishment by teachers. The number of such allegations coming to the attention of Commissioners is small and declining; for example, there were 345 such cases in 1976, 242 in 1982, and 243 in 1983.<sup>35</sup> Upon investigation, infringements were established in 167 of these -----

<sup>34</sup> Article 6, paragraphs 4 and 5, Commissioner Law, 1984 Compendium, p.31.

<sup>35</sup>Beer and Weeramantry, p.13; Hoso Jiho, op.cit., p. 144; and "Organization and

cases in 1982 and in 165 cases in 1983.

It should be noted that law enforcement and administrative agencies have their own internal inspection systems, and a separate system of lay commissioners, the Local Administrative Counselors ( Gyosei Sodan Iin) monitors official performance in light of human rights standards and receives citizen complaints.<sup>36</sup> The traditional elitism and bureaucratic disrespect for citizens found among earlier modern civil servants in Japan have markedly diminished under the current constitutional regime; but internal checks still must form an important part of the rights protection apparatus. The Administrative Inspection Bureau (Administrative Management Agency) and its local offices oversee the activities of the Counselors. The Counselor system was established in 1961; by 1965 they numbered 3,605 and handled 55,547 cases. In 1975, about 4,500 Counselors, average age 61, dealt with some 100,000 complaints, while in 1979 about 4,600 were consulted in over 120,000 cases; in 1982, 4,789 Counselors handled almost 200,000 cases.<sup>37</sup>

Local Administrative Counselors are respected local citizens who provide confidential and impartial service. Apparently, most problems are settled to the citizen's satisfaction by explanation, discussion, or conciliatory remedial action in cooperation with appropriate officials. The Counselor system has proven its value, but is not as widely known or used as the Commissioner system. There is naturally some overlap in the types of cases faced by Counselors and Commissioners, as with the work of local police in the neighborhood, social welfare offices, and the family courts (which involve both lay people and judges in the settlement to domestic conflicts and juvenile problems);<sup>38</sup> but the Human Rights Commissioners are the most active in noncoercive solution of rights issues problems for private parties.

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<sup>35</sup>(cont'd) Functions, "p.7.

<sup>36</sup>Freedom, p. 143.

<sup>37</sup> Ibid.; Beer Weeramantry, pp. 14-16; Kiyooki Tsuji, Public Administration in Japan (Tokyo: Tokyo University Press, 1983), pp. 229-235.

<sup>38</sup> Freedom, chapter 4; Supreme Court of Japan, Justice in Japan 1978, Tokyo, p.14.

Their legal context is somewhat delicate: the Commissioners and Bureau are limited by the principle that, as administrative entities, they should not intervene in private, civil matters. The primary intent of the Constitution is to guarantee citizen rights vis-a-vis the State, not in private dispute situations. However, the Supreme Court has held that the State has a legitimate interest in cases where private actions issue in infringement of freedom and equality rights that "go beyond the limits permissible in society."<sup>39</sup> For example, when the socially or economically influential infringe upon the rights of a socially disadvantaged individual, the Constitution and the Commissioners may come into play,<sup>40</sup> but the means used to resolve problems are meant to avoid compulsory intervention or any appearance of such.

A Commissioner takes up a case on the basis of a complaint or information provided by a victim or someone else, or when a newspaper, television or other report brings to light evidence of an apparent rights violation in his/her area. The main categories of private cases established by the Bureau are: cruelty to the sick or aged; restraint on physical freedom; community ostracism (mura hachibu); discrimination; violation of trust, good name or privacy; infringement of the freedom of speech, religion, association or assembly; violation of worker rights; denial of the right to security in one's home; and environmental pollution and public hazards.<sup>41</sup> In most recent years, the number of cases of alleged (and, in parenthesis, established) rights violation has shown a gradual increase: in 1979, 16,385 cases (15,877 confirmed); 1980, 16,306 (16,140); 1981, 16,632 (16,479); 1982, 15,539 (15,329); and 1983, 13,923 (13,742).

The Commissioner reports each case to the local Bureau office and tries to help the victim and others involved solve the problem on a voluntary basis. The Commissioner investigates on his own without asking help of agencies with compulsory investigative powers, and then discusses the case thoroughly with the principals involved or affected. The aim is to -----

<sup>39</sup>Mitsubishi Resin v. Takano, 27 Minshu 1536 (Sup. Ct., Grand Bench, December 12, 1973; see translation Series of Prominent Judgments No. 15, General Secretariat, Supreme Court of Japan, "Judgment upon Case of Seeking Affirmation of the Existence of a Contractual Labor Relationship," Tokyo, 1980.

<sup>40</sup> Ibid; "Organization and Functions," p.7.

<sup>41</sup>Ibid; Hoso Jiho, op.cit. p. 146.

defuse what is often a quite emotional local situation involving family or neighbors or co-workers. Where a culprit emerges, the Commissioner endeavors to help the person by quiet persuasion to cooperate, to realize that such rights violations are not acceptable, and to agree not to repeat the offense. Restoration of social harmony, insofar as humanly possible, is the deal. In the great majority of cases, the Commissioner succeeds, with others lending moral support, in inducing the offender to desist and to express regret, repentance and/or apology. In more serious cases which elude solution, the Commissioner or the Bureau may issue a written "warning" to the rights violator. Although such warnings have only the force of informal advice, they are socially powerful in many of Japan's tight-knit communities, where a reputation for being inhuman and selfish can be socially devastating.<sup>42</sup> It should be noted that while Commissioners are required to refer offences under Criminal Code to the appropriate law enforcement agency, no such cases have arisen in recent years.

In addition to availing themselves of this avenue for relief from more serious problems of rights infringement, an increasing number of citizens have been making use of the human rights consultative services of the Commissioners and Bureau in the past decade. To illustrate, in 1976, 290,000 made such use of the human rights agencies, in 1977, the figure was 307,073; more recently, 358,737 consultations occurred in 1981, 368,802 in 1982, and 356,320 in 1983.<sup>43</sup>

A few salient characteristics of the Commissioner system of human rights problem solving merit emphasis. The Commissioner is not an official backed up by the coercive resources of the State, but a layperson trying to help his/her neighbors and fellow local citizens find a conciliatory way out of deeply troubling conflicts. In technical law, the conflict may or may not entail a violation of constitutional right. The Commissioner listens and empathizes a great deal, and tries to assist the parties to a less conflictual and more intersubjective and softened perception of the situation, but in light of the human rights standards involved. He/she is neither an arbitrator nor a judge, but a conciliator in a group

<sup>42</sup> "Organization and Function," pp. 8-9.

<sup>43</sup> Hoso Jiho, op.cit. p.159.

context within a culture which recognizes the fitness of group problem-solution and the propriety of calling upon a prestigious third party to serve as a sympathetic presence facilitating dispute resolution with a minimum loss of face on the part of all concerned. "Black and white justice" is not descriptive of what is sought or what happens; "an intersubjectively persuasive and acceptable local resolution of conflict with substantive attention to human rights standards" seems better. In sum, the Commissioner system is low cost and high held in all respects, and it reenforces the legitimacy of both human rights and the constitutional regime by linking national law with the ordinary citizen's daily environment in a salutary manner.

#### B. Human Rights Education and Promotion

Perhaps in few places are the ideals of human rights as unabashedly advertised and as systematically promoted as in Japan. A wide range of Commissioner and Bureau educational programs facilitates student and adult awareness of the importance of human rights. The Commissioners, as human rights elite of laypeople, buttress government, scholarly, and mass media support for human rights in ever more deeply institutionalizing Japan's human rights revolution, which began in 1945. Here I would only set forth a few of the many and sometimes colorful means used to diffuse human rights awareness throughout society. It is easier to bring one's problems to a Commissioner if one already knows of his/her readiness to help through effective educational propaganda.

Among the tools are special human rights consultation desks at department stores and other well-traversed locations, radio and television programs, local lecture and discussion meetings with Commissioners, publications, posters, bumper stickers, and so on. <sup>44</sup> National human rights essay contests are sponsored in the schools, with the Commissioners honoring local winners and the Bureau publishing an annual collection of the nationally best essays on human rights.

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<sup>44</sup>"Organization and Functions," p. 9; Beer and Weeramantry, pp. 10-12.

In a high-technology world small and inexpensive physical objects can be meaningful purveyors of human rights wisdom. In August, 1984 for example, I received from the headquarters of the Bureau a number of objects carrying human rights slogans: <sup>45</sup> colored marking pens, a mechanical pencil, calling cards and book marks with different human rights admonitions, calendar cards of various design, note pads, a triangle ruler in an attractive pack, leaflet handouts explaining the Commissioner system and the Bureau's mission, announcements of national poster contests on human rights, matchbooks.

There are also sincere, slick, and persuasive posters: with babies decrying discrimination (with clear identification of the problem: discrimination against the 1.5 to 2.5 million burakumin<sup>46</sup> descendants of traditionally outcaste occupational groups who now enjoy legally, though not always socially, enforceable rights); with celebrations of the 35th anniversary of the United Nations Universal Declaration of Human Rights in December, 1983; with calls couched in traditional art forms for observance of "Human Rights Day" on December 10; with internationalist pictures which link human rights with happiness and the Human Rights Commissioners; with a child's art and words asking all to think of the other person and the "mutual existence of human rights"; with an actress asking, "Aren't you forgetting what's most important?" in Human Rights Week theme.

During Human Rights Week, the Bureau organizes celebrations and school assemblies, festooned human rights sound trucks pass along the streets, public meetings and national poster contests are held, banners are strung across avenues, and panel discussions and public debates encouraged. Commemorative human rights stamp have been issued on occasion by the Postal Ministry. In a society permeated with modern advertising, all the above is not gimmickry but common sense.

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<sup>45</sup> I am grateful to Hiroshi Suzuki and the leadership staff of the Civil Liberties Bureau, Justice Ministry of Japan for sharing generously with me written materials, sample promotional materials, and helpful perspectives concerning the Commissioner system, Tokyo, August, 1984.

<sup>46</sup>Beer and Weeramantry, pp. 16-19; Frank K. Upham, "Ten Years of Affirmative Action for Japanese Burakumin: A Preliminary Report on the Law on Special Measures for Dowa Projects." Law in Japan, Vol. 13,1980, p.39.

All local and national government bodies are alerted to the importance of human rights during the December week and also with Constitution Day observances on May 3, when leading constitutional lawyers give solemn honor to constitutional rights at large and well-publicized public gatherings. It seems fitting to close by mentioning the impressive local and national observances in December, 1983 of the 35th anniversary of the Universal Declaration of Human Rights, when the Prime Minister's Office, the Justice Ministry, the Foreign Ministry, other public and private agencies, and every local government unit joined in grand public ceremonies to honor human rights. In short, human rights have entered sufficiently into the fabric of Japanese civilization to be an ordinary object of public education and annual national celebration.

### Conclusion

Here it has been my intent not to analyze a number of Japan's specific rights problems, nor to underplay or exaggerate human rights violations,<sup>47</sup> but to focus attention on a low cost and relatively effective national system for protecting and promoting human rights which centers on the official utilization of locally respected, unpaid laypeople. Conciliatory, noncoercive, persuasive solution of rights problems and resolution of serious, private interpersonal disputes without excessive reliance on the courts, compulsion, or officialdom are needed in both industrialized countries and in predominantly rural societies. Country studies, as of Japan's Human Rights Commissioners, and comparative studies of analogous systems<sup>48</sup> may well provide scholarly knowledge and insight useful to the general cause of individual human rights in many countries with a variety of types of regime and socioeconomic system. More generally, accurate and sensitive cross-cultural communication on various distinctive modes of rights protection and dispute resolution by laypeople at the level of the face-to face community may powerfully foster mutual understanding and intercultural respect.

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<sup>47</sup> Although Japan's homogeneity reduces the society-wide importance of interethnic conflict, problems of discrimination against Koreans (c. 670,000), Chinese (c. 50,000), burakumin, and women remain.

<sup>48</sup>See sources supra, note 1.

Chart 1

Persons Doing Legal Work in Japan (1982)

Judges	2,700
Public Procurators	1,173
Practising Attorneys	12,233
Company Employees Doing Legal Work	1,320
Judicial Scriveners ( <u>Shiho-Shoshi</u> )	14,572
Administrative Scriveners ( <u>Gyosei-Shoshi</u> )	30,121
Patent Attorneys ( <u>Benrishi</u> )	2,600
Tax Attorneys ( <u>Zeirishi</u> )	40,860
Total Persons Doing Legal Work	105,579
Population of Japan (December 1981)	118,107,000
Population Per Person Doing Legal Work	1,119

Chart 2

Comparison of Population Per Person

Doing Legal Work in Several Countries

France (1965)	4,026
West Germany (1971)	1,561
Japan (1982)	1,119
United Kingdom (1971)	1,023
United States (1978)	505