

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

JAPAN

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This country report is one of many prepared for the World Factbook of Criminal Justice Systems under Bureau of Justice Statistics grant No. 90-BJ-CX-0002 to the State University of New York at Albany. The project director was Graeme R. Newman, but responsibility for the accuracy of the information contained in each report is that of the individual author. The contents of these reports do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U. S. Department of Justice.

GENERAL OVERVIEW

1. Political system.

Although Japan has a federal system of government, it is largely centralized. One reason for centralization, in addition to racial homogeneity, is that it is considered very important for the formal agencies to administer the political and legal measures equally and on the same basis over the territory. In fact, apart from the district traditions and cultures, there is little difference, at least in the administration of laws, between the center of Japan, Tokyo, and the local areas.

The government is fundamentally divided into executive, legislative, and judicial powers. There is also a parliamentary Cabinet system, making the Cabinet a little stronger than the other two powers.

Development of the contemporary Japanese political system has been influenced by the remains of the pre-war political system which was based on the 19th-century German and British parliamentary models. The political system has also been influenced by the Constitution of Japan, which was largely authored by United States government advisers early in the post-World War II occupation. Thus, the substance of the present

political system in Japan is a mixture of these sources and Japanese traditional factors.

In 1947, a new Constitution, often called the Peaceful Constitution, was established. It completely bans any wars and has strongly influenced legislation passed in Japan during the post-war period. Constitutional Law moved most dramatically toward democracy in its dealings with the imperial family.

2. Legal system.

The Japanese legal system has been historically influenced by the Continental Laws, namely, the German Criminal Law and the French Civil Law. However, after World War II, the influence of American Law models has become more dominant in all areas of jurisprudence because of the closer relationship between United States and Japan. Areas affected have especially been Constitutional Law and Criminal Procedure Law. Prior to 1868, when the Meiji Restoration brought the Western legal systems to Japan, the Japanese legal system had emulated Chinese laws. Western laws were introduced by the government during a period of enthusiasm over the abolition of treaties with Western countries that contained unfair provisions for Japan, such as those denying the right to impose custom duties. Laws that were imported to Japan were gradually reformed to adapt to the Japanese nation. Thus, the Japanese legal system is a blend of the Continental, Anglo-American and Oriental models.

Japanese tradition tries to avoid disputes, particularly among community members. Even as the number of law suits has recently increased, informal resolution without going to court is still preferred. Stemming from this aversion toward legal formalities, the Japanese informal system is based on mediation and arbitration. In fact, the number of practicing lawyers totals 12,000 over the entire country. This number is comparatively small, for a rate of one per 10,000 population versus one per 450 in the United States.

3. History of the Criminal Justice System.

Before the Meiji Era (1867-1912), the powers of imperial family members, or the judges they appointed, possessed a large amount of discretion, which often resulted in the abuse of power. Capital punishment was the main measure of dealing with offenders in the criminal justice system. Under feudalism, authorities frequently used the death penalty against political rivals. However, after the Meiji Era, as Western culture was

introduced, the government established new laws reflecting a gradually modernizing Japanese society. In 1907, criminal law and prison law were passed in an effort to bring Japan into line with Western countries. However, the rights of offenders did not become a main issue in the criminal justice system until the post-war period.

Based on the new Constitution, Criminal Procedure Law was radically changed toward the adoption of an adversarial system. Under this system, the roles of the police, the prosecutor, and the judge changed. Unfortunately, immediately following this innovation, a series of cases resulted in a miscarriage of justice partly because the police were not accustomed to the new system.

Although a jury system came into force in 1939, it was practically never used because of inflexibility in the ongoing criminal justice system at that time. In addition, professional judges have always enjoyed a high level of trust in Japanese society. After the war, the police began to carry guns instead of sabers, according to the advice of the United States.

Arguments were frequently made for reforming the main laws such as the Criminal Law (1907), the Juvenile Law (1947) and the Prisons Law (1907). However, plans for reform were controversial because they addressed delicate issues, such as the introduction of protective measures to Criminal Law, juvenile punishment, or the abolition of the practice of imprisoning defendants in police cells. Japanese society is relatively conservative in its approach to reforms and is generally inclined to oppose them. The government attempts to reform older laws by issuing a series of supplements.

CRIME

1. Classification of Crime.

*Legal classification. The three main categories of crime under the Japanese Criminal Law are crimes against the state, crimes against society and crimes against individuals. This law was passed under the old Constitution which had mainly focused on the power of the emperor and the state. As a result, crimes against the imperial family and the state were highly emphasized. While crimes against the imperial family were abolished after World War II, the fundamental structure of this law was little changed. Since there has been no complete revision of the law, the law remains

fairly antiquated on the surface.

The criminal justice system reflects the state's task of protecting individual interests in daily life. Crimes against life, person, and freedom include homicide, assault, bodily injury, forcible rape, indecent assault, and kidnapping. Crimes against property include theft, fraud, robbery, extortion, and embezzlement. The concept of theft has a very broad meaning and includes burglary, shoplifting, and stealing the goods in a car. Stealing bicycles from in front of railway stations is a typical theft according to criminal statistics. Crimes which significantly cause social disorder, like arson, indecent behavior in the public, and gambling, are usually placed in a category of crimes against society. Bribery is considered a crime against the state.

Special laws include firearms and sword control law, laws for regulating business that affects public morals, anti-prostitution laws, anti-organized crime laws, and road traffic laws. There are a large number of traffic offenses, indicating serious problems on roads in Japan. Annually, there are 11,000 deaths caused by traffic accidents. After a controversy involving citizen's freedom of association in 1992, an anti-organized crime law was passed in 1992, which regulated the activity of Boryokudan crime organizations.

*Age of criminal responsibility. Persons younger than 20 years of age are legally considered juveniles. According to the Juvenile Law, juvenile cases go to Family court. The court subsequently determines the need to subject the juvenile concerned to protective measures and the most beneficial treatment for the juvenile. Possible measures include placement under the supervision of probation officers, commitment to a child education or training home or a house for dependent children, and commitment to a juvenile training school. The Juvenile Law states that juvenile cases should be in principle separated from adult cases in terms of their future development. Although there are exceptions, juveniles are criminally prosecuted when the case involves a certain punishment in response to a very serious offense.

*Drug offenses. There are special laws regulating cannabis, narcotics and psychotropics, stimulants and opium. Drug regulations cover punishment for the use, trade, possession, and production of drugs. In the 1990's a new drug regulation was introduced to conform to the standards of the United Nations. Toluene, thinner, and bonding substances are regulated by special law as well.

Their abuse is a serious problem among the youth, partly because of their cheap price.

Drug abuse in Japanese society largely stems from the use of amphetamine, which is largely imported from other Asian countries. Organized crime is involved in the handling and production of amphetamines and has become rich from this activity.

2. Crime statistics.

Police, prosecution, court, correction and after-care divisions each publish their own statistics as a yearbook. The Ministry of Justice summarizes their statistics and publishes a book, White Paper on Crime. Because of the nationwide unitary system of these agencies, such a complete portrayal of the crime situation in Japan is possible. The number of reported crimes which follows is derived from the summary of the White Paper on Crime, for 1990.

*Murder. In 1990, there were 1,238 cases of homicide reported to the police.

*Rape. In 1990, there were 1,548 cases of rape reported to the police.

*Larceny. In 1990, there were 1,444,067 cases of larceny reported to the police.

*Serious drug offense. Information not obtained.

*Crime regions. Information not obtained.

VICTIMS

1. Groups most victimized by crime.

There is very little data collected officially or privately about victims or victimization. By nature, victimization in Japan is generally not partial to a particular area, class, sex or age. However, according to a special survey, aged persons are victimized at a comparatively high rate by burglary, vandalism, and traffic offenses. (White Paper on Crime, 1991: 272-273).

2. Victims' assistance agencies.

There are a few private organizations which financially assist victims. In light of the emphasis on family in the community, victims have

tended to be assisted by their family members or relatives, or other community members. They are, at times, compensated by the offenders themselves or the offender's family. There are also organizations to help with psychological counseling for the victims of forcible rape, traffic accidents and child abuse.

3. Role of victim in prosecution and sentencing.

Information not obtained.

4. Victims' rights legislation.

In 1981, a victim-oriented law came into force, similar to the systems of New Zealand and Britain. This law provides that the state will financially assist the victim, or, in cases of violent crimes, the bereaved family. The amount of monetary benefit roughly ranges from 10,000 to 20,000 U.S. dollars, but, in 1990, although 42,000 violent crimes had occurred only 264 persons received this benefit. Thus, administration of this system seems problematic; few persons in the general public have knowledge about it.

POLICE

1. Administration.

The Police Law, enacted in 1945, in conforming with principles such as rule of law and local autonomy, aims at providing an efficient police structure on a democratic base. The police structure consists of the national police and the prefectural police. Formerly, most police agencies functioned as guards for the imperial family. Now, there is a mix of centralization and decentralization in that police administration is the responsibility of prefectural governments.

The national level police organizations are the National Police Safety Commission (NPSC) and the National Police Agency (NPA). Since the NPSC makes basic policy and the NPA administers police affairs, the NPSC has control over the NPA. The NPSC is a governmental body responsible mainly for the administrative supervision of the police and coordination of police administration. It also oversees matters relating to police education, communication, criminal identification, criminal statistics and police equipment. To ensure its independence and neutrality, not even the Prime Minister is empowered to direct and give orders to the NPSC.

The NPA, which is headed by a Director

General, maintains Regional Police Bureaus as its local agencies throughout the country. There are seven bureaus in the major cities, excluding Tokyo and the northern island of Hokkaido. Police law stipulates that each prefectural government, which is a local entity, shall have its own Prefectural Police (PP). The PP is supervised by the Prefectural Public Safety Commission, which carries out all police duties within the boundaries of the prefecture. In practice, the PP forces are located in each of the 47 prefectures. The National Police Academy, the National Research Institute of Police Science and the Imperial Guard Headquarters are also organizations affiliated with the NPA.

In addition, the Koban system provides local residents with safety and peace through daily contacts of police officers with residents in the area. Originally created by the Japanese police, this system has been recently adopted by countries such as Germany and Singapore. However, its success depends on the human relationship between the police officers and the community people. At times, there is an excess of intervention by police. The Koban system rests on approximately 15,000 police boxes (Hasshusho) and residential police boxes (Chuzasho) located throughout the country.

2. Resources.

*Expenditures. There are two types of police budgets: the national budget and the prefectural budget. The national police budget covers the expenditures of the NPA relevant to the execution of duties under its jurisdiction, including personnel costs, expenses incurred by the prefectural police which are shouldered by the state, and subsidies to the PP. Expenditures needed by the PP to carry out their duties are appropriated in the budget of each prefecture.

In 1992, the NPA budget totalled 213,464 billion yen and the PP budget totalled 2,992,454 million yen (270 billion USD).

The total National Police Agency Budget for the 1990 fiscal year was 198,420 billion yen, of which 41.5% (82,282 billion yen) went toward personnel expenses, 14.5% (28,870 billion yen) went toward equipment, communications, and facilities, 18.2% (36,149 billion yen) were allocated toward other expenses, and 25.8% (51,119 billion yen) went toward subsidies for Prefectural Police. In all, 74.2% of the total (147,301 billion yen) went toward NPA expenses.

*Number of police. The NPA and the PP personnel forces are composed of police officers, officers

of the Imperial Guard Headquarters, and civilian employees such as clerical workers and technical engineers. In 1990, there were about 258,800 authorized full-time police personnel. The ratio of police to population is about one officer to 556 citizens.

The NPA is comprised of approximately 7,600 personnel, of whom 1,200 are police officers, 900 are Imperial Guards and 5,500 are civilian personnel. The 47 PP forces have a total strength of approximately 250,000, of whom 220,000 are police officers and 30,000 are civilians.

There are approximately 4,200 female police officers (1.6%), whose role has been growing in importance. In addition, there are about 14,000 female civilians, of whom about 3,100 are traffic control personnel and juvenile guidance personnel engaged in on-the-street juvenile control.

3. Technology.

*Availability of police automobiles. Motor vehicles are assigned to all police boxes throughout the country. Because of their mobility, they are useful in handling emergency cases, investigating criminal activity, and enforcing traffic control. As of 1994, there are approximately 26,000 police motor vehicles, including 5,000 patrol cars, 3,000 traffic police motorcycles, 5,000 vehicles employed for criminal investigation and 2,500 transport vehicles. In addition, about 200 police boats and 60 helicopters are assigned to each jurisdiction.

*Electronic equipment. Network technology includes police telephone circuits, facsimile, an integrated system for police activities, a communication command system and mobile radio system, portable radio sets, a communication satellite, and multi-channel mobile telephone cars.

*Weapons. After World War II, the United States advised Japanese police to require individual police officers to carry guns, whereas they used to carry only sabers. However, few guns are actually used. One problem is that offenders may initially attack police in order to obtain guns.

4. Training and Qualifications.

Recruited police officers must immediately attend a three-part training course, consisting of preservice, on-the-job, and a comprehensive training course. Those recruited by the PP are enrolled in a 1-year preservice training course at their respective police academies.

5. Discretion.

*Use of force. Information not obtained.

*Stop/apprehend a suspect. Information not obtained.

*Decision to arrest. Information not obtained.

*Search and seizure. Information not obtained.

*Confessions. Admissions of testimony in court may not include confessions made under compulsion, torture or threat, or after prolonged detention or confinement. Conviction or punishment cannot be permitted where the only proof against the defendant is his or her own confession.

6. Accountability.

Information not obtained.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the accused.

*Rights of the accused. The Constitution is the source of individual rights in the setting of criminal investigations and trial. Article 31 declares, "No person shall be deprived of life or liberty, nor shall any other penalty be imposed, except according to procedure established by law," which is regarded as the principle of due process. Article 33 covers protection from illegal arrest: "no person shall be arrested except upon a warrant issued by a competent judicial official, which specifies the offense with which a person is charged...". Article 34 protects persons from illegal confinement and Article 35 protects persons from illegal deprivation of residence and property.

Provisions directly governing trial proceedings provide that admissions of testimony must be compelling. There are also rights guaranteeing a speedy and public trial, full opportunity to examine all witnesses, and legal counsel by lawyers employed by the state if the accused cannot afford a private lawyer. In addition, a person cannot incur criminal liability if the act was lawful at the time it was committed, and cannot be subject to conviction for the same crime twice (double jeopardy).

*Assistance to the accused. The state must provide legal counsel if the defendant cannot afford a private lawyer.

2. Procedures.

*Preparatory procedures for bringing a suspect to trial. Procedure in criminal prosecutions is uniform throughout Japan, and based primarily on the 1948 Code of Criminal Procedure and the 1949 Rules of Criminal Procedure under the Constitutional Law, reflecting Anglo-American legal concepts in contexts important to the protection of human rights.

When police investigation is completed, police must refer the matter, including the evidentiary data, immediately to a public prosecutor. If the matter involves confining a suspect, they must refer the case to the public prosecutor within 48 hours of the suspect's arrest after which a determination is made concerning pre-trial detention.

The jury system has, for all practical purposes, been suspended. There are no procedures equivalent to a guilty plea. That is, even if the defendant acknowledges guilt, the prosecutor must submit evidence to establish guilt. Further, since the Japanese procedural system does not include pre-sentence investigations and reports by probation officers, evidentiary data bearing on the sentencing must be presented by the parties to the case, to be supplemented by the court's own inquiries. In this context, the court is the exclusive trier of fact, which consists of the physical evidence and, when that is the case, the confession of the accused as well as any witnesses testimony.

*Official who conducts prosecution. Only prosecutors are empowered to institute the prosecution of a criminal case and to direct the enforcement of criminal sentences. They have a large amount of discretion in controlling and directing criminal cases. (Japanese Criminal Procedure Code, Art.248). Accordingly, they have the power to suspend prosecution even when they can prove the offender committed a crime.

They can also investigate all categories of criminal cases on their own initiative, without assistance from the police and other law enforcement agencies. Special cases, such as bribery involving highly placed government officials or corporate crimes involving a breach of trust by executives are often investigated by prosecutors. The increasing frequency of the occurrence of these special cases have emphasized the importance of the prosecutor's investigative

powers.

Under the Supreme Public Prosecution Office are 8 higher offices, 50 district offices and 810 local offices. As of 1990, there were about 1,100 prosecutors and 900 assistant public officers, who are all appointed by the central government.

* Alternatives to trial. Information not obtained.

*Proportion of prosecuted cases going to trial. Japan has a low rate of acquittals and high rate of convictions. In 1988, there were 57,790 accused persons tried in first-instance courts, of which only 50 (0.01%) were found not guilty. Defense lawyers generally prefer the introduction of mitigating circumstantial evidence rather than arguing with the prosecutor. In addition, both practicing lawyers and judges regard criminal cases as being less attractive than other types of cases.

*Pre-trial incarceration conditions. If the public prosecutor believes that continued detention of the accused is needed, he or she must apply to a judge for a warrant of detention. This warrant must be applied for within 24 hours after police transfer to the prosecutor, or a maximum of 72 hours from the time of arrest.

If reasonable grounds to detain a suspect exist, the judge must promptly issue a warrant or order of detention at a maximum of 10 days before prosecution is instituted. Reasonable grounds are determined by three criteria: 1) whether the suspect has a fixed dwelling, 2) whether the suspect might destroy evidence and; 3) whether he might flee the jurisdiction.

*Bail Procedure. Information not obtained.

*Proportion of pre-trial offenders incarcerated. Information not obtained.

JUDICIAL SYSTEM

1. Administration.

Supreme Court. The hierarchy of the court structure in Japan places the Supreme Court at the highest level, under which High courts and District courts are located in their own jurisdictions. The Supreme Court exercises appellate jurisdiction. The Grand Bench of the Supreme Court deals mainly with the constitutional

affairs and the Petty Bench deals with the rest.

High Courts. High courts are located in 8 major cities, with each court having jurisdiction over one of the 8 regions into which Japan is divided. As a rule, their jurisdiction extends to appeals rendered against the judgments of district courts, family courts and summary courts.

District Courts. There are 50 district courts handling cases within a judicial district, or the geographical area which corresponds to a given prefecture. The courts are subdivided into 201 branches. District courts are generally primary courts of first-instance or original jurisdiction. They do not hear family court and summary court cases.

Summary Courts. Summary courts are located in cities, towns and villages and have original jurisdiction in criminal cases involving offenses punishable by a fine or lesser punishment, and other minor offenses such as theft of bicycles. There are 452 Summary courts.

2. Special Courts.

Family Courts. Family courts are established in each judicial district, and deal with cases of juvenile delinquency and family concerns, such as domestic affairs.

3. Judges.

*Number of judges. The Supreme Court consists of the Chief Justice and 14 Justices, of which one is female. There are a total of about 280 High court judges. The District Courts are staffed by about 910 judges and 460 assistant judges. There are about 800 Summary court judges throughout the country.

*Appointment and qualifications. The recruitment system in the Japanese judicial agencies is based on the National Judicial Examination. Candidates for judgeships, prosecutors, and practicing lawyers must pass this national level examination. The examination is so competitive that only 700 in 24,000 candidates pass yearly. The average age of the candidates is 29. After the candidates pass the exam, they train for their profession for two years at the Training Institute.

PENALTIES AND SENTENCING

1. Sentencing Process.

*Who determines the sentence? Information not obtained.

*Is there a special sentencing hearing?
Information not obtained.

*Which persons have input into the sentencing process? Information not obtained.

2. Types of Penalties.

*Range of penalties. Under Japanese Criminal Law, there are six main penalties: death, imprisonment with labor, imprisonment without labor, fines (more than 10,000 yen), penal detention (short imprisonment up to 30 days), and minor fines (less than 10,000 yen).

There are also supplementary penalties, such as the forfeiture or confiscation of physical objects used in the commission of offenses or obtained as a result of the crime.

*Death penalty. There are 14 categories of offenses punishable by the death penalty, but in practice only murder and robbery that results in the death of the victim, result in a death penalty. The Juvenile Law prohibits the death penalty from being imposed on anyone below 18 years old.

The method of execution is hanging. In recent years, use of the death penalty has been controversial and there has been a movement toward its abolition. This movement has been powered in part by the United Nations' decision on abolition and a series of cases in which miscarriages of justice occurred. However, polls indicate that the general public approves of the death penalty.

From 1988 to 1992, the number of defendants sentenced to capital punishment has decreased. Executions substantially depend on the will of the Minister of Justice. In the 3 years between 1990 and March 1993, there were no executions. Since March of 1993, seven prisoners have been executed. Presently, there are many in prison awaiting execution. The numbers of inmates sentenced to capital punishment in recent times are: 12 (1988), 5 (1989), 6 (1990), 5 (1991), and 5 (1992).

PRISON

1. Description.

*Number of prisons and type. In 1992, there were 59 prisons, 8 juvenile prisons, 3 medical prisons, 7 detention centers, 8 branch prisons, 2 medical branch prisons, and 107 branch detention centers throughout Japan. Juvenile correctional institutions include 54 juvenile training schools, 52 juvenile classification homes, and 1 branch juvenile classification home. There are 6 prisons for females.

Not until 1969 were open prisons first established in Japan. When the United Nations Congress on Crime Prevention and Treatment of Offenders was held in Kyoto in 1970, the government planned to build the open prisons exclusively for offenders convicted of traffic offenses, which are considered serious offenses in Japan. In 1989, there were eight institutions for traffic offenders. For the other offenders, open-type "live in" camps serve as a form of intermediate prison for persons whose release is imminent.

*Number of prison beds. As of the end of 1992, there were 63,773 prisoners, using 70.7% of prison bed capacity.

Because of the shortage of prison cells for nonconvicted persons, the Prison Law police cells to be used even after persons are committed to a prosecuting agency. However, this situation threatens human rights in that the persons concerned cannot communicate with other persons from inside the police cell. Cases resulting in a miscarriage of justice have occurred involving police pressure to extract a confession. Due to financial reasons, the Ministry of Justice has emphasized the difficulty of constructing more prison cells. In light of the international criticism given to this situation (Daiyo-Kangoku), it is expected that the government will eventually decrease the use of police cells and construct more prison cells.

*Number of annual admissions. In 1992, a total of 22,296 persons were newly admitted to penal institutions, of which 20,864 were newly sentenced prisoners. Also in 1992, 4,356 juvenile school trainees and 1,051 inmates of juvenile classification homes were admitted.

*Average daily population/number of prisoners. In 1992, the average daily population of prisoners was 44,875, of which 37,522 were convicted inmates.

*Actual or estimated proportions of inmates incarcerated. Information not obtained.

2. Administration.

*Administration. All prisons are administered by the central government, that is, by the Correctional Bureau of the Ministry of Justice. There are no local or private prisons.

*Number of prison guards. In 1989, penal institutions in Japan were staffed by about 17,000 officials and employees, which included 820 governors, 1,500 assistant governors, 12,000 guards and 1,200 specialists. Among the 2,500 staff members of juvenile training schools, there were 130 administrators, 2,000 instructors, 90 medical specialists, and 1,200 other staff members. Among the 1,200 staff members of juvenile classification homes, there were 120 administrative officers and 230 classification specialists and instructors.

*Training and qualifications. Information not obtained.

*Expenditure on prison system. Information not obtained.

3. Prison conditions.

*Remissions. While probation procedures can be conducted by volunteer persons or groups, the situation of offender after-care is more formalized. The Rehabilitation Bureau of the Ministry of Justice officially administers the general practices of after-care, such as probation services, parole supervision and community-based treatment. However, in reality, many citizens cooperate with the officers in doing these tasks. In fact, the number of salaried probation officers is only 850 throughout all Japan. This is supplemented with a system of Volunteer Probation Officers (Hogoshi) which involves 48,000 volunteer probation officers who are appointed by the Ministry of Justice. The officers must be qualified, have a confidence and reputation in the community, enthusiasm, time, availability, financial stability and good health. In 1922, the government adopted the volunteer probation officer system for treatment of juvenile delinquency and extended the system's use to adult treatment after World War II.

Nongovernmental bodies, authorized by the government organize rehabilitation aid hostels or halfway-houses which provide accommodation for offenders released from penal institutions. In 1992, the number of probationers and parolees totaled 90,419, of which juveniles comprised the

majority of clients.

*Work/education. In principle, treatment in Japan is based on rehabilitation of offenders, with the objective of individualized treatment of offenders to correct their criminal inclination and secure their reintegration into the community where they will live. A system of scientific classification of offenders has been adopted in order to individualize such treatment. However, this progressive system, in which an offender gradually obtains freedom in proportion to his or her efforts while serving the prison sentence, has become less useful for rehabilitation because it has come to be regarded as an absolute necessity for every prisoner.

In general, most Japanese prisons own their own factory. Treatment of prisoners is mainly focused on work in the factory, usually for 8 hours a day.

* Amenities/privileges. Information not obtained.

EXTRADITION AND TREATIES

*Extradition. Information not obtained.

*Exchange and transfer of prisoners. Information not obtained.

*Specified conditions. Information not obtained.

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