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Japan's New Security Regime and the Rights of Foreigners

by Satoko KOGURE

As the Japanese government moves to beef up the country's military preparedness, once again the issue of the protection of foreigners' rights has been raised.

With the passage of military contingency legislation in June, the government has begun to prepare the civilian population for, and protect it against, an attack on Japan, military or terrorist.

This comes at a time of growing fears of possible strikes by terrorist networks, fueled in part by the ongoing crisis over North Korea.

Coming at a time when government-sponsored crackdowns on immigration violators and police campaigns against foreign criminals have reached near hysteric levels, it is important to examine the implications of the new emergency legislation for the rights of Japan's foreign population.

By not including the foreign population in the terms of the new law, Japanese officialdom has once again signaled its desire to deny equal constitutional rights protection to the growing foreign population at a time when they are potentially most vulnerable to discrimination.

In June, 2004 a package of seven security-related bills, or emergency military legislation, received final approval. One of these, the so-called "Citizens' Protection Law" (Kokumin Hogo Hou) outlines measures to prepare Japanese citizens in the event of an attack and specifies their rights and duties in an emergency.

The law also stipulates the roles of the central and local governments, the Self-Defense Forces and other public organs in organizing and aiding citizens. Foreigners, however, are not automatically protected by this law in a time of national emergency, since they are not included under its terms, or those of the Constitution. Under Japanese law, foreigners include not only the hundreds of thousands of legal and illegal migrant workers whose ranks have grown in recent years, but also more than 600,000 Korean residents, many of them second and third generation in Japan who do not possess Japanese citizenship.

This anomalous situation has its roots in the drafting of the Constitution by the Allied Occupation Force in post-war Japan.

When the Occupation presented its draft of the Constitution to the Japanese government in February 1946, it included two quite visionary provisions.

Article XIII stipulated that "All natural persons are equal before the law. No discrimination shall be authorized or tolerated in political, economic or social relations on account of race, creed, sex, social status, caste or national origin."

Article XVI declared that "Aliens shall be entitled to the equal protection of law."

However, both provisions were revised by the Japanese government. It removed Article XVI and phrased the subject of the Constitution as "kokumin", that is Japanese citizens, or those of Japanese nationality.

As a result, although Article 14 (I) of the Constitution stipulates that "All (kokumin) are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin," since the word "kokumin" does not include foreigners, the Constitution provides no legal basis for the protection of foreigners against discrimination.

The identical distinction appears in the new law which is also for "kokumin."

When the first draft of the bill was presented to governors in October 2002, it included language stressing "prohibition of unfair discrimination against foreigners." However, when the government presented the second draft a month later, the provision was gone.

"If the prohibition provision was taken out intentionally, two possible reasons come to mind. One is that there were people who wanted to exclude foreigners from the subject of this law. The second is that people who were discussing the law couldn't fully understand why foreigners needed to be protected," believes Teranaka Makoto, of Amnesty International, Japan.

When asked whether foreigners were to be included in the terms of the new law, the government replied "No, but foreigners will be protected."

The term "kokumin" does not include foreigners, the government said, but the protection of human rights stipulated in the Constitution has been interpreted to include the foreign population; this interpretation of the scope of rights protection is also applicable to the citizens' protection bill.

But have foreigners' rights always been protected, particularly in times of emergency? And what statutory provisions protect foreigners against discrimination or abuse?

There is no law on the Japanese statute books that prohibits racial discrimination. Indeed, Japan is the only OECD country without one. The government's habit of relying on "interpretation" is particularly problematic when applied to emergency situations when abuses are most likely to occur.

Moreover, even though Japan ratified the U.N. International Convention on Eliminating Racial Discrimination in 1996, it has since been reprimanded by the New-York based body for its failure to adopt "specific legislation to outlaw racial discrimination."

History suggests good reasons why foreigners need to be protected, above all in emergency situations.

When a huge earthquake struck the Kanto region in 1923, rumors flew of Koreans starting fires, rioting and poisoning wells.

Based on these rumors, the central government ordered local governments and the police to "watch and control Koreans strictly." Japanese vigilantes, moreover, carried out the torturing and lynching of thousands of Koreans while the police looked on.

In this chaotic situation there was a frightening willingness to crack down on non-citizens.

And since both central and local governments, as well as the police and members of the public, were complicit in the crackdown, the Korean population was left without protection.

In 1995, when the Hanshin earthquake struck, further examples arose of discrimination, when rumors of "Chinese looting" and "Asian laborers stealing," circulated, and some foreigners experienced difficulty obtaining housing after losing their homes.

On the other hand, there were positive developments for foreigners that year. Volunteer groups organized to provide foreigners medical assistance and information, and the Hyogo Prefectural Office publicly denied the rumors of foreigners looting and stealing.

However, the issue resurfaced more recently when Tokyo Gov. Ishihara Shintaro warned that foreigners could be expected to riot in Tokyo in the event of a major disaster in the city.

"The Kanto earthquake is not just history," says Teranaka.

But lawmakers dismiss the idea that discrimination and targeting of foreigners may happen again.

"We have learned from the past," says Maehara Seiji, a member of the Lower House committee that discussed the military contingency legislation. "In making these laws, we considered that the rights of minorities in Japan would easily be threatened in a military contingency. When there was a disaster in the Kanto region back in 1923, the rights of minority people were violated. We are making these laws to prevent this kind of thing happening again," says Maehara.

"Foreign residents in Japan will not be treated differently from Japanese because of their race or nationality. That situation should not be worried about in Japan."

However, recent official policies suggest reason for concern.

"Considering the police and especially the Tokyo Metropolitan government's vilification of foreigners, even in peacetime, we cannot expect them to act fairly in a military contingency as Hyogo officials did," says Teranaka.

"They may even take advantage of an emergency to control foreigners."

Although this type of situation is not exclusive to Japan, as witnessed in the discriminatory treatment of the Muslim population in the United States -- and worldwide -- after 9/11 by both government and public, the Japanese government continues to decline to offer legal protection to the foreign population resident here.

As both the police and the government foster the image of foreigners as a threat and the media propagates this message, it may be that at a time of heightened danger to Japan, foreigners will be viewed and treated not as victims, but as terrorist suspects, with no basis. In such a situation, they will have no other recourse than vague legal "interpretation" to rely on for their defense.

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