

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300; 917-591-3452

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April 23, 2020

Mr. Masako Mori
Justice Minister
Ministry of Justice,
1-1-1 Kasumigaseki, Chiyoda-ku,
Tokyo 100-8977, Japan

Re: Dangers to Prisoners, Detainees and Staff Amidst COVID-19 Pandemic

Dear Justice Minister Masako Mori,

We write to urge you to significantly reduce the population of prisons, jails, and other places of detention in Japan as part of the Ministry of Justice's response to the COVID-19 outbreak.

Human Rights Watch is an independent nongovernmental organization that monitors and reports on compliance with international human rights law in more than 90 countries around the world. Human Rights Watch has done extensive work on prison conditions around the world, including in Japan, as far back as 1995.

We write with a sense of urgency because the risk of COVID-19 spreading is particularly high in prisons and other places of detention where many people are housed close to each other and "social distancing" is difficult, and in many cases impossible. (Please note that we use the term "prisoners" in this letter to refer to prisoners and detainees; we use the term "prisons" to refer to prisons, jails, and all other places of detention.)

International Legal Obligations

In accordance with the International Covenant on Economic, Social and Cultural Rights, which Japan ratified in 1979, and customary international law, governments have an international legal obligation to protect and provide for the health care of all persons who are in government custody. Authorities should draft and implement comprehensive plans to prevent

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and respond to any COVID-19 infection in detention facilities. These plans should proactively protect the physical and mental health of prisoners, as well as staff working in the facilities. Prisons should protect prisoners and staff while allowing prisoners regular and uninterrupted contact with family and loved ones, and access to legal counsel. International guidance says the most important approach for prisons to prevent transmission is to impose “social distancing,” defined as allowing two meters of separation at all times among prisoners and staff, including during meals and within cells. It is also critically important to protect people at heightened risk from the virus, including older prisoners and prisoners with underlying health conditions that put them at greater risk of harm from the virus. Prisons should act quickly to isolate anyone testing positive or with symptoms consistent with COVID-19, and those who have come in contact with people who are or are believed to potentially be infected.

Plans to mitigate risk in prisons should also include ensuring access to potable water; providing hygiene products and information about the disease to prisoners; thoroughly and regularly disinfecting cells in police stations, courthouses, jails, and prisons; screening and testing protocols for prisoners, staff, and visitors; avoiding transferring prisoners between facilities when possible; and ensuring health care and mental health services for all prisoners, particularly those infected.

All plans should include specific attention to female prisoners, older prisoners, and prisoners with disabilities, who have unique health needs and whose interests are often marginalized within prison systems.

If certain prisoners are not eligible for early release, prisons should develop plans to isolate or separately house particularly at-risk prisoners and those testing positive and their close contacts, based on the best available evidence about the effectiveness of the measures. Such measures should be proportionate, and prisoners should not experience such measures as punitive, or they may be encouraged to delay notifying prison staff if they experience symptoms. The authorities should also take into account that further isolating prisoners can have significant repercussions on their mental wellbeing.

Prisons are not isolated from the community, but consist of staff and other workers, as well as new and released prisoners, who go back and forth between the facilities and their homes. Reducing the prison population through releases prior to widespread

transmission, including by placing prisoners in temporary offsite quarantine or self-isolation as necessary, will reduce the risks to prisoners, staff, and communities.

Situation in Japan

Japan's prison system currently lacks the necessary resources to adequately identify, test, treat, and quarantine prisoners and staff infected with COVID-19. Multiple prisoners in Japan often share a single room, creating a grave risk of infection.

We are aware, through media reports, that the Ministry of Justice has taken some steps in response to COVID-19. For instance, Sapporo prison reportedly began quarantining a portion of newly admitted prisoners for at least one week in a different building before being housed with other prisoners after the Justice Ministry requested penal institutions to take necessary measures to prevent the outbreak of COVID-19. The Justice Ministry has also banned any visits to penal institutions located in areas affected by the government's declaration of a state of emergency, allowing only "lawyers, etc." to visit prisoners.¹

The government needs to do far more to respond to the pandemic in a manner that is both adequate and rights respecting. As of April 22, there were over 10,000 people infected with COVID-19 across Japan.² On April 5, a prison guard at Osaka Detention Center was confirmed as being infected with COVID-19.³ In response, the detention center quarantined 40 prisoners who interacted with the prison guard into single cells, while 119 officials were directed to stay home.⁴ On April 11, a male detainee in his 60s at the Tokyo Detention Center was reportedly confirmed to be infected with COVID-19.⁵ On April 15, the Ministry of Justice said a prison guard in his 20s at a prison in Hokkaido was confirmed to be infected with COVID-19.⁶

¹ Justice Ministry, "The handling of visitations at penal institutions located in regions subject to the declaration of a state of emergency under the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response," Undated, <http://www.moj.go.jp/content/001318681.pdf> (accessed April 21, 2020).

² "Domestic cases of novel coronavirus infections at 11,581 excluding the number from a Yokohama cruise ship," NHK, April 22, 2020, <https://www3.nhk.or.jp/news/html/20200422/k10012400031000.html>.

³ "40 prisoners quarantined as prison guard infected," NHK, April 6, 2020, <https://www3.nhk.or.jp/kansai-news/20200406/2000027595.html>.

⁴ Ibid.

⁵ "Tokyo Detention Center, confirmed infection of a defendant, first in the country among defendants and prisoners," NHK, April 11, 2020, <https://www3.nhk.or.jp/news/html/20200411/k10012382451000.html>

⁶ "A Prison Guard in Hokkaido is Infected, First Time at a Prison," Nikkei, April 15, 2020. <https://www.nikkei.com/article/DGXMZO58086890V10C20A4CZ8000/>.

We are only aware of a few PCR tests that have taken place in prisons or other places of detention.

Older People At-Risk in Japan's Prison Population

Japan's prisons house a large and growing proportion of prisoners who are over the age of 65. In 2018, 16.8 percent of women admitted to prison were 65 or older (compared with 5.5 percent in 2003 and 1.9 percent in 1998).⁷ In the same year, 11.7 percent of newly admitted male prisoners were 65 or older (more than a two-fold increase from 4.2 percent in 2003 and 1.3 percent in 1998).⁸

This is particularly important because older people are at increased risk of severe health impacts and death from COVID-19, along with individuals with underlying illnesses such as cardiovascular disease, diabetes, chronic respiratory disease, and hypertension. More than 95 percent of the people who have reportedly died of COVID-19 in Europe were over age 60.⁹

Inadequate Health Care

Healthcare services in Japan's prisons are understaffed and overstretched. In 2013, there was the equivalent of approximately 260 full-time doctors working at penal institutions, compared to 316 in 2003, far below the 332 doctors needed according to Justice Ministry figures.¹⁰ There is also a shortage of nurses. A group of experts advising the Justice Ministry wrote in 2014 that "if drastic measures are not immediately implemented, we must recognize that prison medical care will collapse very soon."¹¹

The same group of experts also warned that with the exception of certain penal facilities, equipment for medical care is "deteriorating." The medical devices necessary for providing

⁷ Correction Bureau, Justice Ministry, "Graph 4-8-2-03," <http://hakusyo1.moj.go.jp/jp/66/nfm/excel/4-8-2-03.xlsx> (accessed January 20, 2020).

⁸ Correction Bureau, Justice Ministry, "Graph 3-1-4-6," 2018, <http://hakusyo1.moj.go.jp/jp/66/nfm/images/full/h3-1-4-06.jpg> (accessed January 20, 2020).

⁹ "Over 95% of People Who Died of Coronavirus in Europe Were Over 60, Says WHO," Associated Press, April 2, 2020. <https://time.com/5814330/who-europe-over-60/>.

¹⁰ Review meeting by experts on how prison medical care should be run, Justice Ministry, "Report on how prison medical care should be run," January 21, 2016, <http://www.moj.go.jp/content/000118361.pdf> (accessed April 13, 2020) pg. 6.

¹¹ *Ibid.*, pp. 8-11.

the necessary standard of medical care are not available, and even at designated prisons where specialized medical care is to be provided, deterioration of the facilities is “severe” and the available medical equipment is not meeting “medical needs.”¹² In light of the current crisis, there is an urgent need for a significant increase in the number of doctors and nurses, as well as the upgrade of medical devices and facilities.

Former prisoners interviewed by Human Rights Watch described inadequate medical care in prisons. Many prisoners experienced long delays in obtaining care, which could be catastrophic with COVID-19. As Maki F., a former prisoner in her 50s who spent over a year in prison, told Human Rights Watch, “I would catch a cold, but it would take two weeks before I get it checked, so I’m already recovered by then. That’s why I would never tell them if I were sick.”¹³

Non-Violent Prisoners

Many of Japan’s prisoners are being held for petty offenses. This is particularly the case for older prisoners, who are at heightened risk of death from COVID-19 infection. In 2018, 43 percent of men and 78 percent of women over 65 years old arrested that year were charged with shoplifting.¹⁴

Many other prisoners are held for simple possession, use, or sale of narcotics. For instance, in 2018, 39 percent of newly admitted female prisoners were convicted of offenses involving stimulants, while 25 percent of newly admitted male prisoners were convicted of the same offenses.¹⁵

Many of these people suffer from drug dependence, itself a health problem. This often leads to repeated incarceration. For example, about 78 percent of men and 56 percent of women who entered prison in 2018 for violations involving illegal stimulants had been previously imprisoned at least once.¹⁶ A survey in 2017 showed that 93 percent of 699

¹² *Ibid.*, p. 22.

¹³ Human Rights Watch interview with Maki F., female former prisoner, location withheld, January 31, 2019.

¹⁴ Correction Bureau, Justice Ministry, “Graph 4-8-1-3,” 2018, <http://hakusy01.moj.go.jp/jp/66/nfm/images/full/h4-8-1-03.jpg> (accessed April 7, 2020).

¹⁵ Correction Bureau, Justice Ministry, “Graph 4-7-2-4,” undated, <http://hakusy01.moj.go.jp/jp/66/nfm/images/full/h3-1-4-07.jpg> (accessed January 10, 2020).

¹⁶ Corrections Bureau, Justice Ministry, “Graph 4-2-3-03,” <http://hakusy01.moj.go.jp/jp/66/nfm/images/full/h4-2-3-03.jpg> (accessed April 8, 2020).

male and female prisoners who responded said they have been imprisoned multiple times for drug crimes involving stimulants.¹⁷

Incarceration during a pandemic for non-violent offenses, such as shoplifting or possession and use of illegal drugs, creates the risk that a prisoner receives what is effectively a death sentence for a minor offense.

Alternative sentencing is an international best practice and is increasingly used to reduce the rate of incarceration. In Japan, some alternatives to imprisonment are widely used, such as monetary penalties and suspension of sentences.¹⁸ However, other alternative sentencing options, such as restitution to the victim, compensation orders, community service orders, referral to an attendance center, house arrest, or judicial supervision, are not available. These alternatives are listed in the Standard Minimum Rules for Non-custodial Measures (the “Tokyo Rules”), adopted by the United Nations General Assembly in 1990.¹⁹

Article 482 of Japan’s Code of Criminal Procedure allows alternatives to imprisonment for those convicted of a crime in cases in which (i) imposing the sentence is likely to damage the health of the person or it is feared the person would not survive the sentence; (ii) person is 70 years of age or older; (iii) person is 150 days pregnant or more; (iv) it is fewer than 60 days since the person gave birth; (v) it is feared that irrevocable harm will be caused by imposing the sentence; (vi) person’s grandparents or parents are 70 years of age or older, seriously ill or disabled, and there are no other relatives who can take care of them; (vii) person’s child or grandchild is an infant and there are no other relatives who can take care of them; (viii) or there are other significant reasons. This provision has been rarely used, but it provides a ready-

¹⁷ National Center of Neurology and Psychiatry and Research and Training Institute of the Ministry of Justice, “Understanding and Supporting Stimulant Offenders 2018,” 2018, <https://www.ncnp.go.jp/nimh/yakubutsu/reference/pdf/kakuseizai2018.pdf> (accessed December 10, 2019).

¹⁸ In 2018, about 81 percent of cases that received a guilty verdict were punished with monetary penalties, while nearly 64 percent of cases were dropped by prosecutors. In addition, about 60 percent of imprisonment with labor sentences were suspended in 2018. See Corrections Bureau, Justice Ministry, “Graph 3-1-3-1” and “Graph 3-1-2-7,” 2018, <http://hakusyo1.moj.go.jp/jp/66/nfm/excel/3-1-3-01.xlsx> and <http://hakusyo1.moj.go.jp/jp/66/nfm/images/full/h3-1-2-07.jpg> (accessed April 8, 2020).

¹⁹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted December 21, 2010, G.A. Res. 65/229.

made tool that should be urgently used to reduce prison populations and mitigate the risk of devastating outbreaks of COVID-19 in Japan's prisons.²⁰

International Best Practices

As the world struggles to contain the spread of COVID-19, some countries have taken steps to mitigate the risks posed by potential outbreaks in prisons by granting early release for some prisoners. On March 16, the Italian government adopted a decree that, among other measures, allows for early supervised release of prisoners with fewer than 18 months left on their sentence.²¹

Other countries, including Afghanistan, Bahrain, Germany, Jordan, Pakistan, Poland, South Korea, Turkey, and the United States, have taken similar steps.

Recommendations

Human Rights Watch urges the Ministry of Justice and other government departments to take the following steps:

Prisoner and Detainee Releases

Japan should urgently release people in prisons and other places of detention to reduce the population in these facilities to a level where social distancing rules can be implemented to prevent the spread of COVID-19. The government should make decisions regarding release of prisoners and detainees based on individualized assessments that take into account factors including: whether the health of those incarcerated can be protected if they remain in detention; time already served; the gravity of the crime; the risk their release would represent to the public; and whether people meet the criteria in article 482 of the Code of Criminal Procedure. The government should prioritize urgently considering the release of:

²⁰ For example, only 125 prisoners had their sentences suspended between 2014 and 2018. This figure also includes sentences suspended under article 480 of the Code of Criminal Procedure, which allows prosecutors to suspend a prisoner's sentence if the individual is determined to be in a "state of insanity." See Correction Bureau Statistical Research, Justice Ministry, "The Reasons for Going In and Out of Prisons Per Facility," 2019, https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00250005&tstat=000001012930&cycle=7&year=20180&stat_infid=000031846873 and Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, "Code of Criminal Procedure (Part III ~)," Undated, http://www.japaneselawtranslation.go.jp/law/detail_download/?ff=09&id=1983

²¹ Patrizio Gonnella, "Prison: a first step, but it takes much more," *il manifesto*, March 17, 2020, <https://ilmanifesto.it/carcere-un-primo-passo-ma-ci-vuole-ben-altro/>

- People at higher health risk should they contract the virus, including:
 - older people;
 - people with compromised immunity or chronic conditions, such as heart disease, diabetes, lung disease, and HIV;
 - pregnant women and girls; and
 - people with disabilities that may place them at greater risk of COVID-19 complications.
- People held for non-violent crimes, such as shoplifting and possession and use of illegal drugs;
- People with care-giving responsibilities, such as women and girls incarcerated with their children, and people who are key care givers to older relatives and/or children;
- People in semi-open facilities who work in the community during the day; and
- People who are close to the end of their sentences.

When prisoners are released, the prison system should work with them quickly to ensure that they have a safe home in the community to go to, access to all needed follow up health care, including COVID-19 testing and care where appropriate, means of financial support, and connection with any needed social services.

Alternatives to Incarceration

The Ministry of Justice should use its existing means for alternatives to incarceration, including by requiring prosecutors and prisons to fully utilize article 482 of the Code of Criminal Procedure to provide alternatives to incarceration to prisoners eligible under that provision.

Healthcare and Mental Health Services

The government should take urgent steps to ensure that prisons and detention facilities respond to COVID-19 by:

- providing detailed, accessible information to all prisoners and staff about COVID-19, including in languages other than Japanese where needed and in easy to read or other accessible formats;
- fully implementing social distancing in all facilities;
- testing prisoners and staff;

- ensuring all prisoners receive appropriate medical care in a timely manner, including preventive care;
- taking urgent steps when prisoners or staff test positive or display symptoms, including providing high quality care to all prisoners and staff who test positive or become ill with the virus;
- hiring sufficient numbers of doctors, nurses, and other staff for the prison systems;
- ensuring availability of quality, professional mental health services to prisoners and detainees; and
- implementing other recommendations from the 2016 expert panel reviewing medical care in Japan's prisons.

Thank you for your urgent attention to this important matter. We hope to be in close correspondence with you on this matter going forward.

Sincerely,

Brad Adams
Asia Director

Kanae Doi
Japan Director