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“They Don’t Treat Us Like Human Beings”

Abuse of Imprisoned Women in Japan



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Summary

Japan's justice system has few alternatives to imprisonment, and overly depends on imprisonment. People found guilty of criminal offenses in Japan are rarely considered for alternatives to imprisonment, other than monetary fines and the whole or partial suspension of prison sentences with or without probation, and suffer violations of their human rights during their imprisonment. Mothers of young children are particularly affected by having to spend time in prison.

Human Rights Watch researched the imprisonment and treatment of imprisoned women in Japan based on interviews with 58 formerly imprisoned women and a person who was imprisoned at the time of research, as well as 11 lawyers and penal reform experts.

Japan's current legal framework, notably article 482 of the Criminal Procedure Code, allows prosecutors to suspend prison sentences for various reasons, including the defendant's age, health, and family situation – but prosecutors rarely evoke this law. Ministry of Justice figures speak to this reality: only 11 imprisoned women had their sentences suspended over the last five years.

Once imprisoned, many women face abuses behind prison walls, which are often caused or compounded by the prisons' lack of resources in addressing their needs and rights. For instance, under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, imprisoned women can legally request to be with their babies under a year old inside the prison, which can be extended for six months, with the permission of the prison ward.

However, Ministry of Justice figures show that between 2011 and 2017, only 3 out of 184 imprisoned women who gave birth during imprisonment were allowed to be with their babies behind prison walls. Formerly imprisoned women said that most are separated from their babies at birth, without a detailed explanation that they are legally allowed to request to be with their babies in prison. Separation at birth can be traumatizing and harm the health of both the mother and infant and can interfere with breastfeeding and parent-child bonding.

In addition, the number of imprisoned older women has increased significantly over recent decades. Research by Human Rights Watch and studies by the Ministry of Justice found that as Japan's society ages, some older women repeatedly commit non-violent crimes such as shoplifting because of social isolation and loneliness. Formerly imprisoned women highlighted the particular care and support needs of imprisoned older women, including reentering their communities, many of which Japan's prisons do not meet.

Violations related to drugs are the second leading cause of imprisonment of women in Japan, after theft. Women who are imprisoned for simple possession or use of drugs are often imprisoned more than once, suggesting they suffer from substance use disorders. Studies also suggest many of these women suffer from trauma caused by childhood abuse and domestic violence. While women's prisons offer rehabilitation programs for substance use disorders, formerly imprisoned women and experts said the programs are generally ineffective at reducing recidivism among women offenders. In addition, imprisonment for minor drug offenses can fuel recidivism as it adds to the preexisting trauma.

Other forms of abuse within women's prisons in Japan include mistreatment of imprisoned transgender people, arbitrary and prolonged use of solitary confinement, verbal abuse by prison guards, inadequate access to health and mental health services, overly stringent restrictions on communications with the outside world, and lack of effective oversight of prison conditions by an independent body.

Human Rights Watch recommends that the Japanese government urgently adopt and implement measures to reduce the number of imprisoned women, particularly by introducing alternative sentencing methods outlined in the Tokyo Rules, including community service.

At the same time, the Ministry of Justice should end imprisonment for the simple possession or use of drugs through decriminalization, and work with the Ministry of Health to provide voluntary relapse prevention programs for substance use disorder outside of penal institutions.

Imprisonment should be the last resort. For those who are imprisoned, the Ministry of Justice should ensure all penal institutions abide by international best practices spelled

out in international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Bangkok Rules.

Key Recommendations

To the National Diet

- Revise article 9 of the penal code on punishment by introducing types of punishments that do not require imprisonment, such as verbal reprimand and orders to compel community service, where offenders are required to report their activities over a certain period.
- Revise laws to decriminalize personal possession and use of drugs; ensure repetition of similar conduct should not lead to criminal liability or other deprivation of liberty, unless other aggravated circumstances are present.

To the Ministry of Justice

- End the excessive use of solitary confinement of any imprisoned person. End the use of solitary confinement for imprisoned people with disabilities.
- Set clear policies and rules that ensure all imprisoned people receive appropriate medical care in a timely manner, in line with the Bangkok Rules.
- Proactively enforce Ministry of Justice's 2014 notice which prohibits officials from shackling imprisoned persons while they are giving birth. Update the 2014 notice to clearly prohibit the use of restraints on women during labor and immediately after birth.
- Draft legislation and support its passage in the Diet to create and increase access to alternatives to imprisonment, and decriminalize low level drug offenses, such as the personal possession and use of drugs.
- Encourage prosecutors to evoke article 482 of the Code of Criminal Procedure.

To the Ministry of Health, Labor, and Welfare

- Advocate for the decriminalization of the personal possession and use of drugs, and law reform to increase access to alternatives to imprisonment for older people, pregnant people and parenting mothers, and people with disabilities or serious medical conditions.

Methodology

Human Rights Watch conducted research for this report in January and February 2017, and from April 2018 to January 2023. In-person research was halted from March 2020 to November 2022 because of the Covid-19 pandemic.

While most of the interviews were conducted before the pandemic, more recent research shows that our initial findings remain as relevant today as before. Research published by the Ministry of Justice in late 2022 and early 2023 also confirms ongoing abuses by prison guards of both imprisoned men and women.

Researchers conducted interviews with 58 formerly imprisoned women, plus a woman who was in prison at the time of the interview, and 11 legal and justice reform experts. All formerly imprisoned people interviewed were women. The interviews were all done in person, except for one phone interview and two via written correspondence.

Human Rights Watch researchers obtained informed consent from all interview participants and provided explanations in Japanese about the objectives of the research. Human Rights Watch also explained to all interviewees that their accounts would be used in a public report and related materials. Interviewees were informed that they could stop the interview at any time or decline to answer any questions.

No compensation was paid to interviewees. All interviews were conducted in Japanese. In all but one case, in-person interviews were conducted privately, with just the interviewer and interviewee present. The only interview conducted with another person present was because assistance was needed due to the interviewee's hearing disability. Care was taken when interviewing survivors of trauma to prevent re-traumatization.

To protect their privacy, Human Rights Watch used pseudonyms for all former and current imprisoned persons.

In this report, people above 65 years old are described as older people, in line with the categorization by Japan's Ministry of Justice.

Human Rights Watch wrote on July 31, 2023 to Japan's Ministry of Justice to request responses to questions and information about the government's policies and practices (See Appendix I). The government replied in-person on August 17, 2023, and the response is reflected in the report (See Appendix II).

The exchange rate used was the official rate on October 4, 2023. 100 Japanese yen = 0.67 US dollars.

I. Background

In Japan, there are 178 penal institutions—prisons, detention centers, and juvenile prisons—under Ministry of Justice jurisdiction.¹ Eleven of those institutions are designated as women’s prisons.²

After hitting a high of 5,345 imprisoned women in 2011, the number has dropped in recent years.³ As of 2021, there were 3,913 imprisoned women.⁴

Women constituted 10.3 percent of the people entering prison in 2021, more than a two-fold percentage increase since 1996 when they constituted only 4.8 percent of people entering prison.⁵ In about 80 percent of prisons around the world, women constitute between 2 to 9 percent of the prison population, placing Japan among countries with a high ratio of imprisoned women.⁶

As of 2021, Japan’s 11 prisons for women had the capacity to hold 6,491 people.⁷ At various times over the past 20 years, women’s prisons were overcrowded, but the government has been steadily expanding facilities that imprison women.⁸

¹ Japan Ministry of Justice, “2022 Version White Paper on Crime,” undated, https://hakusyo1.moj.go.jp/jp/69/nfm/n69_2_2_4_1_1.html (accessed February 9, 2023).

² The facilities are Sapporo prison women’s branch, Fukushima prison women’s branch, Tochigi prison, Kasamatsu prison, Nagoya prison Toyohashi branch, Kakogawa prison, Wakayama prison, Iwakuni prison, Mine Rehabilitation Program Center, Fumoto prison, and Matsuyama prison Saijo branch. Ibid.

³ Corrections Bureau, Justice Ministry, “Graph 2-4-2-1,” undated, <https://hakusyo1.moj.go.jp/jp/68/nfm/excel/2-4-2-1.xlsx> (accessed June 16, 2022).

⁴ Research and Training Institute of the Ministry of Justice, “2022 Version White Paper on Crime,” undated, <https://www.moj.go.jp/content/001385160.pdf> (accessed January 18, 2023).

⁵ Corrections Bureau, Justice Ministry, “Graph 2-4-2-3,” undated, <https://hakusyo1.moj.go.jp/jp/68/nfm/excel/2-4-2-3.xlsx> (accessed June 16, 2022) and Research and Training Institute of the Ministry of Justice, “2022 Version White Paper on Crime,” undated, <https://www.moj.go.jp/content/001385160.pdf> (accessed January 18, 2023).

⁶ World Prison Brief and Institute for Criminal Policy Research, “World Female Imprisonment List,” undated, http://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_prison_4th_edn_v4_web.pdf (accessed November 21, 2019)

⁷ Research and Training Institute of the Ministry of Justice, “2022 Version White Paper on Crime,” undated, <https://www.moj.go.jp/content/001385160.pdf> (accessed January 18, 2023).

⁸ In 2007, the government created the Mine Rehabilitation Program Center, with capacity to imprison up to 800 women and 500 men. In 2011, an additional facility for women was created at the Kakogawa male prison with capacity to imprison 200 women. In January 2018, the East Japan Adult Correction Medical Center opened, which is designed to be accessible to people with disabilities and has capacity to house 580 people, including women. Overall, since 2001, the Japanese government has added 3,050 new spaces for the imprisonment of women, a nearly two-fold increase.

While imprisoned men are housed in different prisons depending on whether they are categorized as either “developing criminal tendencies” or “not developing criminal tendencies,” imprisoned women are lumped into one category labeled, “W,” meaning they are housed with other women without any distinction based on their crimes.⁹

One penology expert said the limited number of women’s prisons partly explains the lack of distinction among imprisoned women.¹⁰

Characteristics of Women in Prison in Japan

For women in Japan, the leading causes of imprisonment are theft or crimes involving drugs, such as amphetamines. For instance, in 2021, 48 percent of newly imprisoned women were convicted of theft, while 33 percent were convicted of offenses involving drugs.¹¹

Women imprisoned for theft convictions have become increasingly common. From 1978 to 2011, convictions for crimes involving drugs were the leading causes of imprisonment among women.¹² In 2012, theft or larceny convictions overtook drugs as the leading cause for imprisonment of women.¹³

In 2021, 20 percent of women admitted to prison were 65 years old or older, nearly a four-fold percentage increase from 5.5 percent in 2003, and 1.9 percent in 1998.¹⁴ For men, 13 percent of newly admitted imprisoned people in 2021 were over 65 years old, more than about a three-fold percentage increase from 4.2 percent in 2003 and 1.3 percent in 1998.¹⁵

⁹ Correction Bureau, Justice Ministry, “Graph 3-1-4-13,” undated, <http://hakusyo1.moj.go.jp/jp/66/nfm/images/full/h3-1-4-13.jpg> (accessed February 10, 2020).

¹⁰ Human Rights Watch interview with Prof. Koichi Hamai, Ryukoku University, Kyoto, September 25, 2019.

¹¹ Research and Training Institute of the Ministry of Justice, “2022 Version White Paper on Crime,” undated, <https://www.moj.go.jp/content/001385160.pdf> (accessed January 18, 2023).

¹² Corrections Bureau, Justice Ministry, “2017 version White Paper on Crime,” undated, http://hakusyo1.moj.go.jp/jp/64/nfm/n64_2_2_4_1_3.html#h2-4-1-05 (accessed November 21, 2019).

¹³ Ibid.

¹⁴ Corrections Bureau, Justice Ministry, “Graph 2-4-2-5,” <https://hakusyo1.moj.go.jp/jp/69/nfm/excel/2-4-2-5.xlsx> (accessed January 26, 2023).

¹⁵ Ibid.

Most older women are imprisoned for theft. In 2021, 88 percent of women older than 65 were charged for theft (mostly petty theft, such as shoplifting).¹⁶

Mental health is becoming an increasingly important issue in women's prisons in Japan. The number of imprisoned women in Japan diagnosed as having a psychosocial disability (mental health condition) has more than doubled over the past 16 years, according to the Ministry of Justice. In 2002, the ministry identified 11 percent of women being admitted to prison as having either an "intellectual disability," "a personality disorder," a "neurotic disorder," or "another mental health disorder."¹⁷ In 2021, the ministry identified 25 percent of women admitted to prison that year as having one or more of these disabilities.¹⁸

Studies indicate many imprisoned women carry violence-linked trauma. In a survey completed in 2000 of 90 newly imprisoned women, 73 percent reported past experiences of sexual violence.¹⁹ Researchers who surveyed nearly 1,000 imprisoned women at Mine Rehabilitation Program Center and Kasamatsu Prison found that many of the women surveyed reported they experienced domestic violence in the past.²⁰ A 2017 survey of 237 women also showed more than 40 percent of women who used drugs cut themselves, 46 percent had serious suicidal thoughts, and 73 percent had been victims of domestic violence from their partners.²¹

For the past two decades, recidivism among imprisoned women have been on the rise. In 2021, 48 percent of women admitted into prison had prior convictions, compared to 2004 when 30 percent of women sent to prison had previous convictions.²² In 2021, 85 percent

¹⁶ Corrections Bureau, Justice Ministry, "Graph 4-8-2-3," <https://hakusy01.moj.go.jp/jp/69/nfm/images/full/h4-8-2-3.jpg> (January 26, 2023).

¹⁷ Corrections Bureau Statistical Research, Justice Ministry, "The number of imprisonment and types of crime among newly imprisoned people, psychiatric evaluation," undated, <https://www.e-stat.go.jp/stat-search/file-download?statInflId=000001129238&fileKind=0> (accessed November 21 2019).

¹⁸ Corrections Bureau Statistical Research, Justice Ministry, "The number of imprisonment and types of crime among newly imprisoned people, psychiatric evaluation," undated, <https://www.e-stat.go.jp/stat-search/file-download?statInflId=000032209808&fileKind=4> July 29, 2022 (accessed January 18, 2023).

¹⁹ Arahori Kenji, "A Study on Childhood Sexual Abuse of Imprisoned Women in Japan," *Adolescentology*, vol. 20, p. 1.

²⁰ Emi Yano, "Women's prisons, inmates and prison officers in Japan today," *Keio Law Journal* No. 37 (2017): p. 120. https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=AA1203413X-20170224-0111

²¹ Research and Training Institute of the Ministry of Justice and the National Center of Neurology and Psychiatry, "Understanding and supporting drug offenders 2018," March 31, 2019, <https://www.ncnp.go.jp/nimh/yakubutsu/reference/pdf/kakuseizai2018.pdf> (accessed May 15, 2023).

²² Research and Training Institute of the Ministry of Justice, "2022 Version White Paper on Crime," undated, p.246. <https://www.moj.go.jp/content/001387346.pdf> (accessed May 18, 2023).

of the women with prior convictions who were admitted to prisons were unemployed at the time of their arrest.²³

Government Initiatives

The Japanese government has taken some important steps to tackle some of the issues women face in prisons.

After serious abuses of imprisoned men by prison guards—including one death—came to light in 2002, the Japanese government revised the nearly 100-year-old Prison Law. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which was enacted in 2003, aims to “ensure the adequate treatment of inmates ... by respecting their human rights and taking into account their circumstances, as well as appropriately managing and administrating penal detention facilities.”²⁴

In 2013, the Ministry of Justice supported the creation of the Committee to Research and Consider How Women’s Prisons Should be Run. Led by a high-profile former member of parliament and past governor of Chiba prefecture, Akiko Domoto, the committee documented major flaws in the running of women’s prisons, including lack of coordination between social welfare services and the justice system.

In 2014, the committee recommended that the Ministry of Justice improve conditions in women’s prisons by implementing reforms including improving the quality of medical care.²⁵ Specifically, the initiative created a network with local medical and social welfare professionals who could undertake interventions and provide programs based on the imprisoned person’s individual characteristics such as age, health, and criminal record, and improve the workplace environment for prison staff.²⁶

²³ Ibid.

²⁴ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Act on Penal Detention Facilities and the Treatment of Inmates and Detainees,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/2796/en> (accessed February 9, 2023); Japan Federation of Bar Association, “Statement on New Development in Bodily/Mental Assaults Committed in Nagoya Prison,” February 20, 2003, <https://www.nichibenren.or.jp/en/document/statements/20030220.html> (accessed February 9, 2023).

²⁵ Corrections Bureau, Justice Ministry, “Chapter 4 Women,” undated, http://hakusyo1.moj.go.jp/jp/63/nfm/n63_2_5_2_4_1.html (accessed November 21, 2019).

²⁶ Ibid.

To reduce recidivism, the National Diet, in 2016, enacted the Act for the Prevention of Recidivism.²⁷ The law requires the national government to develop and implement policies to make it easier for former offenders to reintegrate into society, including assisting them in obtaining employment and housing.²⁸ Local governments are also encouraged under the law to create and promote such policies.²⁹

In 2018, the Japanese government allocated funding for model projects aimed at reducing recidivism developed under the 2016 law. Specifically, from 2018 to 2020, the Justice Ministry coordinated with 36 regional public organizations and implemented model projects aimed at those who suffer from substance use disorders, those who committed sex crimes, older people in prison, imprisoned persons with disabilities, juvenile offenders, and to assist in finding employment and housing.³⁰

The city of Akashi, in Hyogo prefecture had already piloted a model. Akashi's then-mayor launched an initiative in 2017 to reduce the rate of reimprisonment among older people and people with mental disabilities. The Ministry of Justice later funded the program.³¹ By 2019, the city had developed a network of 37 organizations, most of them social welfare organizations, working in the initiative to assist formerly imprisoned people.³² In 2021, Akashi authorities described the model project as a success, as the city achieved its initial goal of introducing a certain number of formerly imprisoned people to social welfare services.³³

In 2022, Japan's Diet passed a resolution to revise article 12 of Japan's Penal Code, which stipulates "*choeki*" or imprisonment with labor, and to abolish article 13 of the Penal Code, which stipulates "*kinko*" or imprisonment without labor. The reform created a new category of confinement called "*kokin*," which directly translates into "imprisonment." By

²⁷ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, "Act for the Prevention of Recidivism," undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/3425> (accessed May 15, 2023).

²⁸ Ibid.

²⁹ Ibid.

³⁰ Justice Ministry, "Results of Regional Recidivism Prevention Model Project," May 25, 2021, https://www.moj.go.jp/hisho/saihanboushi/hishoo4_00060.html (accessed January 18, 2023).

³¹ Akashi city government, "Efforts to Assist Community Re-Integration In Akashi-city," undated, http://www.city.akashi.lg.jp/fukushi/ts_kousei/documents/pamphlet_4pages.pdf (accessed January 30, 2020).

³² Human Rights Watch interview with an Akashi-city official, Hyogo prefecture, Japan, November 12, 2019.

³³ Justice Ministry, "Results of Regional Recidivism Prevention Model Project," undated, <https://www.moj.go.jp/content/001348795.pdf> (accessed March 14, 2023).

eliminating the strict categorization of imprisonment with labor and imprisonment without labor, the Ministry of Justice aims to lower the recidivism rate by deciding on a case-by-case basis whether an imprisoned person should work, what type of work they should be doing, as well as what rehabilitation services they need. The reformed law will go into effect in 2025.

Challenges

Despite major government initiatives, abuse of both imprisoned men and women in Japan's prisons remains a serious problem.

On December 9, 2022, the Ministry of Justice announced it confirmed the physical and verbal abuse by 22 prison guards against three imprisoned men at Nagoya Prison, including hitting their face and hands, violently throwing objects into their cell, and spraying hand sanitizer into their face. The guards abused the imprisoned men from November 2021 to late August 2022.³⁴ In response to the findings, the ministry established a third-party committee on December 26, 2022, to “grasp the entirety of the situation and analyze the cause” and “implement appropriate measures to prevent reoccurrence.”³⁵

On February 8, 2023, the Corrections Bureau at the Ministry of Justice announced it investigated surveillance camera footage from December 5 to 12, 2022, recorded at 257 facilities administered by the Ministry of Justice.³⁶ The ministry said it found 122 cases of inappropriate conduct by guards, including verbal abuse. In addition, on February 8, 2023, the ministry reported that between 2018 and 2022, 177 prison guards had been reprimanded, including 14 dismissals and 46 suspensions, for inappropriate conduct towards imprisoned people, including one case of sexual harassment of an imprisoned woman in 2020.³⁷

³⁴ Ministry of Justice, “Summary of a Special Press Conference by the Justice Minister,” December 9, 2022, https://www.moj.go.jp/hisho/kouhou/hishoo8_00364.html (accessed February 9, 2023).

³⁵ Ministry of Justice, “The Holding of a Third Party Committee Regarding the Abuse and Inappropriate Treatment by Nagoya Prison Guards,” December 26, 2022, <https://www.moj.go.jp/content/001387851.pdf> (accessed February 9, 2023).

³⁶ Ministry of Justice, “Inspection of Camera Footage, Status on Nation-Wide Investigation,” February 8, 2022, <https://www.moj.go.jp/content/001389978.pdf> (accessed February 9, 2023).

³⁷ Ministry of Justice, “The Status of Reprimands Against Staff at Penal Facilities,” undated, <https://www.moj.go.jp/content/001389974.pdf> (accessed February 9, 2023). The ministry reported 14 dismissals, 46 suspensions, 75 pay cuts and 40 warnings.

On June 21, 2023, the third-party committee submitted a set of recommendations to Japan's then-Minister of Justice, Ken Saito. The committee identified the following factors as the cause of the incident: "insufficient awareness of human rights and an organizational culture that excessively emphasizes discipline and order;" "a work environment with inadequate means of communication;" "not understanding the personal characteristics of prisoners;" "a shift system that places the responsibility of dealing with several prisoners with specific needs on one new prison guard;" "the lack of a mechanism which would allow a manager to identify inappropriate treatment of prisoners in a timely manner;" and "the dysfunctionality of a mechanism meant to provide redress for prisoners who received inappropriate treatment."³⁸

The committee recommended the specialization and downsizing of prison facilities, enhanced access to the complaint system, and the improved education and training of prison guards, among others. Citing the February 2023 announcement by the Ministry of Justice, the third-party committee added "the cause of this incident exists across the country" thus "preventative measures should be formulated for the entire country."³⁹

³⁸ Ministry of Justice, "Recommendation Letter (Summary) ~ for the realization of improved treatment of prisoners in an age of Kokin," June 21, 2023, <https://www.moj.go.jp/content/001398332.pdf> (accessed July 2, 2023).

³⁹ Ibid.

II. Abuses Against Women in Japan’s Prisons

Unmet Needs of Specific Populations of Imprisoned Women

Barriers to Women Being Able to Parent

Some women in prison are parents of babies and young children, and some are pregnant when they enter prison.

Between 2011 and 2017, 184 imprisoned people—ranging from 13 to 36 a year—gave birth while incarcerated.⁴⁰ Women are more likely than men to be the primary care giver to their children, and this gender disparity in caregiving is pronounced in Japan.⁴¹

Women who are pregnant, or the parents of young children when they are imprisoned, face barriers to parenting that pose harm to their children and themselves. These include prosecutors almost never using a law that allows the suspension of sentences if women are the sole caregivers of their children; being denied the opportunity to keep their children with them in prison; and suffering physical abuse during pregnancy, labor, and post-partum recovery. Children of imprisoned people are also often deprived of their right, “as far as possible,” to be cared for by their parents.⁴²

Restraints During Childbirth

Rule 48 of the Mandela Rules states that “instruments of restraint shall never be used on women during labor, during childbirth and immediately after birth.”⁴³ In addition, Rule 24 of the Bangkok Rules states that “... in some countries body restraints, such as shackles,

⁴⁰ Upper House Committee on Health, Labor, and Welfare, May 16, 2019 <https://kokkai.ndl.go.jp/#/detailPDF?minId=119814260X00920190516&page=6&spkNum=25¤t=-1> (accessed October 14, 2023).

⁴¹ Nobuko Nagase and Mary C. Brinton, “The gender division of labor and second births: Labor market institutions and fertility in Japan,” *Demographic Research*, vol. 36 (2017), p. 345.

⁴² Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* September 2, 1990, article 7, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Japan ratified the Convention on the Rights of the Child in 1994.

⁴³ UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules), adopted December 17, 2015, G.A. Res. 70/175, rule 48.

are used on pregnant women during transfers to hospitals, gynecological examinations and birth. This practice violates international standards.”⁴⁴

Women who are pregnant while in prison are typically transported to a nearby hospital to give birth. Before 2014, imprisoned people in labor at a hospital were routinely handcuffed by at least one arm during labor, birth, and post-partum recovery. In 2014, then-Minister of Justice Yoko Kamikawa issued an order to all prisons instructing them to halt using restraints on imprisoned pregnant women inside delivery rooms.⁴⁵

Despite Kamikawa’s order, a formerly imprisoned woman said staff at Fumoto prison in Saga prefecture still handcuffed (by at least one arm) imprisoned women during childbirth in 2018. Another formerly imprisoned woman also described a fellow imprisoned person’s account of having both wrists cuffed to a bed while she gave birth in 2017:

[The pregnant woman] told me she gave birth on a bed with both of her hands handcuffed. I cried when I heard that, but she said she was just glad they let her give birth safely at a hospital.⁴⁶

On November 5, 2019, Human Rights Watch notified the Ministry of Justice about its findings that suggest the use of handcuffs on imprisoned women during childbirth at Fumoto prison.

At a meeting on November 12, 2019, ministry officials denied the allegations, citing self-reported annual surveys that administrators of all women’s prisons complete.⁴⁷ During the meeting, Human Rights Watch requested that the Ministry of Justice investigate whether the practice was ongoing at women’s prisons, particularly at Fumoto prison.⁴⁸

The officials initially declined to launch an investigation, citing lack of time, funding, and staff capacity. But they agreed to resend the 2014 notice to all prisons and did so the same

⁴⁴ UN 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, rule 24.

⁴⁵ See Appendix III.

⁴⁶ Human Rights Watch interview with Chisato Y., a formerly imprisoned woman, location withheld, September 24, 2019.

⁴⁷ Human Rights Watch communication with Japan’s Ministry of Justice, Tokyo, November 12, 2019.

⁴⁸ The meeting was held at the Ministry of Justice in Tokyo, Japan, on November 12, 2019, with two Justice Ministry officials and one Human Rights Watch staff member.

month. Officials also informed Human Rights Watch that they would seek information from Fumoto prison administrators about the use of restraints on imprisoned pregnant women while they gave birth.

On November 25, 2019, ministry officials reported to Human Rights Watch that they found no record of handcuffs being used inside delivery rooms. However, officials also said handcuffs have been generally used on imprisoned pregnant women before entering and after exiting delivery rooms.

Denial of Right to Parent in Prison

Research shows that early childhood bonding is critically important to a child's development, as there "is increasing evidence from the fields of development psychology, neurobiology and animal epigenetic studies that neglect, parental inconsistency and a lack of love can lead to long-term mental health problems as well as to reduced overall potential and happiness."⁴⁹ In the UK, for example, newborn babies and young children are permitted to remain with the mothers in prison, and some prisons provide parenting support and training to those mothers.⁵⁰

As of 2019, Japan had facilities in seven penal institutions designed to permit young children to be housed there with their parents, and five of these are in women's prisons.⁵¹ Furthermore, under article 66 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, imprisoned women are allowed to be with their children inside a prison until the child is one year old, if the mother's request is approved by the prison warden.⁵² The initial one-year period may also be extended by an additional six months, again with the warden's approval.

⁴⁹ Robert Winston & Rebecca Chicot, "The importance of early bonding on the long-term mental health and resilience of children", *London Journal of Primary Care*, Vol. 8, No. 1 (February 2016), pp. 12-14. <https://doi.org/10.1080/17571472.2015.1133012>.

⁵⁰ The UK government, "prison life," undated, <https://www.gov.uk/life-in-prison/pregnancy-and-childcare-in-prison> (accessed May 15, 2023).

⁵¹ The five women's prisons are Fukushima, Tochigi, Kakogawa, Wakayama, and Iwakuni prisons. The two other facilities are Tachikawa Detention House and East Japan Adult Correction Medical Center. Upper House Committee on Health, Labor, and Welfare, May 16, 2019, <https://kokkai.ndl.go.jp/#/detailPDF?minId=119814260X00920190516&page=6&spkNum=25¤t=-1>

⁵² Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, "Act on Penal Detention Facilities and the Treatment of Inmates and Detainees," undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/2796/en> (accessed November 22, 2019).

Rule 29 of the Mandela Rules states that:

A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for: (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent; (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.⁵³

Rule 52 of the Bangkok Rules also states that “Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.”⁵⁴

In practice, however, prison authorities rarely inform mothers that they can request to keep their children with them.

Between 2011 to 2017, only 3 out of 184 imprisoned women who gave birth were given permission to be with their child in prison. Even for the three imprisoned people who did receive permission, the time they could stay with their babies was very limited—12 days, 10 days, and 8 days respectively. The Ministry of Justice says it does not know how many imprisoned people requested to care for their babies in prison under article 66 and how many requests were denied.⁵⁵

When imprisoned people give birth, their infants are typically taken from them almost immediately and handed to relatives or sent to an alternative care institution. Reiko M., a formerly imprisoned woman who was released from prison in 2018, said:

I’ve never seen a room where they can raise a baby [in prison], but I know a woman who worked in the same workshop as me who gave birth. She didn’t

⁵³ The Mandela Rules, rule 29.

⁵⁴ The Bangkok Rules, rule 52.

⁵⁵ Diet Minutes Search System, Upper House Committee on Health, Labour, and Welfare, May 16, 2019. <https://kokkai.ndl.go.jp/#/detailPDF?minId=119814260X00920190516&page=6&spkNum=25¤t=-1> (accessed October 14, 2023).

say much about her experience during labor, but she came back about a week afterwards. The rules say she can raise her child for up to a year and a few months, but she was with her baby for five minutes and then the hospital told her they had to take her baby away.⁵⁶

Masako B. described giving birth in prison about a decade ago and facing similar problems: “By the time I was returning to prison, it was already set in stone that my baby would be sent to an institution.”⁵⁷

There are indications that the prison system has become less tolerant over time about women parenting while in prison. Keiko K., a formerly imprisoned woman who first served a sentence 50 years ago at Tochigi, Japan’s largest women’s prison, and has subsequently served time at Tochigi again, including in recent years, said:

I would bathe the babies [during my earlier sentence] because I was considered [by the prison guards] as having a calm temperament.... the [baby] room was on the upper floor, and it was clean. There was a baby bed with a toy above it. There was always someone to watch after [the babies] while the mother worked. They allowed it for half a year, but they don’t let them [babies] in anymore. I heard [from fellow inmates] that babies seeing iron-barred windows is bad for them.⁵⁸

Increasing Number of Older Women in Prison

Japan’s population is rapidly ageing. Around one in four people in Japan are now over 65.⁵⁹ The country’s prison population is also ageing, and the trend is more pronounced among women than men. As previously noted, in 2021, 20 percent of women admitted to prison

⁵⁶ Human Rights Watch interview with Reiko M., a formerly imprisoned woman, location withheld by Human Rights Watch, July 17, 2019.

⁵⁷ Human Rights Watch interview with Masako B., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

⁵⁸ Human Rights Watch interview with Keiko K., a formerly imprisoned woman, location withheld, April 2, 2019.

⁵⁹ Cabinet Office, Government of Japan, “2022 Version White Paper on Ageing Society,” <https://www8.cao.go.jp/kourei/whitepaper/w-2022/gaiyou/pdf/151s.pdf> (accessed June 16, 2022).

were 65 years old or older, nearly a four-fold percentage increase from 5.5 percent in 2003, and 1.9 percent in 1998.⁶⁰

Many older Japanese people struggle with social isolation. One manifestation of this trend is the increase of what are known as “lonely deaths,” where older people die alone and remain unnoticed for days, and sometimes weeks.

There were 4,238 cases of what appear to be “lonely deaths” in Tokyo alone in 2020, nearly a three-fold increase from 1,451 cases in 2003.⁶¹

A Ministry of Justice survey drew a connection between social isolation of older women and petty theft. While “insecurity about their financial future” was the most common motive for shoplifting among both older men and women, the ministry found that a higher proportion of women stole things because of their isolation and a sense of age discrimination, even while women were in a relatively better financial situation than men.⁶²

However, the current prison system does not cater for the needs of the increasing number of older people in prison.

Kazuko C., a formerly imprisoned woman in her 70s who served time in prison in 2018, said:

Before I went to prison, I assumed I would be the oldest person there. When I got there, I realized there were so many [older] people in wheelchairs and those who couldn’t take baths by themselves. When I saw that, I realized I still had the ability to take care of myself like doing laundry.... Caretakers from outside the prison would come and help prisoners, including those with disabilities, to take baths and put on clothes.⁶³

⁶⁰ Corrections Bureau, Justice Ministry, “Graph 2-4-2-5,” <https://hakusyo1.moj.go.jp/jp/69/nfm/excel/2-4-2-5.xlsx> (accessed January 26, 2023).

⁶¹ Cabinet Office, Japanese Government, “Graph 1-2-3-11,” 2022, https://www8.cao.go.jp/kourei/whitepaper/w-2022/html/zenbun/s1_2_3.html (accessed January 26, 2023).

⁶² Correction Bureau, Justice Ministry, “2008 Version White Paper on Crime,” 2008, http://hakusyo1.moj.go.jp/jp/55/nfm/n_55_2_7_3_2_2.html (accessed November 22, 2019).

⁶³ Human Rights Watch interview with Kazuko C., a formerly imprisoned woman, location withheld, February 6, 2019.

Older people in prison with significant care and support needs are typically given cell rooms for a single person. But healthy older people usually work in prison workshops and live in shared rooms with other imprisoned people who vary in age, length of sentence, and type of crime. Bullying of older people in prison is a serious concern in this environment. Takako J., a formerly imprisoned woman who served about a year when she was in her 70s, said:

I was reading ... and a cellmate dropped futons on my head, leaving my neck strained for three days.... A cellmate also poured boiling hot water on my foot, and it left my foot red and swollen, I couldn't even wear socks. [The guards] said it was [swollen] because I didn't go to the bathroom properly. They would never contact the doctors. I wrote this in my notebook, but when I was leaving prison, they told me to rip that part out. That's when I finally realized I was really in prison ... up until that moment I felt like I was dreaming.⁶⁴

Guards are sometimes abusive toward older people in prison and frustrated by their limited mobility. Hiroko J., a formerly imprisoned woman who spent three years in prison for theft and was released in 2018, said: "Grandmas would push a wheeled walker, all while being yelled at by guards. I felt sorry for them [the older women] as they were doing what they can. Of course, they were slow."⁶⁵

Transgender People in Prison

Transgender women often face specific harms in Japan's prison system because the government fails to appropriately recognize their gender identity and support their healthcare needs. All imprisoned people, including transgender people, are housed in facilities that match the legal gender registered for the individual under the government's family registry system.⁶⁶

⁶⁴ Human Rights Watch interview with Takako J., a formerly imprisoned woman, location withheld by Human Rights Watch, November 13, 2018.

⁶⁵ Human Rights Watch interview with Hiroko J., a formerly imprisoned woman, location withheld by Human Rights Watch, November 21, 2019.

⁶⁶ Eri Nakanishi, "Current Situation and Issues regarding LGBT," Legislation and Research, No. 394 (2017), p. 15 https://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2017pdf/20171109003.pdf (accessed October 14, 2023).

There are many Japanese transgender people whose gender identity does not match their identity in the family registry system because of the law’s draconian, regressive, and harmful legal gender recognition requirements.

Japan’s Legal Gender Recognition Process

Transgender people wishing to legally change their gender must appeal to a family court under the 2004 Gender Identity Disorder (GID) Special Cases Act. This law requires applicants to be single and without children under age 20, to receive at least two medical diagnoses of “gender identity disorder,” and to undergo sterilization surgery.⁶⁷ Many transgender people refuse to undergo the required procedures, which are both burdensome and violate their human rights, so they retain the legal sex they were assigned at birth.⁶⁸ As a consequence, imprisoned transgender people whose family registration does not match their gender identity are sent to prisons against their gender identity.

In 2011, the Justice Ministry sent a Notice Regarding Treatment Guidelines for Detainees with Gender Identity Disorder to all penal institutions. The notice permits facilities to offer single cells, and provide privacy during bath time, for “prisoners with gender identity disorder” or imprisoned people with “a tendency to gender identity disorder” who do not have at least two medical diagnoses.⁶⁹ The notice also allows prisons to provide gender-appropriate women’s underwear to imprisoned people who have a “gender identity disorder” diagnosis⁷⁰ and have completed surgery, including those who have had breast

⁶⁷ Human Rights Watch, “A Really High Hurdle” *Japan’s Abusive Transgender Legal Recognition Process*, (2019), <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>

⁶⁸ Human Rights Watch, *Japan: Compelled Sterilization of Transgender People*, March 2019, https://www.hrw.org/sites/default/files/report_pdf/japano319_web_o.pdf

⁶⁹ Appendix IV.

⁷⁰ Psychiatrists in Japan use both the International Classification of Diseases (ICD), which is published by the UN World Health Organization (WHO), and the Diagnostic and Statistical Manual (DSM), which is published by the American Psychiatric Association (APA). Both the DSM and the ICD have removed the diagnoses for “GID” and “transsexualism” from “mental disorders” sections altogether.

In 2012, the APA board’s changes to the latest DSM removed the term “Gender Identity Disorder.” APA instead added the term “Gender Dysphoria” with the specific definition that it refers to emotional distress over “a marked incongruence between one’s experienced/expressed gender and assigned gender.” The APA specifically clarified: “It is important to note

augmentation surgery and require the use of a bra, as prescribed by law.⁷¹

However, this notice does not apply to all transgender people who are imprisoned at penal institutions according to their gender on the family registry system. If the imprisoned person has not received at least two medical diagnoses, it will be difficult for prison staff to determine whether the person has a “tendency to gender identity disorder.”

While the notice also refers to the possibility of respecting imprisoned people’s gender identity without a “GID” diagnosis, the implementation remains determined by the government’s designation of the person’s gender in its official records.

Motoko S., a trans woman who has identified as female since childhood, was imprisoned in Tokyo about seven years ago. At the time of her imprisonment, she had not taken steps to receive a medical diagnosis of “gender identity disorder,” change her gender on her family registry, or receive gender reassignment surgery.

Despite her expressed wish to be held in a women’s prison, the authorities imprisoned her in a men’s prison. She told Human Rights Watch that she informed a prison doctor and guards that she has “gender identity disorder” and asked to be placed in a single cell. She says the doctor ignored her appeal and a prison guard scolded her, saying her situation was not life threatening. As a result, she spent more than a year with imprisoned men in the same cell, sharing sleeping space, dressing rooms, and showers.⁷²

Motoko S. said:

When I was using the bathroom, the prison guards could see through the acrylic separation. Of course, the men living in the same room can also see.

that gender nonconformity is not in itself a mental disorder. The critical element of gender dysphoria is the presence of clinically significant distress associated with the condition.”

The WHO published a revised version of the ICD in June 2018. The new WHO guidelines reframe “gender identity disorders” as “gender incongruence,” and move the diagnostic codes from the chapter on mental disorders to one on sexual health—an important gain for transgender adolescents and adults, who may soon be able to seek medical care without being viewed as “mentally disordered.”

⁷¹ Ibid.

⁷² Human Rights Watch interview with Motoko S., location withheld by Human Rights Watch, November 8, 2019.

It's the same situation when taking baths. From other men's perspectives, they probably think, "Your body is the same as the rest of us." But considering I have a complex about my body, I didn't want to show it to others even more. I also don't want to see other men's bodies. I went through a lot in the past, so it was just painful. In the dressing room next to the baths, it would be so congested that our naked bodies would rub up against each other, which was disgusting.⁷³

Motoko said she was forced to try to conceal her gender identity to stay safe:

When I entered prison, I told the guard about my identity. But no matter how ready I was to live as a woman, I'm aware what that will mean for my life in prison. That's why I went on hiding it. I tried my best not to express my identity by feigning masculinity. I was constantly afraid of being exposed, and I was truly horrified of the possibility that a moment may come, and everyone would make fun of me for being a "fairy" and have bias against me.⁷⁴

The United Nations Development Program's (UNDP) September 2020 report advises that "Governments and prison authorities should allow transgender prisoners to participate in the decision regarding their housing in prisons, be offered a choice balanced against security concerns, and be informed about the final outcomes related to their housing."⁷⁵

The report also advises that "Prison authorities should take into account transgender prisoners' gender identity, physical status, dignity and personal safety when facilitating access to shower and bathroom facilities. Where dedicated private or separate facilities cannot be provided, prison authorities should put in place physical barriers to maximize privacy, without compromising safety and security."⁷⁶

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ United Nations Development Programme, "Mapping of Good Practices for the Management of Transgender Prisoners," September 27, 2020, <https://www.undp.org/sites/g/files/zskgke326/files/2023-03/UNDP-TH-the-mapping-of-good-practices-for-the-management-of-transgender-prisoners.pdf> (accessed May 15, 2023).

⁷⁶ Ibid.

The mistreatment of imprisoned transgender people is a longstanding issue in Japan. In 2009, the Japan Federation of Bar Associations (JFBA) sent an advisory letter to Kurobane prison, a men’s facility in Tochigi prefecture, raising concerns about the treatment of an imprisoned transgender person. The letter detailed how a transgender woman in the facility was initially exempted from having her hair buzz cut (as is done to all men in prison) and was allowed to wear a women’s uniform. However, as the letter explained, the prison subsequently changed its policies and withdrew these accommodations.⁷⁷

Kurobane prison officials initially declined to answer in detail most questions posed by JFBA and commented in detail only after lawyers from JFBA visited the prison and persuaded them to clarify the situation.⁷⁸

Prison officials reported that the woman had a history of committing violent crimes against those she deemed not to be understanding of her disorder, and thus prison officials deemed it appropriate to “reform” her in prison so she would not have “emotional outbursts” in society should she be treated as a man by others. The decision to retract the right to let her keep her hair as well as wear women’s clothing was part of this effort, the prison explained in its response to JFBA.⁷⁹

The Justice Ministry’s 2011 notice sent to all prisons ruled out making hormone treatment available for imprisoned transgender people, as “it would not cause irrecoverable damage” by not providing it, unless there is a special necessity.⁸⁰

In a widely reported 2015 case, a court sentenced 29-year-old Azuha Kikuchi to 16 years in prison. Doctors diagnosed Azuha as having “gender identity disorder” and she had been receiving hormone treatment from age 18, according to media reports.⁸¹ When she was 20 years old, she went through gender reassignment surgery, and on the family registry

⁷⁷ Japan Federation of Bar Associations, “Recommendation Letter,” September 17, 2009, https://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/o90917.pdf (accessed November 22, 2019) p. 1.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Eri Nakanishi, “Current Situation and Issues regarding LGBT,” Legislation and Research, No. 394 (2017), p. 15, https://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2017pdf/20171109003.pdf (accessed October 18, 2023).

⁸¹ Aya Shioiri, “Detained after sex reassignment surgery, hormone treatment not allowed, Tokyo Detention House,” Asahi Newspaper, December 2, 2015.

system she changed her gender to female.⁸² Despite Azuha being on hormone treatment for several years, the Tokyo Detention Center, where authorities detained her in 2015, denied her further hormone treatment because prison officials deemed her condition “not a disease” and therefore not requiring treatment.⁸³

In March 2016, the Japanese Society of Psychiatry and Neurology warned the Ministry of Justice that Azuha’s ill health following the Tokyo Detention Center’s decision was a symptom of hormone deficiency and recommended that the government consult medical experts who are knowledgeable about “gender identity disorder...as soon as possible.”⁸⁴

The World Professional Association for Transgender Health (WPATH) advises that hormone replacement therapy “is a medically necessary intervention for many transsexual, transgender, and gender-nonconforming individuals with gender dysphoria,”⁸⁵ and that transgender people in institutionalized settings should be able to receive the same level of care they would be able to access within the community.⁸⁶

WPATH guidelines further advise that “[t]he consequences of abrupt withdrawal of hormones or lack of initiation of hormone therapy when medically necessary include a high likelihood of negative outcomes such as surgical self-treatment by auto castration, depressed mood, dysphoria, and/or suicidality.”⁸⁷

Abusive Confinement Conditions

Japan’s prisons impose harsh conditions of confinement. Imprisoned people are subject to strict regulations enforced by prison guards with the threat of solitary confinement for disciplinary infractions.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Junichiro Ota, “A Letter of Request Regarding the Medical Treatment of Prisoners with Gender Identity Disorder in Correctional Facilities,” Japanese Society of Psychiatry and Neurology, March 19, 2016, https://www.jspn.or.jp/uploads/uploads/files/activity/iryoutekitaio_u_youbousyo_rev.pdf (accessed September 7, 2023).

⁸⁵ Eli Coleman, et. al., “Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7,” *International Journal of Transgenderism*, No. 13 (Aug 2012). <https://doi.org/10.1080/15532739.2011.700873>.

⁸⁶ Ibid., p. 67.

⁸⁷ Ibid.

Regulations in Japan’s prisons are often rigidly enforced in ways that risk worsening social isolation and creating psychological harm for imprisoned people. For instance, imprisoned people are often restricted from interacting with other imprisoned people without permission, including looking in their direction or even making eye contact.

Maki F., a formerly imprisoned woman who spent more than a year in prison in 2017, said:

There are no instructions passed down [by the guards]. We’re not allowed to talk. That was hard. I didn’t understand what was going on. When we’re cleaning the bath, we’re not allowed to talk, or even nod, or [make] any type of signal. We can’t even say, “Please wash the rag.” We had to be silent and not make eye contact [with either the guards or other imprisoned people].⁸⁸

Kyoko M., who spent two years in prison in 2017, said: “We weren’t allowed to talk to someone next to us, including teaching them something they didn’t know or even laughing....I was warned by a guard once, who asked me, ‘What’s so funny?’”⁸⁹

Arbitrary Use of Solitary Confinement

Imprisoned people found to have violated prison rules are sometimes punished with prolonged periods of solitary confinement. Imprisoned people accused of rule infractions are also placed in solitary confinement pending investigation of the allegation.⁹⁰

Under the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, solitary confinement is limited to “a period not exceeding thirty days ... and if the circumstances are especially serious, for a period not exceeding sixty days” as a form of disciplinary punishment.⁹¹

⁸⁸ Human Rights Watch interview with Maki F., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

⁸⁹ Human Rights Watch interview with Kyoko M., a formerly imprisoned woman, location withheld by Human Rights Watch, April 23, 2019.

⁹⁰ Human Rights Watch interview with Akiko S., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

⁹¹ Japanese Law Translation Project at the Ministry of Justice, “Act on Penal Detention Facilities and Treatment of Inmates and Detainees,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/142/en> (accessed May 15, 2023).

The social isolation and sensory deprivation that comes with solitary confinement can have harmful effects on mental health. Isolation can be psychologically damaging to any imprisoned person causing anxiety, depression, anger, obsessive thoughts, paranoia, and psychosis. Its effects can be particularly detrimental for people with psychosocial or cognitive disabilities.⁹²

The stress of a closed and heavily monitored environment, absence of meaningful social contact, and lack of activity can exacerbate mental health conditions and have long-term adverse effects on the mental well-being of people with psychosocial or cognitive disabilities.

According to Sharon Shalev, an expert on solitary confinement at the Oxford University Center for Criminology, “conditions of extreme social isolation and reduced environmental stimulation [in solitary confinement] inflict psychological trauma and in some cases deprive inmates of sanity itself.”⁹³

Juan Mendez, the then-UN special rapporteur on torture, said that the imposition of solitary confinement “of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment.” He called on governments to abolish it for imprisoned people with psychosocial or cognitive disabilities.⁹⁴

Akiko S., a formerly imprisoned woman who has been imprisoned three times, said:

I was put into solitary confinement for 28 days as a disciplinary measure, and afterwards I was having difficulties mentally, so I wrote a request to meet a psychologist. I was diagnosed with manic depression, and they

⁹² The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has said that “prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled.” UN General Assembly, “Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment,” A/66/268, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>, para. 58.

⁹³ Sharon Shalev, “Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis,” *Journal of Forensic Psychology Practice*, Vol. 11, Issue 2-3 (March 2011), pp. 151-83. <https://doi.org/10.1080/15228932.2011.537582>

⁹⁴ UN General Assembly, “Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment,” A/66/268, August 5, 2011, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (accessed January 18, 2018).

gave me medicine. Taking it made me sleepy and made it difficult for me to work. When I told them this, I was told I have a high blood concentration of the drug. I was eventually drooling.⁹⁵

Rule 43 of the Mandela Rules states “in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment,” including “prolonged solitary confinement” as a practice that should be “prohibited.”⁹⁶

She continued:

“Investigations” are what made life in prison so difficult for me. I was disciplined five times.... They put me in solitary confinement. They would take away my spot in the workshop, even take away my nametag.... During the disciplinary period I just sat. ... I couldn’t use the bathroom without permission, and I just sat there staring at a calendar pinned to the door. The guards can see inside through the door ... if I shift my gaze, they punished me.⁹⁷

Some formerly imprisoned women said such internal investigations are one-sided and do not give imprisoned people the chance to explain themselves. Mari L., a formerly imprisoned woman who was released in 2018, said:

They [the guards] would punish us just by observing the situation, without giving us a chance to explain what happened. We should have a chance to explain ourselves, but even when we try, they just tell us how things are unilaterally. It would be different if they simply listened to us. Not being heard is very painful.⁹⁸

⁹⁵ Human Rights Watch interview with Akiko S., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

⁹⁶ The Mandela Rules, rule 43.

⁹⁷ Ibid.

⁹⁸ Human Rights Watch interview with Mari L., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

Imprisoned people can also lose their rights to receive visits or to write letters, including to their lawyers, depending on their disciplinary status. A woman serving a life sentence who has been repeatedly put into a “protection room” in Tochigi prison for disciplinary infractions was denied her right to see all visitors, including her lawyer, between December 2018 to at least October 2019.⁹⁹

Teppei Ono, one of several lawyers who petitioned the Tochigi Prefecture Bar Association under a human rights procedure seeking to improve the imprisoned person’s situation, said:

This isn’t written in the law [the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees]. But if an imprisoned person is put in a protection room, they aren’t physically able to receive visitations, effectively meaning they aren’t allowed to receive them. Even letters, they don’t know what will happen if they hand the imprisoned person pen and paper, so that form of communication isn’t allowed either. It’s not written out in the law, but that’s how the prison is running things and the courts are allowing it.¹⁰⁰

Inadequate Access to Daily Amenities

Work inside prisons is not covered by Japan’s Minimum Wages Act because it is not based on a contract between an employee and an employer.¹⁰¹ Instead, under Japan’s penal code, prison labor is considered a form of punishment and rehabilitation, and not necessarily a means to earn an income.

Under article 98 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, imprisoned people are paid for their prison labor at the time of their release.¹⁰² During imprisonment, an imprisoned person can ask to use some of their earnings to buy daily amenities.¹⁰³

⁹⁹ Human Rights Watch interview with criminal defense lawyer Tepei Ono, Aichi, October 28, 2019.

¹⁰⁰ Ibid.

¹⁰¹ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Labor Standards Act,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/3567/en> (accessed November 22, 2019).

¹⁰² Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (2005),” article 98, <https://www.japaneselawtranslation.go.jp/en/laws/view/142/en> (accessed November 22, 2019).

¹⁰³ Ibid, art. 98 (4).

Formerly imprisoned women told Human Rights Watch that daily amenities sold by the prison commissary were unusually expensive. The commissary is the only location where imprisoned people are permitted to purchase items. Junko T., who was released from prison between 2018 and 2019 explained the challenge for people in prison:

The pay was so little, but everything from toothpaste to shampoo was so expensive. They're so much cheaper outside at pharmacies. Why does a face lotion that costs 100 to 200 yen (US\$0.68 to 1.36) outside cost 1000 yen (US\$6.81) inside?¹⁰⁴

The pricing of amenities inside prisons is a longstanding issue. In 2004, the Ministry of Justice instructed that prisons price goods appropriately by conducting market research, soliciting quotes from multiple suppliers to engage in market competition, and keep the gross profit margin to 10 to 15 percent.¹⁰⁵ The JFBA issued a letter in 2008 criticizing the ministry's requests, saying that there is no way to objectively check whether prisons have taken such measures as they rarely keep track of these issues in written documents.¹⁰⁶

In the same letter, the JFBA said it conducted its own research into the pricing of amenities inside prisons, and said it could not conclusively say goods were priced inappropriately.¹⁰⁷ However, the JFBA said the Japanese Correctional Association (JCA), which includes currently serving prison guards in its membership, dominates the merchandising business within prisons.¹⁰⁸ This means that prison guards profit whenever imprisoned people purchase goods in prisons, creating a conflict of interest and a sense of unfairness among imprisoned people.¹⁰⁹ As a result, the JFBA recommended that the Ministry of Justice take measures to allow other businesses to enter the market and to prevent JCA from dominating it.¹¹⁰

¹⁰⁴ Human Rights Watch interview with Junko T., a formerly imprisoned woman, location withheld by Human Rights Watch, January 23, 2019.

¹⁰⁵ Japan Federation of Bar Associations, "Opinion on the sale of goods in penal institutions," February 15, 2008, p. 11 https://www.nichibenren.or.jp/library/ja/opinion/report/data/o8o215_4.pdf (accessed May 15, 2023).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

In 2019, the Osaka Bar Association said that prices of certain goods inside prisons under a new supplier rose by 1.3 to 4.5 times from the prices before 2011. The association subsequently urged the supplier to price goods appropriately.¹¹¹

Verbal Abuse by Prison Guards

Prison guards verbally abusing people in prison is an ongoing issue in Japan's prisons. Such practices contravene rule 1 of the Mandela Rules, which states:

All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.¹¹²

Atsuko N., a formerly imprisoned woman who was released in 2018, said:

Normally, if I look away when I'm working, a guard will just point it out and that would be it, but if someone higher-up walks by and catches me looking in a different direction, that person would yell at me with so much ferocity, to the point where my heart was pounding, and I eventually passed out.¹¹³

Some imprisoned people said guards harassed them by referring to their crimes in day-to-day discussions. Masako B., a formerly imprisoned woman who was released from prison in 2018 said:

I know we're in prison to pay our dues for the crimes we committed, but I want them [the guards] to interact with us like we're humans. We already know what we're in there for, but they bring it up anyway, and it weakens

¹¹¹ Osaka Bar Association, "A case study of recommending that the seller of goods at Osaka prison ensure goods are appropriate in terms of quality and price in relation to the lifestyle of prisoners," March 29, 2019, https://www.osakaben.or.jp/01-aboutus/committee/room/jinken/03/2019_0329.php (accessed May 15, 2023).

¹¹² The Mandela Rules, rule 1.

¹¹³ Human Rights Watch interview with Atsuko N., a formerly imprisoned woman, location withheld, March 14, 2019.

me mentally. Every word weakens the prisoners. I still remember the things they said to me.¹¹⁴

Guards seem to single out certain people for abuse. Chisako Y., who was released from prison in 2017, said:

[I]t seems like the guards have their favorites, and whenever they're in a bad mood, they would unleash a tirade [on less favored ones]. They told me, "We're feeding you with tax money, who do you think you are?" It wasn't just me; other prisoners were also yelled at. The guards would just yell at us depending on their mood. Even after everything is settled, they would still be yelling at us.... Some prisoners would intentionally receive disciplinary punishment so they could avoid going to the training room [to avoid seeing the guards].¹¹⁵

Mari L., who was released from prison in late 2018, said: "The guards were yelling all the time. We didn't want to get yelled at so we would be quiet. Whenever an intimidating male prison guard walked by, we would also be quiet."¹¹⁶

In some instances, male prison guards verbally berate imprisoned women. Eiko R., a formerly imprisoned woman who has been in prison nine times for drug-related offenses, said:

The male prison staff would talk like they're in some gang. They said they were from a male prison, but we're women, so we were very afraid ... they would say violent things like, "You looked at me," "I just saw you looking at me," "I'm here to punish you." They wouldn't back down until we said we were sorry.¹¹⁷

¹¹⁴ Human Rights Watch interview with Masako B., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

¹¹⁵ Human Rights Watch interview with Chisako Y., a formerly imprisoned woman, location withheld by Human Rights Watch, February 13, 2019.

¹¹⁶ Human Rights Watch interview with Mari L., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

¹¹⁷ Human Rights Watch interview with Eiko R., a formerly imprisoned woman, location withheld by Human Rights Watch, February 13, 2019.

Inadequate Access to Health Care

Over the last two decades, the number of doctors working in Japan's prisons has declined, leading to imprisoned people being denied access to quality and essential health care in a timely manner. In 2013, the Ministry of Justice determined that it needed the equivalent of 332 full-time prison doctors to provide adequate medical care for people in prison.¹¹⁸ In 2003, there were 316 prison doctors. As of April 2022, there were only 295 prison doctors.¹¹⁹

A group of experts advising the Ministry of Justice on the issue cited a number of problems in recruiting medical personnel, including low pay, inconvenient locations of prisons, difficulty building a relationship with patients who are imprisoned, and fear of encountering patients who were formerly imprisoned outside prison.¹²⁰

The experts wrote: “[I]f drastic measures are not immediately implemented, we must recognize that prison medical care will collapse very soon.”¹²¹ As of 2022, the quota for prison doctors required to provide adequate health care to people in prison remains unmet.

Failing to secure enough prison doctors contravenes rule 27 of the Mandela Rules, which states that “where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.”¹²²

Formerly imprisoned women told Human Rights Watch that the lack of access to adequate health care was one of their most pressing concerns during their time in prison. Hiroko J., who was released from prison in 2018, described her difficulties obtaining treatment for pain and mental health support:

I wanted to be checked as soon as possible, but they told me, “Let’s see how you’re feeling in a while.” After a while I saw them again, and they told

¹¹⁸ 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 November 21, 2019) p. 6.

¹¹⁹ Justice Ministry, White Paper on Crime 2022, “Food, medical care, and hygiene,” undated, https://hokusyo1.moj.go.jp/jp/69/nfm/n69_2_2_4_4_2.html (accessed January 26, 2023).

¹²⁰ “Report on how prison medical care should be run,” *op. cit.*, <http://www.moj.go.jp/content/000118361.pdf> (accessed November 21, 2019) pp. 12-3.

¹²¹ *Ibid.* p. 14.

¹²² The Mandela Rules, rule 27.

me the same thing. When I got my check-up, they didn't look at the spot I wanted them to look at, and it usually ended like that. I was hospitalized after a car accident before, and suffered from a cervical sprain, so they gave me painkillers for 26 days. Then they told me it was too much, so they cut it back to 20 days, which was difficult for me. I couldn't sleep, and I needed psychiatric drugs, so I wrote a request for a check-up, but they told me the same thing again, and I didn't get a check-up for a month while receiving no medication.¹²³

For some formerly imprisoned people, obtaining appropriate health care was difficult. Hiromi T., a woman who was in her late 70s when she was in prison from 2015 to 2018, said:

My back started hurting suddenly when I was sleeping, and I couldn't walk. I told the guard, "It hurts right here, and I can't walk," and the guard called the guard in charge of medical matters. They said, "You should be okay," but it hurt so much it was unbearable. So, I asked them to let me rest for half a day, but it still hurt. They said the pain would go away eventually.¹²⁴

Many imprisoned people have experienced long delays in obtaining care. Maki F., who spent over a year in prison and was released in 2018, said:

I would catch a cold, but it would take two weeks before I [could] get it checked, so I'm already recovered by then. That's why I would never tell them if I was sick. I also didn't tell them if I had a toothache, because they would just pull it out.¹²⁵

¹²³ Human Rights Watch Interview with Hiroko J., a formerly imprisoned woman, location withheld by Human Rights Watch, November 21, 2018.

¹²⁴ Human Rights Watch interview with Hiromi T., a formerly imprisoned woman, location withheld by Human Rights Watch, November 13, 2018.

¹²⁵ Human Rights Watch Interview with Maki F., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

Some imprisoned women felt their descriptions of their symptoms were dismissed or received inappropriate responses from medical staff. Kazuko C., who was in her late 70s when she was in prison and released in 2018, said:

[M]y body itched all over, but when I showed it to the doctor, I was told it would heal itself. It went untreated for over a year.... We only received headache medicine once a week. Once we used it, even if our head hurt, they wouldn't listen to our complaints. ...When I had constipation, the guards just didn't give me food for three days. I begged the guards for food, but they didn't serve me any.¹²⁶

A formerly imprisoned woman, Kei O., who spent nearly two decades in prison and was released in 2019, said:

I had a herniated disc, but even after I told them my back hurt, they just told me to rest for a week, with no proper health check-ups. They just gave me medicine and told me to sleep it off for a week. Fortunately, the pain went away after a while, but I thought it was a problem they didn't check it.¹²⁷

Other imprisoned women say they were not taken seriously by doctors. Eiko R., who has been imprisoned nine times, said:

I told them my head hurt as if it was going to crack open, and the doctor asked me, "Have you ever had your head cracked open?" When I told the doctor that my tooth hurt, he told me, "You're in here for drugs, right? I've never done drugs. I also like toothaches; it makes me feel alive." Doesn't he sound so aggressive? I still can't forget that.¹²⁸

¹²⁶ Human Rights Watch Interview with Kazuko C., a formerly imprisoned woman, location withheld by Human Rights Watch, February 9, 2019.

¹²⁷ Human Rights Watch Interview with Kei O., a formerly imprisoned woman location withheld by Human Rights Watch, March 12, 2019.

¹²⁸ Human Rights Watch interview with Eiko R., a formerly imprisoned woman, location withheld by Human Rights Watch, February 13, 2019.

Rule 27 of the Mandela Rules provides that “all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.”¹²⁹ Atsuko N., a formerly imprisoned woman who was released in 2018, said:

There was a woman who previously had breast cancer, and she noticed a lump again, so she requested a check-up, but she was told to get it diagnosed outside because the end of her prison term was near. Why would they do that to someone who had cancer?¹³⁰

Prison doctors left some imprisoned women’s illnesses untreated. Mari L., who was released in 2019, said:

I found out a few years ago that I have primary ovarian dysfunction, but right after I found out I was arrested, so I haven’t received any treatment for it.... I’ve been talking about it since my time in the detention center so I’m certain the prison knew. Everyone would tell me I wouldn’t get any medication in prison because I never got any inside the detention center. I did ask at first, but they [the prison staff] didn’t do anything, so I became emotionally unstable. I didn’t get any medication [for ovarian dysfunction], so my emotional ups and downs were intense, but I was able to calm down when I was working. When there wasn’t any work, I would cry suddenly, or hurt myself.¹³¹

Rule 27 of the Mandela Rules states that “clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.”¹³² However, prison guards can also exercise control in some cases over who

¹²⁹ The Mandela Rules, rule 27.

¹³⁰ Human Rights Watch interview with Atsuko N., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

¹³¹ Human Rights Watch Interview with Mari L., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

¹³² The Mandela Rules, rule 27.

can receive medical care, despite their lack of medical expertise, and penology experts told Human Rights Watch that guards may use that control in abusive or harmful ways.¹³³

Kazumasa Akaike, a professor at Ryukoku University and an expert in prison health care, told Human Rights Watch:

Under the Medical Practitioners' Act, doctors cannot deny medical check-ups to patients who request one, and that only doctors can decide whether the patient needs medical treatment as well as the content of the treatment. In a closed environment like a prison, people who are not doctors such as prison guards, even if they happened to be assistant nurses, operate on their own discretion, on a much looser level. Since they're not doctors, and they don't have the knowledge, at times they de-prioritize patients who have serious conditions.¹³⁴

Barriers to Adequate Mental Health Care

Rule 12 of the Bangkok Rules states that “individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for imprisoned women with mental health-care needs in prison or in noncustodial settings.”¹³⁵

In addition, rule 25 of the Mandela Rules provides that “every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.”¹³⁶

However, imprisoned women in Japan are also confronted with inadequate mental health services. For instance, prison guards deny some imprisoned people communication with their therapist. Masami F., who served more than one year in the Tokyo Detention Center and had been receiving counselling before being imprisoned, said: “I was talking to a

¹³³ Human Rights Watch interview with Prof. Kazumasa Akaike of Ryukoku University, Kyoto, November 20, 2019.

¹³⁴ Ibid.

¹³⁵ The Bangkok Rules, rule 12.

¹³⁶ The Mandela Rules, rule 25.

prison guard, and I said I wanted to write to my therapist, but they didn't let me. I asked why, and they said it's a rule that restricts prisoners from writing letters if they haven't received one first."¹³⁷

Other formerly imprisoned people say the atmosphere behind prison walls is not understanding of the need for mental health services. Mariko M., a formerly imprisoned woman who was released in 2022 and has an intellectual disability, said:

There was no counseling provided inside. It's not an environment where we can ask for counseling, because they don't treat us like human beings at all. "We don't care about what you have to say, we don't care if you die," is the energy they [prison officials] give off ... prisoners are human beings too. It's true that we broke the rules, and we did bad things, but we're also human beings, so we have our concerns. We want them to listen to us.¹³⁸

Even when mental health services are available, imprisoned people are often left uninformed about such services. Kimiko H., a formerly imprisoned woman who was released from prison in 2018, said: "I never received counselling, but I wanted to. I didn't understand how to apply for it though. The prisoners who were receiving counselling told me the prison guards asked them to get counseling, but I was never told that by the guards."¹³⁹

Some imprisoned people also face long waiting periods to access mental health services. Megumi W., a formerly imprisoned woman who was on provisional release at the time of the interview, said:

I'm currently getting counselling [after prison]. I'm receiving treatment for PTSD and depression caused by family issues during my childhood. Since I was a child, I could feel there was something wrong with me, but I always

¹³⁷ Human Rights Watch interview with Masami F., a formerly imprisoned woman, location withheld by Human Rights Watch, October 25, 2019.

¹³⁸ Human Rights Watch interview with Mariko M., a formerly imprisoned woman, location withheld by Human Rights Watch, December 13, 2022.

¹³⁹ Human Rights Watch interview with Kimiko H., a formerly imprisoned woman, location withheld by Human Rights Watch, December 19, 2018.

thought I was overthinking it. I was strongly advised [to seek care] by a prison guard, so that's why I'm going now. I didn't receive any treatment inside prison.... I think there was counseling there, but it took some time to register, around a few months after applying. Many people around me were receiving counseling, so it took a long time.¹⁴⁰

Rule 35 of the Bangkok Rules states that “prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among imprisoned women and to offer assistance by providing support and referring such cases to specialists.”¹⁴¹ However, some women in prison described both guards and healthcare staff as being uncaring toward imprisoned women with psychosocial disabilities (mental health conditions). Naoko G., a formerly imprisoned woman who said she struggles to manage the after-effects of past trauma, said:

I wanted tranquilizers, and I also needed headache medicine, but if it's bad they [guards and doctors] will just have me rest, so I told them, “I'm okay.” When I told the doctor, I wanted to tell them something, the prison guard said, “We're not going to listen to you,” and kicked me out.... [The doctor] doesn't look at anything, saying, “Oh that's fine,” or “We can't look at that here” so indifferently.¹⁴²

Covid-19 Pandemic

Since the number of people infected with Covid-19 skyrocketed in Japan in early 2020, the Ministry of Justice took steps to contain the spread of infection at penal institutions, including the establishment of a taskforce led by the then-vice justice minister.¹⁴³

Specific steps included Sapporo prison reportedly quarantining newly admitted people for at least one week in a different building before housing them with other prisoners. The

¹⁴⁰ Human Rights Watch interview with Megumi W., a formerly imprisoned woman, location withheld by Human Rights Watch, December 19, 2018.

¹⁴¹ The Bangkok Rules, Rule 35.

¹⁴² Human Rights Watch interview with Naoko G., a formerly imprisoned woman, location withheld by Human Rights Watch, April 23, 2019.

¹⁴³ Ministry of Justice, “Meeting by the task force on preventing the spread of infection at penal institutions,” April 13, 2020, <https://www.moj.go.jp/content/001319668.pdf>

Ministry of Justice also restricted visitation to penal institutions during the Japanese government's state of emergencies, allowing only "lawyers, etc." to visit people in prison.

By February 2023, there were no restrictions placed on visitations at any penal institutions, other than masking, hand sanitizing, and other basic Covid-19-related requirements laid out by the taskforce.

On April 23, 2020, Human Rights Watch wrote to then-Justice Minister Masako Mori, raising the issues documented in this report including the large number of imprisoned older women and access to medical care within penal institutions. Human Rights Watch urged that the Japanese government 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."¹⁴⁴

The Ministry of Justice did not respond to Human Rights Watch's recommendations, nor is Human Rights Watch aware of any early releases of imprisoned people in consideration of Covid-19.

¹⁴⁴ Human Rights Watch, "Japan: Protect Prisoners, Staff from Covid-19," April 23, 2020, <https://www.hrw.org/news/2020/04/22/japan-protect-prisoners-staff-covid-19>.

III. Abusive Policies

Lack of Measures to Reduce Use of Imprisonment

International best practices encourage governments to adopt “non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.”¹⁴⁵

Lack of Measures to Reduce Use of Imprisonment for Repeat Offenders during Sentencing

Japan currently uses some alternatives to imprisonment, including monetary fines and the whole or partial suspension of prison sentences with or without probation.

In 2021, Japanese judges punished 78 percent of cases in which a guilty verdict was handed down with monetary fines.¹⁴⁶ In the same year, 62 percent of cases with sentences of imprisonment with labor, and 98 percent of cases with sentences of imprisonment, were wholly suspended.¹⁴⁷

Under article 25 of Japan’s penal code, prosecutors can suspend sentences for first-time offenders who meet the criteria.¹⁴⁸ Since 2016, judges can also partially suspend prison sentences, including for repeat offenders with a pattern of substance-related offenses.¹⁴⁹

However, when monetary fines and sentence suspensions are not an option, judges are not equipped with other forms of alternative sentencing, such as verbal warnings,

¹⁴⁵ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted December 14, 1990, G.A. Res. 45/110.

¹⁴⁶ Justice Ministry, Corrections Bureau, “Graph 2-3-2-1,” undated, <https://hakusyo1.moj.go.jp/jp/69/nfm/images/full/h2-3-2-1.jpg> (accessed March 10, 2023)

¹⁴⁷ Ibid.

¹⁴⁸ See Japanese Law Translation of the Penal Code, article 25 <https://www.japaneselawtranslation.go.jp/ja/laws/view/3581> (accessed March 10, 2023).

¹⁴⁹ National Center for Addiction Services Administration, “On partial suspension of sentences given to people who committed crimes including those related to drug use,” Undated, <https://www.ncasa-japan.jp/policy/suspended> (accessed November 21, 2019).

community service orders, and house arrest, which are listed in the Standard Minimum Rules for Noncustodial Measures (The Tokyo Rules).¹⁵⁰

Without other options for alternative to imprisonment, Japanese judges have no choice but to send repeat offenders to prison who are not eligible for whole or partial sentence suspension.

What is Alternative Sentencing?

Globally, alternative sentencing is a best practice for reducing imprisonment rates by giving people alternatives to imprisonment, such as suspended or deferred sentences, and probation.

In 1990, the United Nations General Assembly adopted Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules). These contain a section on sentencing dispositions, which states: “The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.”

The section lists the following sentencing options: (a) verbal sanctions, such as admonition, reprimand and warning; (b) conditional discharge; (c) status penalties; (d) economic sanctions and monetary penalties, such as fines and day-fines; (e) confiscation or an expropriation order; (f) restitution to the victim or a compensation order; (g) suspended or deferred sentence; (h) probation and judicial supervision; (i) a community service order; (j) referral to an attendance center; (k) house arrest; (l) any other mode of non-institutional treatment; (m) some combination of the measures listed above.

Countries around the world have worked to end unnecessary use of imprisonment by implementing alternative sentencing measures. In Northern Ireland, for example,

¹⁵⁰ The Tokyo Rules.

offenders are sometimes sentenced to community service for at least 40 hours.¹⁵¹ In Sweden, offenders can opt for an intensive monitoring by an electronic device as an alternative to a prison sentence of up to three months.¹⁵²

Inadequate Use of Sentence Suspension after Sentencing

Japan's prosecutors do not adequately employ existing options to reduce imprisonment for specific categories of people in prison, including some provisions specifically aimed at assisting women.

Article 482 of the Code of Criminal Procedure allows prosecutors to suspend a sentence based on reasons including, but not limited to, pregnancy, family responsibilities, age, and health.¹⁵³ However, Human Rights Watch research indicates this legal provision is almost never used and it is highly unlikely that a person's sentence is suspended after they are sent to prison.

For example, only 11 imprisoned women had their sentences suspended between 2018 and 2022.¹⁵⁴ That figure also includes sentences suspended under article 480 of the Code of

¹⁵¹ Nidirect, Northern Ireland, "Non-custodial sentences," Undated, <https://www.nidirect.gov.uk/articles/non-custodial-sentences> (accessed April 1, 2020).

¹⁵² Swedish Prison and Probation Service, Swedish Government, "Sanctions," Undated, <https://www.kriminalvarden.se/swedish-prison-and-probation-service/sanctions/> (accessed April 1, 2020).

¹⁵³ Article 482 allows public prosecutors to suspend a sentence under these circumstances:

- (i) Execution of the sentence is likely to damage the health of the person or it is feared that the person would not be able to survive its execution;
- (ii) The person is 70 years of age or older;
- (iii) The person is 150 days pregnant or more;
- (iv) It is less than 60 days since the person gave birth;
- (v) It is feared that irrevocable harm will be caused due to execution of the sentence.
- (vi) The 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) The person's child or grandchild is young and there are no other relatives who can take care of him/her; or
- (viii) There are other significant reasons.

¹⁵⁴ Correction Bureau Statistical Research, Justice Ministry, "The Reasons for Going In and Out of Prisons Per Facility," July 31, 2023, <https://www.e-stat.go.jp/stat-search/file-download?statInflId=000040081397&fileKind=4> (accessed September 22, 2023).

Criminal Procedure, which allows prosecutors to suspend a person’s sentence if the individual is determined to be in a “state of insanity.”¹⁵⁵

Women are specifically eligible for sentence suspension under a provision of article 482 applicable in the event of pregnancy, but as discussed in the following section, this provision is almost never used. In Japan, women are more likely than men to be primary caregivers for children and others, yet such caregiving responsibilities are apparently rarely considered when determining sentences.¹⁵⁶

Prosecutors Failure to Use Authority to Suspend Imprisonment of Mothers

Imprisoned women often do not benefit from a provision in the law that could grant them suspended sentences based on their status as caregivers to children. Article 482 of the Code of Criminal Procedure allows public prosecutors to suspend sentences depending on the defendant’s circumstances, including pregnancy and being the sole caregiver for young children.¹⁵⁷

However, Human Rights Watch research indicates women with young children often do not know about this provision; and public prosecutors rarely invoke it.

Article 482 allows public prosecutors to suspend a sentence under the following circumstances:

- (i) The person is 150 days pregnant or more;
- (ii) It is less than 60 days since the person gave birth;
- (iii) It is feared that irrevocable harm will be caused due to execution of the sentence;
- (iv) The person's child or grandchild is young and there are no other relatives who can take care of them; or
- (v) There are other significant reasons.¹⁵⁸

¹⁵⁵ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Code of Criminal Procedure (Part III ~),” Undated, https://www.japaneselawtranslation.go.jp/en/laws/view/3740#je_pt5at12 (accessed January 24, 2023).

¹⁵⁶ Mao Saito, “Current Issues regarding Family Caregiving and Gender Equality in Japan: Male Caregivers and the Interplay between Caregiving and Masculinities,” *Japan Labor Review*, vol. 14 (2017), p. 92.

¹⁵⁷ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Code of Criminal Procedure,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/3740> (accessed December 6, 2019).

¹⁵⁸ Specific reasons are not spelled out by the law.

Narumi I., a formerly imprisoned woman who has more than five children, was arrested in 2015 for offenses including theft and sentenced to about three years in prison. She told Human Rights Watch that she was never informed about article 482:

After I was arrested, my husband and my parents were taking care of our children, but he was in an accident and was in a coma, so the kids had to go to an institution.¹⁵⁹

At the time, Narumi's youngest child was less than a year old.

Hiroko Kotake, a criminal defense lawyer who has previously invoked article 482, said:

[The law is] basically never discussed. I've used the, "It is feared that irrevocable harm will be caused due to execution of the sentence" bit before. There was another person who wanted to attend their parent's funeral. Both requests were rejected [by prosecutors].... Maybe many lawyers believe their role is done once the sentence is handed down.¹⁶⁰

Teppei Ono, a criminal defense lawyer, said this law is rarely used because it is designed to be invoked after a person's sentence has been given and confirmed, and by that time, they do not have legal representation through a lawyer.¹⁶¹

Criminalization of Personal Possession and Use of Drugs and the Lack of Voluntary Treatment for People with Substance Use Disorder

Japan's criminal laws impose tough punishments for possession and use of drugs. Possession of marijuana, and the possession and use of other drugs including cocaine, heroin, LSD, and MDMA are criminalized.¹⁶² Sentences for these offenses range from imprisonment with labor not exceeding five years for possession of marijuana to

¹⁵⁹ Human Rights Watch interview with Narumi I., a formerly imprisoned woman, location withheld by Human Rights Watch, March 14, 2019. Human Rights Watch also withheld Narumi's exact number of children, to prevent identification.

¹⁶⁰ Human Rights Watch interview with Hiroko Kotake, a criminal defense lawyer, Tokyo, August 27, 2019.

¹⁶¹ Human Rights Watch interview with Tepei Ono, a criminal defense lawyer, Aichi prefecture, October 28, 2019.

¹⁶² Possession and use of stimulant drugs such as methamphetamine and amphetamine are criminalized under the Stimulants Control Act. Possession of marijuana is sanctioned by the Cannabis Control Act, and the possession and use of drugs such as cocaine are criminalized under the Narcotics and Psychotropics Control Act.

imprisonment with labor not exceeding 10 years for possession of stimulants.¹⁶³ Sale of drugs incurs even harsher penalties: sale of marijuana is punishable by imprisonment with labor not exceeding 10 years or a fine of no more than 3,000,000 yen (US\$22,000), while the sale of stimulants can incur a sentence between one to twenty years.¹⁶⁴

Drug crimes involving stimulants are the second most common crime among women entering Japanese prisons today. A survey in 2017 showed that 93 percent of 699 imprisoned men and women revealed they have been imprisoned multiple times for drug crimes involving stimulants.¹⁶⁵ Ministry of Justice figures also show nearly 60 percent of women who were imprisoned in 2021 were repeat offenders of the Stimulants Control Act.¹⁶⁶

To address the large number of women being admitted into prison for drug-related offenses, the Ministry of Justice currently provides a relapse prevention program in all prisons.¹⁶⁷ The program consists of a core curriculum, which requires participants to watch a DVD about substance dependency, and a workbook based on the DVD. Beyond the core curriculum, there is another program which involves having participants understand external and internal triggers that led them to drug use, and risk of relapse. Other specific programs are available, including group work with an education specialist, a meeting with private support groups, accessing additional DVD materials, and individual counselling interviews.¹⁶⁸

However, some formerly imprisoned women said they were effectively forced to participate in such sessions. Toshiko S., a formerly imprisoned woman who spent two years in prison

¹⁶³ Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Cannabis Control Act,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/2594/en> (accessed December 10, 2019), and Japanese Law Translation Project at the Ministry of Justice, Justice Ministry, “Stimulants Control Act,” undated, <https://www.japaneselawtranslation.go.jp/en/laws/view/2814> (accessed December 10, 2019).

¹⁶⁴ Ibid.

¹⁶⁵ 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).

¹⁶⁶ Corrections Bureau, Ministry of Justice, “Graph 4-2-3-4,” undated, <https://hakusy01.moj.go.jp/jp/69/nfm/excel/4-2-3-4.xlsx> (accessed October 3, 2023).

¹⁶⁷ Ministry of Health, Labour, and Welfare, “Narcotics Addiction Withdrawal Guidance,” Undated, https://www.mhlw.go.jp/seisakunitsuite/bunya/kenkou_iryuu/iyakuhin/yakubutsuranyou_taisaku/kaigi/zenkoku_h29/dl/s5-2.pdf (accessed November 21, 2019).

¹⁶⁸ Ministry of Health, Labour, and Welfare, “Narcotics Addiction Withdrawal Guidance,” Undated, https://www.mhlw.go.jp/seisakunitsuite/bunya/kenkou_iryuu/iyakuhin/yakubutsuranyou_taisaku/kaigi/zenkoku_h29/dl/s5-2.pdf (accessed December 9, 2019).

for drug-related offenses and was released in 2019, said: “I was in a narcotics program. That was hard. I was also part of the program before, and the time before that, and I hated it, because they chose me, without me volunteering, and forced me to participate.”¹⁶⁹

Imprisoned women who have substance use disorders often have histories of trauma, including family violence.¹⁷⁰ Ministry of Justice research examining imprisoned people’s motivation to use drugs found that imprisoned women most frequently used drugs to “forget about bad things,” compared to men who most said they do it “for pleasure.”¹⁷¹ Junko T., a formerly imprisoned woman who has been to prison more than three times for drug-related offenses, said:

I was horribly abused by my [step] mother.... She was young, and she didn’t expect my father to have a daughter like me who looks like her birth mother. Everyone else talked about similar experiences at Narcotics Anonymous, about their boyfriend’s domestic violence and other forms of abuse.... I was lonely, and I wanted to be loved.... When I did drugs, I could forgive my [step] mother for abusing me because I was doing something much worse than what she did to me. I would tell her, “Mom, I did drugs,” and she would tell me, “Please take care of your body,” and that would make me so happy.¹⁷²

Harsh punishment for drug possession and use, lack of access to mental health services and histories of trauma among imprisoned women come together to fuel recidivism among women with substance use disorders. Toshihiko Matsumoto, a psychologist and an expert on drug dependency, told Human Rights Watch:

¹⁶⁹ Human Rights Watch interview with Toshiko S., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

¹⁷⁰ 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).

¹⁷¹ Correction Bureau, Justice Ministry, “2016 Version White Paper on Crime,” Undated, http://hakusyo1.moj.go.jp/jp/63/nfm/n63_2_5_2_5_2.html (accessed November 21, 2019).

¹⁷² Human Rights Watch interview with Junko T., a formerly imprisoned woman, location withheld by Human Rights Watch, January 23, 2019.

[Some women] use drugs to ease their trauma from childhood abuse and post-traumatic stress disorder...they use drugs under very difficult circumstances, but that is seen as a crime, and they are put in prisons. They are punished, but no options are provided to deal with the internal trauma. Under this sort of system, the situation will only continue to worsen.¹⁷³

Barriers to Maintaining Community Ties

For imprisoned people, restrictions on visits and other forms of contact with people outside the prison make it hard for them to maintain community ties. Women suffer disproportionately because the smaller number of women's prisons often means they are imprisoned in facilities further from their families.¹⁷⁴

Rule 4 of the Bangkok Rules provides that “women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.”¹⁷⁵ Rule 59 of the Mandela Rules also states that “prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.”¹⁷⁶

However, imprisoned people typically do not choose the prison in which they are housed. Mariko M., a formerly imprisoned woman who was released in 2022, said her family could not visit her because she was imprisoned at Fukushima prison women's branch, far from home.

No one visited me. My dad said it would be too expensive to visit Fukushima. At the detention center [before being sent to Fukushima prison

¹⁷³ Human Rights Watch interview with Toshihiko Matsumoto, a psychiatrist, Tokyo, Japan, July 4, 2018.

¹⁷⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf(2018)5, <https://rm.coe.int/168077ff14> (accessed February 3, 2020), para. 4.

¹⁷⁵ The Bangkok Rules, rule 4.

¹⁷⁶ The Mandela Rules, rule 59.

women’s branch], the officials just told me, “You’re going here” and I was sent there on very same day.¹⁷⁷

Imprisoned people are allowed a limited number of visits from relatives, friends, and lawyers in cases where the prison recognizes the necessity of the visit. Depending on their ranking (one to five, with one being the highest rank), which is based partly on conduct, imprisoned women can have visitors at least twice a month. Each visit is supposed to last 30 minutes or more, and visits are usually permitted only on weekdays. Visitation rooms generally have an acrylic or glass partition separating the imprisoned person from the visitor, but depending on their rank, some prisoners can have visits without partitions.

Allowing people in prison to maintain contact with the outside world, including family and friends, on a regular basis is crucial for the imprisoned person’s physical and mental health, as well as for their successful reintegration into society when they are released.

Rule 58 of the Mandela Rules states that “prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

- (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
- (b) By receiving visits.”¹⁷⁸

However, there are usually no special arrangements for children visiting their parents in prison, and parents struggle with seeing their children under difficult conditions. Etsuko U., a formerly imprisoned woman who was released in 2016, said:

They [my child and relatives] came once for about 30 minutes when I was 24. Back then, Tochigi prison’s visitation rooms didn’t have any glass partitions, and it was like a little home with tatami-floors. I was even able to touch my daughter...[But] afterwards, the rooms had glass partitions, so [my relatives] stopped bringing my child [because it looked like a prison].¹⁷⁹

¹⁷⁷ Human Rights Watch interview with Mariko M., a formerly imprisoned woman, location withheld by Human Rights Watch, December 13, 2022.

¹⁷⁸ The Mandela Rules, rule 58.

¹⁷⁹ Human Rights Watch interview with Etsuko U., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

Since visits are typically available only on weekdays, children of imprisoned people are often forced to choose between seeing their mother or missing school. Kei O., a formerly imprisoned woman who was released in 2019, told Human Rights Watch: “In the beginning, they [her child] came to visit quite often, once in three months or so.... I think they [her child] came during the weekdays and skipped [school].”¹⁸⁰

Women can only see their young children if someone is willing to bring their children to visit at the prison. Atsuko N., a formerly imprisoned woman who was released in 2018, said:

My mother used to visit me when she was still alive. She passed away during my imprisonment. I didn’t see my child until he was in middle school. That’s when they [her son’s middle school teacher] started bringing him to see me. He was 3 years old when we were separated.¹⁸¹

Older women also face challenges in maintaining community ties because if they are repeat offenders, their family members often shun them. In other cases, older relatives pass away while the woman is in prison. Hiromi T., a formerly imprisoned woman in her 80s who spent about three years in prison for theft and was released in 2018, said:

My husband was already ill when I entered prison. He did visit me at the police station and the detention center.... After I entered prison, my husband passed away. The guards never told me. When I was about to be released, the guards asked if I’m going home by airplane, so I told them my husband is coming to get me. They told me he died about a year-and-a half after my imprisonment. I was shocked.¹⁸²

In addition to visits, people in prison are also allowed to receive an unlimited number of letters. Imprisoned people can write a restricted number of letters, depending on their

¹⁸⁰ Human Rights Watch interview with Kei O., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

¹⁸¹ Human Rights Watch interview with Atsuko N., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

¹⁸² Human Rights Watch interview with Hiromi T., a formerly imprisoned woman, location withheld by Human Rights Watch, November 13, 2018.

prison ranking; the content of their letters is inspected by the guards before being mailed.¹⁸³ Imprisoned people can receive gifts such as cash, daily amenities, and books/magazines, if the prison does not deem the items or the sender inappropriate for the correctional purposes of the person in prison.¹⁸⁴

There is no internet access. Phone calls are available for some imprisoned people with a high ranking but are governed by strict procedures, which can hinder imprisoned women's efforts to maintain contact with the outside world. A formerly imprisoned woman, Kei O., said:

You need to first buy a prepaid telephone card and reserve the date when you'll be making the call, so it takes at least two weeks. I called my mother, and while I was talking to her, my son was next to her, so he got on the phone, but because I never registered his name, I was verbally reprimanded.¹⁸⁵

Current mail procedures, including return addresses, make it easy to identify letters sent by people in prison and cause some formerly imprisoned women to feel reluctant to write to their family. This is connected to stigma felt by imprisoned people, and fear of creating shame for their family. Toshiko S., a formerly imprisoned woman, said:

I wanted to write letters to my daughter more. My daughter is living at a company dorm, so all the letters would arrive at her office. I didn't want her company to know my address, so I hesitated, and instead I chose to ask my friend to pass on my messages to my daughter.¹⁸⁶

Losing ties to the community is not only emotionally painful and distressing for imprisoned women but can also have a direct impact on their ability to successfully reintegrate into

¹⁸³ Justice Ministry, "For people hoping to communicate with prisoners via mail and visitations," undated, http://www.moj.go.jp/kyousei1/kyousei_kyouse37.html#1 (accessed November 22, 2019).

¹⁸⁴ Ibid.

¹⁸⁵ Human Rights Watch interview with Kei O., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

¹⁸⁶ Human Rights Watch interview with Toshiko S., a formerly imprisoned woman, location withheld by Human Rights Watch, March 12, 2019.

society. Yasuko Y., a formerly imprisoned woman in her late 60s who went to prison four times for theft, said:

I have a daughter and a grandchild, and I've been writing to them the whole time, but I haven't received a reply. My daughter was my guarantor the first and second time, but not this time.¹⁸⁷

Barriers to People in Prison Successfully Reentering the Community

Once they are out of prison, many formerly imprisoned women face social stigma due to their history of imprisonment, making it difficult for them to find employment or a place to live.

Chisako Y., a formerly imprisoned woman who was released from prison in 2018 after about three years, said:

What I hated the most was seeing my husband and my children being blamed [for what I did], which I wouldn't have minded if it was me being criticized instead.... It's okay if they said it directly to me, but why did they blame my children? It was so difficult to see my husband and my children being told such things. I wanted to talk about this with my family, but I didn't want to cry in front of them.¹⁸⁸

Many imprisoned women, despite working full time for months or years in prison, are released with very little money and struggle to meet their basic needs for food, transportation, and shelter. Hanae M., a formerly imprisoned woman who was imprisoned in two different prisons for theft and drug related offenses, said:

I got out just like that [from the first prison], but basically, I had no possessions. [The prison] didn't provide me with transportation fees, so I basically used all the money I earned working inside the prison for transportation. I was in a vulnerable situation, as I didn't have any money,

¹⁸⁷ Human Rights Watch interview with Yasuko Y., a formerly imprisoned woman, location withheld by Human Rights Watch, February 18, 2019.

¹⁸⁸ Human Rights Watch interview with Chisako Y., a formerly imprisoned woman, location withheld by Human Rights Watch, February 13, 2019.

so I began stealing. When I left prison, I had about \$250. I used everything for my flight home. When I entered prison again I had almost nothing.¹⁸⁹

Older women are particularly at risk at the time of release and receive little or no assistance. Yoko U., a formerly imprisoned woman who was released in 2019, said:

The prison guards told me, “She’s old so please take her with you.” She has children but she doesn’t have their contact information. She has limited hearing, so I had to raise my voice when I talked to her. If she were to walk out into the street and get run over, it would become my fault. I want the government to take care of something like this.¹⁹⁰

Lack of Effective Independent Oversight of Prisons

Japan’s prison system lacks robust mechanisms that could provide opportunities for women experiencing abuse in prison to seek help, ensure accountability, and drive reform.

In 2006, when Japan replaced its nearly 100-year-old Prison Law with the updated Law Concerning the Treatment of Inmates, the new law established a Penal Institution Visiting Committee (PIVC) to provide oversight of the prison system. The PIVC consists of up to 10 people, and includes experts from the fields of law, medicine, and government.

PIVC members are responsible for monitoring conditions in penal institutions, including prisons and juvenile detention centers, through visits and interviews with inmates.¹⁹¹ The PIVC also places opinion boxes in each penal institution, allowing imprisoned people to submit comments and complaints on paper, which are conveyed to the committee.¹⁹² The committee has the power to make recommendations to the head of penal institutions, such as prison wardens.¹⁹³

¹⁸⁹ Human Rights Watch interview with Hanae M., a formerly imprisoned woman, location withheld by Human Rights Watch, February 14, 2019.

¹⁹⁰ Human Rights Watch interview with Yoko U., a formerly imprisoned woman, location withheld by Human Rights Watch, July 18, 2019.

¹⁹¹ Japan Federation of Bar Associations, “Information for Prison Inmates,” November 2016, https://www.nichibenren.or.jp/library/ja/legal_aid/on-duty_lawyer/data/jyukeisha_jp4.pdf (accessed November 22, 2019) p. 27.

¹⁹² *Ibid.*, p. 28.

¹⁹³ *Ibid.*

The complaint mechanism is technically available to all imprisoned people, but often they either are not aware of it or do not trust it. Maki F., a formerly imprisoned woman, said:

I did see an opinion box, but I was never told about it by the guards. I didn't see anyone submit anything either. They'll be able to tell who wrote it by the handwriting. It's not good to be singled out [by the guards] for writing it.¹⁹⁴

The lack of appropriate explanation by prison guards about the complaint mechanism conflicts with rule 54(b) of the Mandela Rules, which states that:

Upon admission, every prisoner shall be promptly provided with written information about: (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints.¹⁹⁵

Other formerly imprisoned women told Human Rights Watch the guards did explain to them the details of the complaint mechanism, but the opinion box was placed in an inaccessible location. Hiroko J., a formerly imprisoned woman, said:

When I entered prison, they did explain it to me once, but when we walk to the workshops, we're not allowed to deviate from our path, so even if there is an opinion box, it's not a situation in which we can just say we want to submit something. We're not allowed to submit anything while we work, either.¹⁹⁶

The confidentiality of the imprisoned person is also not guaranteed. Ai Y., a formerly imprisoned woman who was on provisional release at the time of the interview, said:

¹⁹⁴ Human Rights Watch interview with Maki F., a formerly imprisoned woman, location withheld by Human Rights Watch, January 31, 2019.

¹⁹⁵ The Mandela Rules, rule 54(b).

¹⁹⁶ Human Rights Watch interview Hiroko J., a formerly imprisoned woman, location withheld by Human Rights Watch, November 21, 2018.

[The opinion box] was by a door, in the space between our rooms and the workshops....There's always a prison guard there. We [have to] get the paper [to write complaints] from the guards.¹⁹⁷

The lack of confidentiality conflicts with rule 57(2) of the Mandela Rules, which states that “safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner.”¹⁹⁸

The problem of imprisoned people not having confidentiality and privacy secured when submitting complaints is an issue that has been raised by the Japan Federation of Bar Associations as early as 2009.¹⁹⁹ The PIVC has suggested reforms to make opinion boxes more accessible to people in prison, including placing the boxes in accessible areas of the prison such as an indoor exercise facility, and distributing paper forms to all imprisoned people.²⁰⁰

¹⁹⁷ Human Rights Watch Interview with Ai Y., a formerly imprisoned woman, location withheld by Human Rights Watch, September 22, 2019.

¹⁹⁸ The Mandela Rules, rule 57(2).

¹⁹⁹ Japan Federation of Bar Associations, “Recommendation Letter,” September 17, 2009, <https://www.nichibenren.or.jp/document/opinion/year/2009/090917.html> (accessed February 10, 2020).

²⁰⁰ Japan Federation of Bar Associations, “For the Improvement of the Penal Institution Visiting Committee’s activities,” <https://www.nichibenren.or.jp/library/ja/publication/booklet/data/keijishisetsuiinkai.pdf> (accessed October 18, 2023).

IV. Applicable International Law and Standards

Japan is a party to the core international human rights conventions. Issues concerning criminal justice and the treatment of imprisoned people are found primarily in United Nations treaties such as the International Covenant on Civil and Political Rights (ICCPR)²⁰¹ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²⁰² and various international standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).²⁰³ Many of Japan's current justice system and prison practices violate provisions of these conventions or contravene these standards.

The Standard Minimum Rules for the Treatment of Prisoners is the core international instrument that sets out guidelines for governments to protect imprisoned people's human rights in detention or prison. Adopted in 1955 by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, the rules were approved by the UN Economic and Social Council in July 1957. They were revised in a five-year review process, and the UN General Assembly adopted the updated rules, now known as the Mandela Rules, in December 2015.²⁰⁴

In addition to the Mandela Rules are the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)²⁰⁵ and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).²⁰⁶

The Tokyo Rules promote the adoption by governments of alternatives to imprisonment for the benefit of both offenders and society at large. The Bangkok Rules were adopted in

²⁰¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A, entered into force March 23, 1976. Japan ratified on June 21, 1979.

²⁰² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, entered into force June 26, 1987. Japan ratified on June 29, 1999.

²⁰³ The Bangkok Rules.

²⁰⁴ Ibid.

²⁰⁵ The Tokyo Rules.

²⁰⁶ The Bangkok Rules.

2010 to supplement the Standard Minimum Rules for the Treatment of Prisoners, as the latter “did not...draw sufficient attention to women’s particular needs.”²⁰⁷

Although the Mandela Rules, Tokyo Rules, and Bangkok Rules are not legally binding on states, they provide granular guidelines to governments on the treatment of imprisoned people in accordance with international norms and principles.

Alternatives to Imprisonment

The Japanese government has not met the standards on alternatives to imprisonment as set out in the Bangkok Rules.

Specifically, the Bangkok Rules at rule 58 states that “women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.”²⁰⁸

Research by Human Rights Watch found that the Japanese government excessively imprisons many people who committed non-violent crimes and suffer from substance use disorders, mental illness, are pregnant, or have young children.

Accessibility of Health Care for People in Prison

The highest attainable standard of physical and mental health is a human right enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁰⁹ and other treaties to which Japan is a party.

As a party to the ICESCR, Japan has a duty to provide imprisoned people with the highest attainable standard of physical and mental health. The UN Committee on Economic, Social and Cultural Rights, which oversees government compliance with the ICESCR, stated that

²⁰⁷ Ibid.

²⁰⁸ The Bangkok Rules, rule 58.

²⁰⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A, entered into force January 3, 1976. Japan ratified on June 21, 1979.

“[s]tates have the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, (...) to preventive, curative and palliative health services; abstain from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.”²¹⁰

The committee also stated that “health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.”²¹¹

The Mandela Rules at rule 24(1) states that “The provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”²¹²

Rule 27 states that “All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.”²¹³

The Committee on Economic, Social and Cultural Rights also stated that “all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.”

²¹⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 34.

²¹¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 12(d).

²¹² The Mandela Rules, rule 24 (1).

²¹³ The Mandela Rules, rule 27.

However, Human Rights Watch found that many imprisoned women face multiple hurdles accessing quality health care in prisons. Some are denied health care by prison guards; others are discouraged from seeking further medical advice by prison doctors. The low number of prison doctors also compounds these serious problems.

Prohibition of Discrimination in Health Care

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²¹⁴ at article 12 provides that states should “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services.”²¹⁵ As a party to the ICESCR, Japan should ensure that rights guaranteed under the covenant, including the right to health, are enjoyed without discrimination on grounds of sex.

Provision of Access to Gender-Specific Healthcare Services

The Bangkok Rules at rule 10 provides that “gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.”²¹⁶

In addition, rule 12 states that “individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs shall be made available for women prisoners with mental health care needs in prison or in noncustodial settings.”²¹⁷

Human Rights Watch research found that some imprisoned people are denied access to gender-specific healthcare services, including basic care such as access to sanitary products.

Provision of Access to Mental Health Services While in Prison

The Mandela Rules provide that “every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental

²¹⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on December 18, 1979, G.A. Res. 34/180, entered into force September 3, 1981. Japan ratified on June 25, 1985.

²¹⁵ CEDAW, art. 12 (1).

²¹⁶ The Bangkok Rules, rule 10.

²¹⁷ The Bangkok Rules, rule 12.

health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.”²¹⁸

The rules also provide that “the Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.”²¹⁹

Formerly imprisoned women in Japan described some mental health services as being inaccessible to imprisoned women with physical, mental, or other disabilities, partly due to a lack of accessible mental health services, as well as adequate care for older people in prison with physical limitations.

Provision of Access to Treatment for Substance Use Disorder

The Bangkok Rules at rule 15 provides that “prison health services shall provide or facilitate specialized treatment programs designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.”²²⁰

Rule 62 states that “the provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programs in the community and women’s access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.”²²¹

Currently, Japan’s prisons provide treatment for substance use disorders, but some imprisoned people said they were non-consensual, and did not sufficiently address past traumas, particularly those that are gender-based such as domestic violence and sexual abuse.

²¹⁸ The Mandela Rules, rule 25(1).

²¹⁹ The Mandela Rules, rule 5(1).

²²⁰ The Bangkok Rules, rule 15.

²²¹ The Bangkok Rules, rule 62.

Prohibition of Restraints on Imprisoned Women during Labor, Birth, Immediate Post-Birth

The Bangkok Rules at rule 24 states that “instruments of restraint shall never be used on women during labor, during birth and immediately after birth.”²²²

Japan has not met this international best practice, as Ministry of Justice officials told Human Rights Watch handcuffs have been generally used on imprisoned pregnant women before entering and after exiting delivery rooms.

Rights of Mothers and Their Children

The Convention on the Rights of the Child (CRC)²²³ at article 2 states that “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”²²⁴

Article 9 of the CRC is relevant for children left outside when a parent is imprisoned. The article states that “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”²²⁵

The UN Committee on the Rights of the Child recommended that “in sentencing parent(s) and primary caregivers, noncustodial sentences should, wherever possible, be issued in lieu of custodial sentences, including in the pre-trial and trial phase. Alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child(ren).”²²⁶

²²² The Bangkok Rules, rule 24.

²²³ Convention on the Rights of the Child (CRD), adopted November 20, 1989, G.A. Res. 44/25, entered into force September 2, 1990. Japan ratified on April 22, 1994.

²²⁴ CRC, art. 2(2).

²²⁵ CRC, art. 9(3).

²²⁶ UN Committee on the Rights of the Child, “Children of Incarcerated Parents,” General Discussion, (2011), para. 30.

The committee also recommended that “every child has the right to be with their parent as well as the right to family life and a social environment conducive to their development. In this context, the Committee recommends that decisions on whether the best interests of the child are better respected by having the child live with the incarcerated parent or outside the detention facility should always be made on an individual basis.” If children live with their imprisoned parents, the committee recommended that “state parties ensure the provision of sufficient social services at an adequate quality, including, health and educational facilities, to children living with incarcerated parent(s).”²²⁷

The Bangkok Rules at rule 50 provides that “women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.”²²⁸

Furthermore, rule 52 provides that “decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws,” and “after children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.”²²⁹

The committee also recommended that imprisoned people with children are held in a facility as near as possible to where the child lives. If the imprisonment results in the parent(s) being located far away from the child, the government should facilitate and/or subsidize travel related to children being able to visit their imprisoned parent.²³⁰

For child visits to parents, the committee recommended that “every prison has a child friendly environment available to prisoners for visits for their child outside of the detention center if appropriate, and during times that are not in conflict with other elements of the child’s life such as school.”²³¹

²²⁷ Ibid., para. 10.

²²⁸ The Bangkok Rules, rule 50.

²²⁹ The Bangkok Rules, rule 52.

²³⁰ UN Committee on the Rights of the Child, “Children of Incarcerated Parents,” para. 40.

²³¹ Ibid., para. 39.

Formerly imprisoned women told Human Rights Watch they could not see their children because they were housed in prisons far from their homes, and visitation hours were primarily limited to weekdays, meaning children would have to skip school to visit their parent in prison.

Human Rights Watch found instances in which imprisoned people in Japan were not informed of their right to request parenting their infant child in prison.

Rights of Older People in Prison

The UN Committee on Economic, Social and Cultural Rights has advised that “health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups” among which “older persons” is an included category of persons.”²³²

Research by Human Rights Watch found that many older people in prison in Japan lack access to adequate health care, and often having to deal with chronic pain or illnesses without appropriate medical treatment or advice.

The UN Office on Drugs and Crime (UNODC) advised that “most older prisoners can be better cared for in the community, within the framework of suitable non-custodial sanctions and measures, the age of offenders, their mental and physical health, prospects of receiving adequate care in prison should be take into account by sentencing authorities, to ensure that the sentence does not comprise a disproportionately harsh punishment.”²³³

The UNODC added that “the growth rate of older prisoners, the prospects for further increase, and human rights concerns relating to their treatment and care in prisons justify the development of special policies and strategies by prison services to address the special needs of this vulnerable group of prisoners.”²³⁴

²³² UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para. 12(b).

<https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>

²³³ UN Office on Drugs and Crime, “Handbook on Prisoners with special needs,” 2009, p. 124, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

²³⁴ Ibid.

The UN Human Rights Council’s independent expert on enjoyment of all human rights by older persons, Claudia Mahler, stated that “regardless of the reasons justifying their detention and the restriction of their personal liberty, older persons generally find themselves in situations that are detrimental to their human rights and that do not provide adequate safety and protection.”²³⁵ In the context of criminal detention of older people, the independent expert advised the following:

(a) States need to adopt age-sensitive policies and strategies in the criminal justice context to ensure respect for and protection of the human rights of older persons, in line with international and regional human rights standards regulating the deprivation of liberty²³⁶;

(b) Age-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured; older persons should have access to age-appropriate services and activities, including opportunities for lifelong learning and vocational training²³⁷;

(c) Appropriate health-care services for older persons should be provided to meet their individual needs, according to the principle of equality in health care; screening upon admission, transition and throughout the period of detention must be in place to identify the risks and specific needs of older detainees²³⁸;

(d) States should ensure that, when released, older persons have benefited from individualized pre-release programs designed for their specific needs and wishes, including access to medical and mental health care for longstanding, undertreated health conditions, housing solutions, access to pensions and financial support²³⁹;

(e) Intersectional factors should be given due consideration throughout all stages of the criminal justice process, especially when older persons have other

²³⁵ UN Human Rights Council, Older persons deprived of liberty, U.N. Doc. A/HRC/51/27 (2022), para. 84.

²³⁶ *Ibid.*, para. 88(a).

²³⁷ *Ibid.*, para. 88(b).

²³⁸ *Ibid.*, para. 88(c).

²³⁹ *Ibid.*, para. 88(d).

intersecting bases for discrimination, such as gender, disability, indigenous or ethnic identities; individual care plans should be created to ensure that older persons at higher risk of violence, ill-treatment and persecution are provided with security in detention, including older women, older lesbian, gay, bisexual, transgender and intersex persons and older persons belonging to ethnic, religious or indigenous groups²⁴⁰;

(f) States, via their judicial systems, should consider the necessity and proportionality of detaining older persons with complex health conditions and in need of palliative care; States should also examine the possibility of non-custodial alternatives at all stages of detention, including serving sentences in facilities where the needs of older persons would be addressed through or benefit from humanitarian or compassionate release.²⁴¹

Preservation of Community Ties and Access to Community Reintegration

The Bangkok Rules at rule 26 states that “women prisoners’ contact with their families, including their children, and their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.”²⁴²

Rule 28 states that “visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.”²⁴³

Rule 43 states that “prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.”²⁴⁴

²⁴⁰ Ibid., para. 88 (e).

²⁴¹ Ibid., para. 88 (f).

²⁴² The Bangkok Rules, rule 15.

²⁴³ The Bangkok Rules, rule 28.

²⁴⁴ The Bangkok Rules, rule 43.

Rule 15 provides that “disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.”

Rule 45 provides that “prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programs and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.”²⁴⁵

Rule 47 states that “additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community.”²⁴⁶

²⁴⁵ The Bangkok Rules, Rule 45.

²⁴⁶ The Bangkok Rules, Rule 47.

Recommendations

Recommendations for Japan's National Diet

- Revise article 9 of Japan's penal code on punishment by introducing types of punishments that do not require imprisonment, such as deferred sentences, orders to compel performance of community services, and referral to the probation office.
- Revise article 9 of the Code of Criminal Procedure to give judges the authority to provide alternatives to imprisonment.
- Revise laws to decriminalize personal possession and use of drugs; ensure repetition of similar conduct should not lead to criminal liability or other deprivation of liberty, unless other aggravated circumstances are present. Expand access to voluntary, community-based drug dependency treatment and ensure that such treatment is medically appropriate and comports with international standards.

Recommendations for the Ministry of Justice

Reduce Use of Imprisonment

- Draft legislation and support its passage in the Diet to create and increase access to alternatives to imprisonment.
- Seek to decriminalize low-level drug offenses, such as the personal possession and use of drugs.
- Develop and promulgate a policy to encourage prosecutors to use Criminal Procedure Code article 482 to allow imprisoned people to have their imprisonment suspended based on reasons such as pregnancy, family responsibilities, age, and health.
- Establish a policy to ensure that anyone who is potentially eligible for relief under Code of Criminal Procedure article 482 has information and legal assistance to request application of article 482 in their case.
- Significantly upgrade the capacity of probation offices to effectively meet the needs of persons sentenced to punishment that does not involve imprisonment.

Conditions and Treatment of People in Prison

- Revise prison rules to eliminate excessive restrictions on people in prison's conduct, including restrictions on looking at and talking with other inmates during work assignments.
- Ensure that determinations regarding prison discipline, and investigations into alleged infractions by people in prison, are conducted in an independent and transparent manner, including providing opportunity for the imprisoned person to defend themselves.
- End physical punishments such as requiring imprisoned people in solitary confinement to sit still in a certain pose.
- End prolonged solitary confinement of any imprisoned person. End all solitary confinement of imprisoned people with psychosocial disabilities (mental health conditions).
- Provide access to a lawyer to any imprisoned person put in solitary confinement to defend their rights.
- Transparently investigate and strictly punish guards and other prison staff who violate rules against verbal harassment and other abuse of imprisoned people, with penalties including dismissal from their position.
- Proactively identify imprisoned women with a history of trauma, including sexual abuse, and provide them with the choice of being imprisoned in an all-female staff facility.
- Conduct mandatory training programs for guards and other prison staff interacting with imprisoned women in a gender-sensitive, dignified manner.
- Ensure imprisoned people have access to free and adequate supplies of menstrual hygiene products that are at the same level of quality as those available in communities outside prison. Imprisoned people should also have free access to products commonly used by older inmates; dental hygiene products; and other basic amenities.
- Conduct mandatory training for guards and other prison staff on understanding difficulties faced by imprisoned people with substance use disorders, psychosocial disabilities, and other mental health conditions.

Medical Care

- Set clear policies and rules that ensure all imprisoned people receive appropriate medical care in a timely manner, in line with the Mandela Rules and Bangkok Rules. In medical emergencies, ensure care is provided without delay. Medical personnel should be on call for immediate action in such emergencies. Ensure all medical care provided in prisons reflects up-to-date best practices and medicines, with treatment provided in a timely way in external facilities as required by medical necessities.
- Since guards are the first point of contact for a sick person in prison, set specific rules for how prison guards must handle imprisoned people's medical requests in a humane, dignified, and respectful manner, with timely and accurate referrals made to medical personnel, including external medical professionals. Provide training to guards, medical personnel, and other prison staff on those rules, and impose disciplinary measures on staff members who fail to implement them.
- Hire sufficient doctors, nurses, and other healthcare staff working in prisons to reverse trends of falling numbers of healthcare providers for people in prison.
- Provide appropriate dental care to all imprisoned people, including preventative care.

Services for People with Disabilities:

- Systematically screen imprisoned people for all types of disabilities upon entry into prison and provide reasonable accommodations. Ensure imprisoned people with disabilities have adequate access to support services.
- Provide imprisoned people with access to quality mental health services. Ensure there are sufficient qualified mental health professionals, services based on free and informed consent, adequate resources, and levels of care that meet standards of community health care.
- Establish clear rules that prohibit prisons from placing imprisoned people with psychosocial disabilities in solitary confinement.
 - If the government is not prepared to take this step immediately, conduct a national inquiry done by subject matter experts with expertise into psychosocial disabilities into the use of solitary confinement for imprisoned people with psychosocial disabilities as a first step, with clear recommendations for reforms in policy and practice.

- Train prison staff on properly engaging with people with disabilities to provide support services suited to their needs.
- Ensure prison health staff are adequately trained to effectively engage with persons with disabilities. All prison officials should receive regular gender sensitive training on interacting with people with disabilities, particularly those with psychosocial or cognitive disabilities, to help identify and refer for assistance imprisoned people needing services.

Substance Use Disorder and Treatment

- While working to decriminalize the simple possession and use of drugs, ensure all imprisoned people are aware of and have access to voluntary, evidence-based treatment for substance use disorders and provide a full range of services, including peer-support, individual counseling, relapse prevention programs, and other treatments, such as methadone treatment.

Mothers and Their Children

- Issue an order encouraging prosecutors to use Code of Criminal Procedures article 482, which grants prosecutors power to suspend sentences for imprisoned people who are 150 or more days pregnant; who have given birth within the past 60 days; or whose child or grandchild is young and there are no other relatives who can take care of them.
- Conduct outreach to people in prison and their families to ensure they are informed of article 482 and associated procedures.
- Ensure imprisoned people are informed about their legal right to seek permission to keep their child with them in prison, subject to approval by the prison warden, and encourage prison wardens to expeditiously and sympathetically consider such requests. Per the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees article 66, imprisoned women can seek permission to nurse their children inside a prison until they are a year old. The initial one-year period may be extended by an additional six months with approval from the prison warden.
- Provide support for eligible imprisoned people to have timely access to a lawyer to assist in preparing legal petitions authorized under the above-mentioned legal provisions.

- Proactively enforce the Ministry of Justice’s 2014 notice that prohibits officials from shackling imprisoned people while they are giving birth. Update the 2014 notice to clearly prohibit the use of restraints on women during labor and immediately after birth.
- Develop a policy, and issue rules as needed, to permit mothers to keep their child with them in prison unless they do not wish to, or there is a reason to believe such action would go against the best interests of the child.
- Provide appropriate resources for prisons to establish facilities needed to support mothers who keep their infant children with them in prison. Set aside an appropriate space in prison and outfit it for childcare, and provide necessary supplies (such as baby food, nappies, clothing, immunizations, etc.) necessary for quality childcare.
- Educate prison administrators, guards, and other prison staff about the importance of parental bonding between mothers and newborns, and the benefits to parents, children, and society of allowing newborn children to stay with their mother in prison.
- Provide early childhood development programs for children living in prisons.
- Ensure that every prison has a child-friendly space available to people in prison for visits for their child outside of the detention center, and during times that are not in conflict with other elements of the child’s life such as school.
- Ensure that imprisoned people with children are imprisoned in a facility as near as possible to where the child lives. If the imprisonment results in the parent(s) being located far away, the government should facilitate and/or subsidize travel related to the visit, as recommended by the UN Committee on the Rights of the Child.
- Ensure imprisoned people receive proper medical care and rest after giving birth by permitting them to remain in hospital for as long as recommended by the medical professional overseeing their care. On return to prison, assess the physical health of the mother before deciding when and whether to assign her to labor.
- Ensure that imprisoned people who are pregnant or have given birth while serving their sentence in prison, receive pre-natal and post-natal care of comparable quality to that provided in communities outside the prison.
- Allow social workers to provide support for imprisoned women who are parents.

Older People in Prison

- Issue an order encouraging prosecutors to use the Code of Criminal Procedures article 482, which gives prosecutors the authority to suspend prison sentences for imprisoned people 70 years or older.
- Widely publicize the provisions of article 482 regarding older people in prison and provide support for eligible persons to have timely access to a lawyer to assist in preparing legal petitions authorized under the above-mentioned legal provisions.
- Establish a policy to provide care and support services for older people in prison including access to medical care, and support with performing daily tasks such as bathing, eating, working, and exercising, through support of specialized staff.
- Ensure older people in prison have access to vocational training on an equal basis with other imprisoned people, as well as other pre-release support such as housing solutions and financial support.
- Proactively monitor and prevent bullying by younger people in prison directed at older people in prison, especially when those imprisoned are rooming with younger inmates.
- Immediately establish and begin a public legal aid program with Japan Federation of Bar Associations to connect lawyers with imprisoned women who are pregnant, are separated from young children, are older (especially above 70 years old), have a disability, and/or have a serious illness.

Transgender People in Prison

- Issue a clear regulation that transgender people in prison are to only be imprisoned in facilities that align with their gender identity, regardless of whether they have changed their gender on their family registry system or received a gender identity disorder (GID) diagnosis.
- Revise the Notice Regarding Treatment Guidelines for Detainees with Gender Identity Disorder as follows:
 - Specify that hormone replacement therapy and other gender-affirming medical interventions are medically necessary and should be made available to all imprisoned people who want them.
 - Specify that in all foreseeable situations where transgender people in prison will be unclothed, they are consulted in advance regarding the gender of the guards who may be present.

- Eliminate requirements that a medical evaluation be performed to assess whether the person has gender identity disorder. Issue a rule that prisons must adopt a model based on self-declaration of gender identity and receive protections on that basis.

Maintaining Community Ties

- Ensure imprisoned people are not deprived of their right to receive visitors, send and receive letters, and make phone calls, including during disciplinary periods. To spare family members stigma of having a relative in prison, provide a general post office box address to which letters to imprisoned people in a facility can be sent, and permit imprisoned people to use that address as their return address.
- Introduce a policy to allow imprisoned people to have access to the internet, so they can send emails and make (online) video calls.
- Ensure imprisoned people's maintenance of ties to family and community are an important factor in determining which facility they are sent to serve their sentence, taking into consideration the distance from their community of origin and family members, including children.

Successful Reentry into Community Upon Release

- The prison service should have a clear policy on assistance in proactive planning and support of each person's post-prison future, built on an assessment of individual's likely needs upon release, and a plan for how services/training received within the prison can help prepare the individual for release.
 - At least six months prior to the individuals' scheduled release date, qualified prison staff should start work with the person in prison to develop a plan for her reentry to society that ensures that she will have access to food, housing, funds for basic needs, and access to any needed public benefits and social support for which she qualifies.
 - As part of the planning process, steps should be taken to connect newly released people, especially older people, people with disabilities, and people with children, to social workers and social welfare services to which the prisoners are entitled.

- The prison service should have a policy to ensure all people released from prison are provided the necessary logistical support, including transportation fees, and other guidance to make sure the person safely reaches their destination.
- Work to remove barriers for formerly imprisoned people in getting housing and employment and conduct public advocacy to end social stigma attached to formerly imprisoned people.

Recommendations for the Ministry of Health, Labor, and Welfare

Substance Use Disorder and Treatment:

- Transform its drug policy from a criminalization approach to a public health approach to minimize the adverse consequences of drug use, reduce drug dependence, and support harm reduction around drug use and increased access to emergency care.
- Advocate for de-stigmatization of people with drug dependency via means including public campaigns and forums.
- Advocate for the decriminalization of simple possession and use of drugs.
- Send a notice to all facilities operating under the health ministry that they should prioritize medical treatment of substance use disorder and refrain from reporting patients to police authorities.

Recommendations for the Japan Federation of Bar Associations

- Immediately establish and begin a public legal aid program to connect lawyers with imprisoned women who are pregnant, are separated from young children, are older (especially above 70 years old), have a disability, and/or have a serious illness. Until the program is operated with public funds, ensure it is provided on a pro bono basis.
- Educate lawyers about filing petitions to seek application of the Code of Criminal Procedures article 482, which gives prosecutors discretionally power to suspend sentence based on reasons such as pregnancy, family responsibilities, age, and health. Ensure that criminal defense attorneys inform their clients about potential relief provided by this provision of law.
- Educate lawyers about filing petitions to seek application of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees article 66, which allows people in prison to seek permission to keep their newborn baby with them

in prison subject to approval by the prison warden. Ensure that criminal defense attorneys inform their clients of their legal right to seek such permission.

Acknowledgements

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Our greatest thanks are to all the formerly and currently imprisoned people who generously shared their stories with us.

Appendix I: Human Rights Watch Letter to Ministry of Justice

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HRW.org

July 31, 2023
Minister Ken Saito
Ministry of Justice
1-1-1 Kasumigaseki, Chiyoda-ku
Tokyo, Japan

Re: Human Rights Violations in Women's Prisons in Japan

Dear Minister Saito,

I am writing on behalf of Human Rights Watch, a nongovernmental human rights organization that documents human rights violations and advocates for respect for human rights in more than 100 countries around the world. We opened an office in Tokyo in 2009 and since then have worked on human rights issues in Japan, including the rights of children and LGBT people.

We have recently undertaken research focusing on human rights violations in women's prisons in Japan, and government policies towards women prisoners, for a report we plan to publish in late 2023. To ensure that the views of the Japanese government are reflected in our reporting, we would appreciate receiving your response to our findings. We request that the Ministry of Justice kindly respond to the eight questions in the appendix to this letter **no later than August 21, 2023**. Human Rights Watch is prepared to reflect in our report any written responses provided by the ministry.

Human Rights Watch conducted research on women's prisons in Japan in January and February 2017, and from April 2018 to January 2023. In-person research was halted from March 2020 to November 2022 because of the Covid-19 pandemic. We interviewed nearly 60 former prisoners, and 11 legal and justice reform experts.

While our research is not an exhaustive survey of all human rights violations that women prisoners in Japan face, we identified important trends and key issues in our interviews with former prisoners, lawyers, and academics. While Human Rights Watch was not granted access to prisons, we corroborated information from these interviews with multiple testimonies, media reports, government reports, and other official documents.

We are particularly interested in learning about the latest steps taken by the Ministry of Justice to address the key concerns raised below.

Key Findings

Human Rights Watch's research on women's prisons in Japan focused on abuses by prison officials against prisoners.

Most notably, former prisoners told Human Rights Watch that women who are pregnant or the parents of young children are often denied opportunities to keep their children with them in prison; and suffer from physical abuse during pregnancy, labor, and post-partum recovery, including the use of restraints. Such abuses contravene international standards set forth by Rules 29, 48, and 52 of the Nelson Mandela Rules, as well as parenting opportunities spelled out in article 66 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees.

Other former prisoners told Human Rights Watch that older prisoners face verbal abuse by prison guards as well as physical abuse by younger prisoners, partly due to limited resources and housing space. One transgender former prisoner said she was housed in a male prison, despite explicitly requesting that she be housed in a women's prison. Other former prisoners described excessively strict regulations enforced by prison guards with the threat of solitary confinement for disciplinary infractions, arbitrary use of solitary confinement with one instance lasting 28 days, seemingly arbitrary restrictions on contact with the outside world via letters, inadequate access to daily amenities, verbal abuse by prison guards, and inadequate access to health care including mental health services.

Human Rights Watch's research also focused on Japan's policies that apparently compound such abuses.

Most notably, Japan's justice system contains the necessary legislation to suspend prison sentences for non-violent women offenders, particularly those with young children. Specifically, article 482 of the Code of Criminal Procedure allows prosecutors to suspend a sentence based on reasons including, but not limited to, pregnancy, family responsibilities, age, and health.

Human Rights Watch found that Japan's prosecutors have not used this law sufficiently. Only 11 women prisoners out of 20,116 had their sentences suspended between 2017 and 2021. That 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."

Many women are also imprisoned for drug-related violations. While the Ministry of Justice currently provides a substance use disorder relapse prevention program in

women's prisons, some former prisoners told Human Rights Watch they were forced to participate against their will. An expert on drug dependency also described the trauma many of these women carry including childhood abuse, and inadequate access to mental health services such as counseling inevitably fuels recidivism.

Japan is a party to the core international human rights conventions. Issues concerning criminal justice and the treatment of prisoners are found primarily in United Nations treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and various international standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Many of Japan's current justice system and prison practices violate provisions of these conventions or contravene these standards.

Thank you for your time and attention to this important request, including answers to our questions and any other information you wish to provide. Please send your responses to Teppei Kasai, our Asia program officer in Tokyo, at [REDACTED] by **August 21, 2023** so your responses can be reflected in our reporting.

We thank you for your time and consideration of this important matter.

Sincerely,

[REDACTED]

Elaine Pearson
Asia Executive Director
Human Rights Watch

Appendix II: Response by the Ministry of Justice

1. 出産のために分娩室などに入室している間は、手錠などしておらず、また授乳や抱っこ、沐浴、おむつ交換などで子と接している間は、原則として手錠等の使用はしていない。
2. 刑事施設収容法の74条の規定に基づいて、刑事施設の調和、受刑者が遵守すべき、守るべき事項を定めています。例えば、犯罪行為をしてはならないこと。他人に対して、粗野もしくは乱暴な言動をしたり、または迷惑を及ぼす行為をしてはならないことなどを定めて、その内容については収容の際に、刑事施設の職員により、その概要を口頭で説明するとともに、書面を居室に備え付けている。職員に対しては、人権意識を高めるために、各種研修を実施するなどしている。
3. 先ほど申し上げた刑事施設収容法では、被収容者は性別により互いに分離することとされており、戸籍上の性別に応じた刑事施設に収容している。その上で、性同一性障害などを有する被収容者に対する処遇は、個別の事情を踏まえつつ、処遇上必要な配慮を実施している。その個別の事情の配慮の具体例に致しましては、例えば入浴や身体検査などについて、いわゆる MTF の人などについては、原則として女性職員が実施する。衣類とか日用品について個別の事情を踏まえて異性の下着の着用を許すとか、必要に応じてカウンセリングをすとか、それから個別の事情に応じて、調髪をあえてしないなどの配慮をしている。
4. 単独居室については、先ほど申し上げた刑事施設収容法の74条に定められた遵守事項を守らず、また刑事施設の規律、秩序を維持するために行った職員の指示に従わなかった場合には、居室内での謹慎などの懲罰を科すことがある。その謹慎については閉居罰と法律上規定されている。その懲罰は法令に定められた手続きに基づき執行されるものであり、また、懲罰を許すかの判断にあたっては、その当該、被収容者の年齢、心身の状態、被収容者の行為が施設の運営に及ぼした影響など、様々な事情を十分に考慮している。
5. 被収容者と外部の者との意思疎通の方法について、刑事施設収容法においては、面会、信書発受、それから電話により通信が規定されている。受刑者が発信を申請できる信書の通数については、刑事施設の管理運営上必要な制限をすることがあるが、制限するときであっても、一か月について4通を下回ってはならない、とされている。受刑態度に応じて、発信を申請できる通数の増加もする。また、通数を制限することが相当でない類型についての信書については、制限を行っていない。
6. 日用品へのアクセスについては、被収容者には衣類及び寝具、それから食事及び湯茶、それから日用品、筆記具、その他の物品を貸与し、または支給することとしている。また、受刑者が衣類、食料品、飲料、室内装飾品、嗜好品、日用品、文房具その他の刑事施設における日常生活に用いる物品について、自弁（購入、差し入れ）、それらのものを使用し、または摂取したいという申し入れがあった場合において、そのものの処遇上適当と認めるときは、法務省令に定めるところによって、これを許すことができる。被収容者に物品を貸与する場合には、保健衛生に十分留

意することとされていて、消耗度合い、残量度を考慮して、適宜交換を行う。受刑者は少なくとも一か月に一回、自弁物品の購入を申請できる。

7. 刑事施設においては、被収容者に対して社会一般の医療の水準に照らして適切な医療上の措置を講じており、医師が被収容者の診療にあたっている。また、施設内での対応が困難な疾病については、外部の医療機関を受診させるなどして、適切な医療措置を講じている。
8. 刑事訴訟法482条は、矯正局では回答できない。

English translation of Appendix II

1. Restraints such as handcuffs are not used on imprisoned women who are in delivery rooms to give birth, and restraints are also not used when imprisoned women are breastfeeding, holding, bathing, or changing the baby's diapers.
2. Rules based on Article 74 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees are in place for the harmonization of penal institutions and they are to be observed and followed by the prisoners. For example, they must not commit criminal acts. They stipulate that inmates shall not speak or act in a coarse or violent manner or cause trouble to others. The contents of these rules are verbally explained to prisoners by prison staff members at the time of imprisonment, and written copies are kept in their cells. Various training programs are conducted for prison staff members to raise their awareness of human rights.
3. According to the law I mentioned earlier, prisoners are to be separated from each other according to their sex and are detained in penal institutions according to their sex in the family registry. In addition, treatment of prisoners with gender identity disorder, etc., is based on individual circumstances, and necessary consideration is given to their treatment. Specific examples of the consideration given to individual circumstances include, for example, bathing and physical examinations, which, in principle, are performed by female prison staff for so-called MTF (male to female) detainees. For clothing and daily necessities, consideration is given to individual circumstances, such as permitting the wearing of underwear of the opposite sex, counseling as necessary, and, depending on the individual circumstances, not cutting their hair short on purpose.
4. Regarding the use of single cells, if the prisoner fails to comply with the compliance requirements stipulated in Article 74 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which I mentioned earlier, or fails to follow the

instructions of prison staff members who have made efforts to maintain discipline and order in the penal institution, the prisoner may be subject to disciplinary punishments within a cell. Legally, such punishment is defined as disciplinary confinement. Such disciplinary punishments are administered in accordance with the procedures prescribed by law, and various factors are fully considered in determining whether to allow the disciplinary punishment, including the circumstances in question, the prisoner's age, mental and physical condition, and the impact of the prisoner's conduct on the operation of the facility.

5. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates the methods of communication between prisoners and outsiders, including visits, sending and receiving letters, and telephoning. The number of letters a prisoner may request to send may be limited as necessary for the management and administration of the penal institution, but even when it is limited, the number must not be less than four per month. The number of letters that can be sent out may be increased depending on the attitude of the prisoner. No restrictions are placed on the number of outgoing letters for types of correspondence that is not reasonable to do so.
6. Regarding access to daily necessities, prisoners are to be lent or provided with clothing and bedding, meals and hot water, daily necessities, writing materials, and other articles. In addition, in cases where a prisoner requests to self-supply (purchase, be gifted), use, or consume clothing, food, beverages, interior decorations, recreational goods, daily amenities, stationery, and other articles used in daily life in the penal institution, and when it is deemed appropriate, the use of these goods is permitted according to the Ministry of Justice Ordinance. When loaning articles to prisoners, the Ministry of Justice shall pay due attention to health and hygiene, and replace them as necessary, taking into consideration the degree of wear and tear and the amount remaining. Prisoners may apply for the purchase of articles at least once a month.
7. In penal institutions, appropriate medical measures are taken for prisoners in light of the standard of medical care in society in general, and physicians provide medical care for prisoners. In addition, appropriate medical measures are taken for illnesses that are difficult to treat in penal institutions, such as having prisoners receive treatment at outside medical institutions.
8. The correction bureau cannot respond to the question about Article 482 of the Code of Criminal Procedure.

Appendix III: Justice Ministry Correction Bureau No. 2957

機密性2情報

法務省矯成第2957号

平成26年12月26日

刑事施設の長 殿
矯正管区長 殿（参考送付）
矯正研修所長 殿（参考送付）

矯正局成人矯正課長 松田 治

女子被収容者等が出産する際の手錠及び捕縄の使用について（通知）

今般、女子被収容者等（以下「被収容者等」という。）が外部病院等において出産する際に、手錠及び捕縄（以下「手錠等」という。）を使用したまま出産をしているとの指摘があったことから、その運用について調査を行ったところ、各刑事施設において、その取扱いに差異が認められました。

そこで、出産時の状態において、逃走等のおそれが認められるか否か、また、出産という新たな生命の誕生に臨む被収容者等の心情等について検討した結果、刑事施設の被収容者等の出産時においては手錠等を使用しない取扱いとし、その運用については、下記のとおりとしますので、遺漏のないよう配慮願います。

記

- 1 手錠等を使用してはならない場面
少なくとも出産のために分娩室等（分娩する場所をいう。以下同じ。）に入室している間は使用しないこと。
- 2 戒護職員
戒護職員の配置箇所や人員は、外部病院等と事前に打合せを行い、不測の事態に備えること。
- 3 不測の事態の際の対応
上記1の取扱いは、出産する際に手錠等を使用しないとするものであり、分娩室等内で待機中に不測の事態が発生した場合の手錠等の使用まで制限するものではないこと。

English translation of Appendix III

Confidentiality Level 2 Information

Justice Ministry Correction Bureau No. 2957

December 26, 2014

To:

The Head of Penal Institutions

The Superintendent of Regional Correction Headquarters (For Reference)

The Director of Training Institute for Correctional Personnel (For Reference)

Director of the Justice Ministry's Prison Service Division, Osamu Matsuda

Regarding the use of handcuffs and restraining ropes when female inmates and detainees give birth (notice)

Recently, it was pointed out that when female inmates and detainees (hereinafter referred to as "the inmates, etc.") give birth at external hospitals, they have been put in handcuffs and restraining ropes (hereinafter referred to as "handcuffs, etc."). Consequently, a survey was conducted regarding the usage of handcuffs, etc., and the results showed that each correction facility has its own rules on the use of handcuffs, etc.

We reviewed whether there was any risk including risk for the inmates to escape, and how the inmates would feel about being handcuffed during childbirth when the inmates embrace a new life. As a result, handcuffs, etc. shall not be used during childbirth, and the usage of handcuffs shall be as described below, so please follow them in its entirety.

Note

1) Situations where handcuffs, etc. shall not be used

Handcuffs shall not be used at least while the inmates are in places such as delivery rooms to give birth.

2) Guardian staff

The arrangement of guardian staff, including their assigned location and the number of staff, shall be coordinated in advance with external hospitals to prepare for unexpected incidents.

3) Response to unexpected situations

The (1) above shall only be applied to childbirth, however, and shall not limit the use of handcuffs, etc. inside the delivery room, etc. when unexpected situations occur.

Appendix IV: Justice Ministry Correction Bureau No. 3212

法務省矯成第3212号

平成23年6月1日

矯正管区長殿
刑事施設の長殿
矯正研修所長殿（参考送付）

法務省矯正局成人矯正課長 大橋 哲
法務省矯正局矯正医療管理官 望月 靖

性同一性障害等を有する被収容者の処遇指針について（通知）

近年、性同一性障害については、その診断、治療について日本精神神経学会からガイドラインが示されるなど、社会的認知が進んできており、刑事施設においても、性同一性障害や同障害と同様の傾向を有する者（以下「性同一性障害者等」という。）が収容される状況が認められ、性同一性障害者等である被収容者（以下「性同一性障害者等被収容者」という。）の処遇に当たっては、各施設において、個々の被収容者の状況を踏まえ、適切に対処してきたところですが、今般、標記について、下記のとおり取りまとめたので、各施設におかれましては、本通知を標準としつつ、個別の必要に応じて、可能な範囲で適切に対応していただきたく、お願いします。

なお、本通知のほか性同一性障害者等被収容者の処遇について疑義が生じた場合においては、適宜の方法により、矯正管区保安課又は医療分類課を通じて、矯正局成人矯正課又は矯正医療管理官まで御照会願います。

記

1 定義

(1) 性同一性障害者

「性同一性障害者」とは、生物学的には性別が明らかであるにもかかわらず、心理的にはそれとは別の性別であるとの持続的な確信を持ち、かつ、自己を身体的及び社会的に他の性別に適合させようとする意思を有する者であって、そのことについてその診断を的確に行うために必要な知識及び経験を有する2人以上の医師の一般に認められている医学的知見に基づき行う診断が一致しているものをいうこと（性同一性障害者の性別の取扱いの特例に関する法律（平成15年法律第111号）第2条）。

なお、「同障害と同様の傾向を有する者」とは、同法による2人以上の医師の診断を受けてはいないものの、同障害を有するものと認められるものであり、服

装倒錯的フェティシズム（性的興奮を目的に異性の服装をするもの）、両性役割服装転換症（異性の一員であるという一時的な体験を享受するために、生活の一部を異性の服装を着用して過ごすもの）、自己女性化性愛（男性であって自身が女性だと想像することで性的に興奮するもの）、同性愛（ジェンダーアイデンティティは身体的性別と一致していながら、性指向としてのもの）等については、本通知における性同一性障害者等に含まれないことに留意すること。

(2) MTF

「MTF」とは、生物学的な性別は男性であるが、心理的には女性であるもの（male to female）をいうこと。

(3) FTM

「FTM」とは、生物学的な性別は女性であるが、心理的には男性であるもの（female to male）をいうこと。

2 医療上の措置

(1) 性同一性障害の診断

上記1(1)のとおり、性同一性障害の診断は、診断を的確に行うために必要な知識及び経験を有する2人以上の医師の診断に基づき行うこととされているため、刑事施設内において当該診断を実施することは、医師の確保等の観点から対応困難であり、また、診断を実施しないこととしても収容生活上直ちに回復困難な損害が生じるものとも考えられないこと、さらに、拘禁中という極めて特殊な環境において実施することは、相当でないとも考えられることから、刑事収容施設及び被収容者等の処遇に関する法律（平成17年法律第50号。以下「法」という。）第56条に基づき国の責務として行うべき医療上の措置の範囲外にあると認められること。

なお、「同障害と同様の傾向を有する者」として、処遇上の配慮を行うことの可否について検討するために診察を行う場合など、必要と認められる範囲において精神科医師による診察を実施して差し支えないこと。

(2) ホルモン療法等

性同一性障害者等についての積極的な身体的治療（ホルモン療法、性別適合手術等）に関しては、極めて専門的な領域に属するものであること、また、これらの治療を実施しなくても、収容生活上直ちに回復困難な損害が生じるものと考えられないことから、特に必要な事情が認められない限り、法第56条に基づき国の責務として行うべき医療上の措置の範囲外にあると認められること。

(3) 指名医による診療

上記(1)及び(2)の医療措置について、被収容者から法第63条に基づき指名医による診療の申請があった場合には、法令、被収容者の保健衛生及び医療に関する訓令（平成18年法務省矯正医訓第3293号大臣訓令）及び平成19年5月3

0日付け法務省矯医第3344号矯正局長依命通達「被收容者の保健衛生及び医療に関する訓令の運用について」に基づき、適切に対応する必要があること。

3 居室の指定等

(1) 収容施設及び収容区域

法第4条第1項の定めるところにより、戸籍上の性別に従い、収容施設及び収容区域を指定すること。

なお、性別の取扱いの変更の審判（性同一性障害者の性別の取扱いの特例に関する法律第3条）を受け、戸籍上の性別変更済みの者については、変更後の性別に従うことに留意すること。

(2) 戸籍上の性別変更済みの性同一性障害者等被收容者の居室の指定等

個々の被收容者の事情に応じて、居室の指定等を行って差し支えないこと。

(3) 戸籍上の性別変更を伴わない性同一性障害者等被收容者の居室の指定等

ア 原則として単独室に收容するほか、本人保護及び職員の職務の正当性を担保する観点から、なるべく廊下監視カメラの整備されている区域の居室へ收容することが望ましく、また、必要に応じて監視カメラの設置された居室への收容等を検討すること。

イ 戸籍上の性別とは異なる区域への收容や処遇に固執したり、外形変更がされていること等により集団処遇が困難な受刑者については、その希望等を参酌しつつ、通常昼夜居室処遇とすることが適当と考えられるものの、性同一性障害者等であるとの理由のみをもって、その法令上の取扱いを法第76条第1項により隔離としたり、法第88条及び刑事施設及び被收容者の処遇に関する規則（平成18年法務省令第57号。以下「規則」という。）第48条により制限区分を第4種に指定することは相当でないこと。

4 戸籍上の性別の変更を伴わない性同一性障害者等被收容者への対応職員

(1) 入浴、身体検査等の着衣を付けない場面における戒護

ア MTFの者のうち外形変更済みの者（特に男性器及び睾丸を除去した者）については、可能な限り女子職員を含めての対応とすること。女子職員が配置できない場合及び当該被收容者に粗暴性が認められるなど、女子職員による対応とすることが適当でない事情が認められる場合には、複数の男子職員による対応とすること。

イ MTFの者のうち外形変更に至らない者については、原則として複数の男子職員による対応とするが、必要に応じて、女子職員を含めての対応として差し支えないこと。

ウ FTMの者については、外形変更の有無にかかわらず、女子職員による対応（法第34条第2項の例による。）とし、必要に応じて、男子職員がその場において応援すること。

- エ 入浴、身体検査等の実施に当たっては、なるべく他の被收容者と接触させず、単独で行うとともに、個々の被收容者の事情に応じて、戒護上の支障が生じない範囲において、つい立を設置するなど、羞恥心に配慮した対応をするよう努めること。
- オ 戒護職員に対しては、必要に応じて、性同一性障害について説明を行うなど、正しい理解の下において対応させるよう努めること。
- (2) (1)以外の場面における戒護
- 外形変更の有無等にかかわらず、性同一性障害者等であるとの理由のみをもって特別な取扱いをせず、他の被收容者と同様、收容区域の担当職員等による対応とすること。
- 5 戸籍上の性別の変更を伴わない性同一性障害者等被收容者への処遇内容
- (1) 運動
- 外形変更の有無等にかかわらず、性同一性障害者等であることの理由のみをもって特別な取扱いをせず、支障がない範囲において集団運動を実施すること。
- (2) 衣類
- ア 貸与する衣類については、被收容者に係る物品の貸与、支給及び自弁に関する訓令（平成19年法務省矯成訓第3339号大臣訓令。以下「物品訓令」という。）別表1において、性別により品名が限られているものについては、原則として、戸籍上の性別に係るもののみを貸与すること。ただし、外形変更済みの者について、豊胸手術をしているためブラジャーの使用が必要であるなど、個別の事情により、使用の必要が認められる場合には、物品訓令第9条の2に基づき、貸与することとして差し支えないこと。
- イ 受刑者の自弁の衣類については、物品訓令別表4において、性別により品名が限られているものについては、原則として、戸籍上の性別に係るもののみ使用を許すことが相当であること。ただし、外形変更済みの者について、豊胸手術をしているためブラジャーの使用が必要であるなど、個別の事情により、使用の必要が認められる場合には、物品訓令第9条の2に基づき、使用を許すこととして差し支えないこと。
- ウ 受刑者以外の被收容者の自弁の衣類については、法第41条第2項に基づき、刑事施設の規律及び秩序の維持その他管理運営上支障を生ずるおそれがある場合並びに賞罰の規定により禁止される場合を除き、これを許すものとされているところ、使用の許否判断に当たっては、当該衣類の使用による他の被收容者への影響等を検討する必要があること。
- (3) 日用品
- ア 被收容者に貸与又は支給する日用品については、物品訓令別表2において、性別により品名が限られているものについても、原則として、戸籍上の性別に

係るもののみを貸与又は支給することが相当であること。ただし、MTFの者について、規則第26条第4項により調髪を行わせていない場合においてシャンプーを支給するなど、個別の事情により、使用の必要が認められる場合には、物品訓令第9条の2に基づき、貸与又は支給して差し支えないこと。

イ 受刑者の自弁については、物品訓令別表7において、性別により品名が限られている物品については、原則として、戸籍上の性別に係るもののみ自弁を許すことが相当であること。ただし、MTFの者について、規則第26条第4項により調髪を行わせていない場合においてくしや整髪料を使用させるなど、個別の事情により、使用の必要が認められる場合には、物品訓令第9条の2に基づき、自弁を許すこととして差し支えないこと。

ウ 受刑者以外の被収容者の自弁については、物品訓令別表9において、性別により品名が限られている物品については、原則として、戸籍上の性別に係るもののみ自弁を許すことが相当であること。ただし、長髪としているMTFの者についてヘアピンを使用させるなど、個別の事情により使用の必要が認められる場合には、物品訓令第9条の2に基づき、自弁を許すこととして差し支えないこと。

(4) 調髪

ア FTMの受刑者の調髪に当たって、女子受刑者の髪型の基準については、被収容者の保健衛生及び医療に関する訓令第6条において、「華美にわたることなく、清楚な髪型とする。」とされているので、これに基づき短髪とすることは可能であること。

イ MTFの受刑者から、調髪を行わないでほしいとの希望があった場合、規則第26条第4項により、これを行わないことを相当とするか否かは、当該受刑者の精神状態や過去の生活歴その他の事情を考慮して、当該受刑者にとって、調髪を行わないことが処遇上有益であると認められる場合に限ることが相当であること。この場合、他の受刑者との処遇の均衡性に鑑み、集団処遇が困難になることも考慮すること。

(5) カウンセリング

被収容者の心情の把握を図るべく、必要に応じて、平成19年5月30日付け法務省矯成第3349号矯正局長通達「少年施設の職員による処遇共助の実施について」記2の(1)のアの規定によるカウンセリング又は職員による面接の実施を検討する等の配慮をすること。

法務省矯成第2631号
平成27年10月1日

矯正管区長 殿
刑事施設の長 殿
矯正研修所長 殿（参考送付）

法務省矯正局成人矯正課長 松田 治
法務省矯正局矯正医療管理官 桐生 康生

「性同一性障害等を有する被収容者の処遇指針について」の一部改正について（通知）

性同一性障害等を有する被収容者の処遇については、平成23年6月1日付け法務省矯成第3212号成人矯正課長・矯正医療管理官連名通知「性同一性障害等を有する被収容者の処遇指針について」に基づき実施してきたところですが、今般、MTFの者のうち外形変更済みの者（男性器及び睾丸を除去した者）の処遇に当たってより一層の配慮を行うため、同通知の一部を下記のとおり改め、本日から実施することとしたので、遺漏のないよう配慮願います。

記

- 1 本通知中「保安課又は医療分類課」を「成人矯正第一課又は矯正医療調整官」に改める。
 - 2 記の1中「定義」を「定義等」に改める。
 - 3 記の1の（3）の次に次のように加える。
- （4）その他

性同一性障害であるか否かについては、知識及び経験を有する医師でなければ服装倒錯的フェティシズム、両性役割服装転換症、自己女性化性愛、同性愛等との鑑別が困難なことが多いため、在社会時の医療機関等から診断書、診療情報等を被収容者に入手させ、又は、指名医を含めた診療を受けさせること等により、可能な限り同障害の存否を明確にするよう指導するほか、性同一性障害を有する被収容者から戸籍の性別変更手続を行いたい旨の申出があった場合には、関係機関への発信を認めるなど、必要な対応を行うこと。

・ 1 ・

4 記の3の(3)のイ中「処遇に固執」を「処遇を希望」に、「通常昼夜居室処遇とする」を「昼夜居室処遇とする」に改める。

5 記の4中(1)及び(2)を次のように改める。

(1) 入浴等の着衣を付けない状態の監視及び着衣の有無にかかわらず直接接触して行う身体検査

ここでいう「入浴等の着衣を付けない状態の監視」を行う職員とは、入浴等を実施する担当職員に限らず、着衣を付けない状態を直接視認することとなる職員も含まれること。

ア MTFの者のうち外形変更済みの者(男性器及び睾丸を除去した者)

(ア) 女子職員による対応とすること。ただし、不測の事態により女子職員による対応を行ういとまがない場合や当該被收容者に粗暴性が認められる場合など、女子職員による対応とすることが適当でない特段の事情が認められる場合には、複数の男子職員による対応として差し支えないこと。

(イ) 男子職員が入浴等を実施する女子職員を監督又は応援する必要がある場合には、当該男子職員は、制止等の措置を執るなど緊急に対応する必要があるときを除き、当該被收容者の羞恥心等に配慮して着衣を付けない状態を直接視認しない方法で行うこと。

(ウ) 入浴等の際し、脱衣場の窓に目隠しするなどして、男子職員が着衣を付けない状態を直接視認し得ない措置を講じている場合には、男子職員による対応で差し支えないこと。

イ MTFの者のうち上記アの外形変更に至らない者

原則として複数の男子職員による対応とするが、必要に応じて、女子職員を含む対応として差し支えないこと。

ウ FTMの者

外形変更の有無にかかわらず、女子職員による対応(法第34条第2項の例による。)とし、必要に応じて、男子職員がその場において応援すること。

エ 入浴、身体検査等の実施に当たっては、なるべく他の被收容者と接触させず、単独で行うとともに、個々の被收容者の事情に応じて、戒護上の支障が生じない範囲において、つい立を設置するなど、羞恥心に配慮した対応をするよう努めること。

オ 対応職員に対しては、必要に応じて、性同一性障害について説明を行うなど、正しい理解の下において対応させるよう努めること。

(2) (1)以外の場面における戒護

- ア 外形変更の有無等にかかわらず、性同一性障害者等であるとの理由のみをもって特別な取扱いはせず、他の被收容者と同様、收容区域の担当職員等による対応とすること。
- イ 健康診断（法61条）や診療等（法62条）は、その性質上、上記（1）に該当するものではなく、これらを行う医師及び医療従事者については性別を限定する必要はないこと。

Partial English translation of Appendix IV

Justice Ministry Correction Bureau No. 3212

June 1, 2011

To:

The Head of Penal Institutions

The Superintendent of Regional Correction Headquarters (For Reference)

The Director of Training Institute for Correctional Personnel (For Reference)

Justice Ministry, Director of the Justice Ministry's Prison Service Division, Satoru Ohashi

Justice Ministry, Director of the Medical Care Division, Yasushi Mochizuki

Regarding the Treatment Guidelines for Detainees with Gender Identity Disorder, etc.

(Notice)

In recent years, social recognition has been progressing regarding gender identity disorder as the Japanese Society of Psychiatry and Neurology has issued guidelines for diagnosis and treatment, and even among penal detention facilities, the detention of people identified as a person with gender identity disorder or a tendency to gender identity disorder (hereinafter referred to as "a person with GID, etc.") has been recognized, and each facility has taken appropriate measures for detainees with gender identity disorders (hereinafter referred to as "a detainee with GID, etc.") on an individual basis. The notification (hereinafter referred to as "the Notice") now has been compiled as follows; that each facility shall deem this notice as a standard, and take appropriate measures that are referred to in the Notice as much as possible, based on each case as needed.

In addition to the Notice, if there are any questions regarding the treatment of a detainee with GID, etc., please contact the Adult Correction Bureau or the Medical Correction Bureau.

(1) Diagnosis of Gender Identity Disorder

As described in 1 (1) above, the diagnosis of GID is based on the examinations by two or more physicians who have the necessary knowledge and experience to conduct an accurate diagnosis. Therefore, it is difficult to carry out such a diagnosis within the penal facilities, since securing physicians who are capable to do so is also difficult. Such a diagnosis is not considered urgent for detainees considering it is not a matter that will cause any irrecoverable damages to prisoners during their time in prison. It is also not appropriate to implement such a diagnosis due to the quite unique circumstances of being detained. Thus, under the Law on Treatment of Penal Detention Facilities and Detainees (Act No. 50 of 2005, hereinafter referred to as the “Law”), Article 56, such a diagnosis is deemed not to fall under the country’s duty in providing medical assistance.

In the case of treating a "person with a tendency of GID", psychiatrists can perform a diagnosis to determine if the person requires special conditions in terms of treatment.

(2) Hormone Therapy, etc.

Since proactive physical treatments (hormone therapy and gender-reassignment surgery, etc.) for a person with GID are quite specialized areas, and not an urgent matter since inaction would not cause immediate and irrecoverable damages in prison, such treatments fall outside of medical treatments the state is responsible for providing under Article 56 of the Law, unless an exception is made.

Designation of prison cell, etc.

(3) Designation of cell, etc. for a detainee with GID who has not changed their gender on their family registry

A. In principle, a detainee with GID is detained in a single cell, and it is also desirable to designate a cell where corridor surveillance cameras are installed, and depending on the situation, detained in a cell where a surveillance camera is installed inside the cell to protect a detainee with GID as well as to monitor the legitimacy of staff duties.

B. For inmates who insist on being housed or receiving treatment based on a gender they are not registered as on their family registry, and those who have difficulty in a group-setting treatment for reasons such as having already completed an alteration of gender

appearance, their requests should be considered, and it is deemed appropriate to separate them day and night in a different prison cell. However, reasons such as GID does not justify the isolation of such prisoners under the Law, Article 76, Paragraph 1. In addition, it is not appropriate to apply the Law, Article 88 as well as Article 48 of the Rules on Panel Detention Facilities and Treatment of Detainees (Ministry of Justice Ordinance No. 57, 2006; hereinafter, referred to as “the Rules”) to categorize the prisoners under Type 4.

Staff members in charge of a detainee with GID without changing sex on their family registry”

(1) Guarding in situations where inmates are unclothed, such as bathing and physical examination

(B) For those who are MTF (male to female) without having completed the change of her physical appearance, in principle, male staff members are in charge. Female staff members are also acceptable for MTF on as needed basis.

“Hair Requirement”

(B) If an MTF inmate requests not to cut their hair, whether the request is approved or not depends on the prisoner’s mental health condition as well as past behavior, as well as whether it is beneficial to the prisoner’s life in prison, under the Rules, Article 26, Paragraph 4. In this case, the difficulty in providing a balanced treatment to all prisoners needs to be considered.

“They Don’t Treat Us Like Human Beings”

Abuse of Imprisoned Women in Japan

Many women imprisoned under Japan’s criminal justice system suffer serious violations of their human rights. The system overly depends on imprisonment and does not provide sufficient alternatives, such as community service. Mothers of young children are particularly affected.

“They Don’t Treat Us Like Human Beings” documents the abusive conditions and policies of women’s prisons in Japan that contravene rules set out in the United Nations Standard Minimum Rules of the Treatment of Prisoners, known as the Nelson Mandela Rules. These include the use of restraints on imprisoned pregnant women, arbitrary use of solitary confinement, inadequate access to health and mental health care, criminalization of simple drug-related violations without effective treatment, and a lack of effective and independent oversight of prisons.

Based on interviews with nearly 70 people, including several dozen formerly imprisoned women, the report demonstrates not only the poor human rights situation of women’s prisons in Japan, but also the few opportunities for alternatives to imprisonment.

Japan’s government should urgently reform its justice system to ensure that the rights of all imprisoned people are fully respected in line with international human rights standards.



A sign reads “check door lock” on a gate inside Tochigi prison, Japan’s largest women’s prison, January 31, 2019.

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