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**JAPAN**

**Joint submission prepared by**

**FIDH - International Federation for Human Rights**

*and*

**Center for Prisoners' Rights (CPR)**

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**FIDH** represents 192 human rights organizations from 117 countries and territories. It takes action for the protection of victims of human rights violations, for the prevention of violations, and to bring perpetrators to justice. Established in 1922, FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights - civil and political rights, as well as economic, social, and cultural rights.

The **Center for Prisoners' Rights (CPR)** was established in March 1995 as the first Japanese NGO specializing in prison reform. CPR's goal is to reform Japanese prison conditions in accordance with international human rights standards and to abolish the death penalty. CPR is an affiliate member of FIDH.

## **Introduction**

1. This joint submission focuses on developments related to detention conditions and the use of the death penalty in Japan since the country's third Universal Periodic Review (UPR) in November 2017. The joint submission also makes recommendations to Japan's government to make progress towards the abolition of the death penalty and for the improvement of prison conditions in Japan.
2. Since the third UPR of Japan in November 2017, there has been no progress in the implementation of most of the recommendations made by UN member states with regard to the death penalty and detention conditions.
3. During the third UPR, the Japanese government did not accept all 23 recommendations it received concerning the death penalty, and all eight recommendations related to detention conditions.

## **Death penalty**

4. Since November 2017, the Japanese government has executed 23 death row inmates by hanging as follows: two in December 2017; 15 in 2018; and three each in 2019 and in 2021. No executions were carried out in 2020 and in the first six and a half months of 2022.
5. Fifteen of the 23 death row inmates executed since 2017 were seeking retrial at the time of their hanging. Among those inmates, Mr. Yoshihiro Inoue, a former senior member of the Aum Shinrikyo doomsday cult, who was executed on 6 July 2020, was seeking retrial with his defense counsel being appointed. The Tokyo High Court held the second meeting to consider his retrial request three days before his execution. At the meeting, the prosecutor promised to disclose new evidence to the defense counsel, but the proceedings were never completed because of the execution.
6. In February 2020, the Osaka District Court rejected a petition by a death row inmate who had sought a court ruling to affirm that the government should refrain from carrying out executions during retrial proceedings. The court stated that once convictions become final in an independent and impartial court, executions carried out during the retrial proceedings do not violate Article 32 of Japan's Constitution, which guarantees the right to a fair trial.<sup>1</sup>
7. Japan does not have a mandatory appeal system against death sentences. While defendants who are sentenced to death or life imprisonment are not allowed to waive their right to appeal, they can withdraw their appeal after submitting it to the court. As a result, the current system does not provide the necessary legal safeguards against wrongful convictions in capital cases, as some defendants may opt to withdraw their appeals against the advice of their lawyer or to withdraw the case independently of their duly appointed legal counsel. There have been a number of cases in which defendants withdrew their appeal after being sentenced to death even though their defense counsel submitted an appeal. For example, Mr. Koji Yamada, who was sentenced to death on 19 December 2018 for murdering two junior high school students, withdrew his appeal in May 2019 after a quarrel with a prison guard. In another case, Mr. Satoshi Uematsu, who was sentenced to death on 16 March 2020 for a stabbing rampage that resulted in 19 people killed and 26 injured in 2016, withdrew his appeal on 30 March 2020, three days after his defense counsel appealed the death sentence.

8. Executions of inmates with suspected mental illnesses have continued. On 18 June 2018, the Japan Federation of Bar Associations (JFBA) recommended that the Minister of Justice suspend executions against eight inmates who were suspected to have been mentally incompetent to stand trial. The JFBA did not reveal the inmates' names, but Mr. Chizuo Matsumoto (aka Shoko Asahara), the founder of the Japanese doomsday cult group Aum Shinrikyo, was believed to be included.<sup>2</sup> Nevertheless, the government executed seven Aum members, including Mr. Matsumoto, on 6 July 2018.
9. There remains a risk that confessions extracted under torture or ill-treatment can be used as evidence in proceedings involving defendants in death penalty cases. No effective legal safeguards have been put in place to avoid evidentiary use of confessions obtained through torture. Despite a system of mandatory video/audio recording of interrogations that has been implemented since 1 June 2019. However, video/audio recording is not required when someone is interrogated during a voluntary appearance without being arrested or detained. In addition, a defense counsel does not generally have access to all the evidence gathered by the prosecutors.
10. Through members of Parliament, on 27 May 2022, CPR requested the government disclose details about the executions conducted in the past 10 years, including the date and time when death row inmates were informed about their executions. However, the Ministry of Justice has refused to disclose such information.
11. Japan's method of execution by hanging may amount to torture or cruel or inhuman treatment. It remains impossible to determine how long executions take in Japan. Despite a request submitted by CPR to the Ministry of Justice through members of Parliament on 8 June 2020 to disclose the duration of each execution from 28 July 2010 to 26 December 2019, the Ministry failed to provide such information. The Japanese government has redacted all the important parts of execution documents whenever it has been asked to disclose them.
12. Death row inmates have continued to be placed in solitary confinement and their access to the outside world is more severely restricted than that of other inmates. Prisoners are guaranteed their right to correspond, with two restrictions, namely: 1) correspondence between death row inmates; and 2) correspondence that is likely to disrupt discipline and order in the correctional institution or hinder appropriate correctional treatment.
13. However, in practice, correspondence with death row inmates is more tightly restricted. They may correspond with their relatives, but correspondence with other individuals outside of the prison is allowed at the discretion of the warden, and only when it meets certain requirements listed in the 2005 Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (hereinafter the "Prison Act").<sup>3</sup> As a result, death row inmates' correspondence with supporters is tightly restricted. In many cases, prison authorities have refused to mail letters from death row inmates because they believed such letters deviated from the purpose of thanking a supporter. Letters from death row relatives and lawyers can be heavily redacted by prison authorities.
14. Japan's prison system does not guarantee the confidentiality of communications between death row inmates and their lawyers. Prison guards often monitor death row inmates' meetings with their lawyers regarding their treatment within the correctional facilities, and the courts approve of such practice. Authorities in correctional facilities have often censored lawyers' letters regardless of their content. In addition, interference with

correspondence between death row inmates and their lawyers has continued, with authorities routinely opening and examining correspondence sent to death row inmates.

### **Recommendations**

15. Abolish the death penalty for all crimes during the fourth UPR cycle.
16. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights during the fourth UPR cycle.
17. Immediately establish an official moratorium on executions.
18. Amend relevant laws to allow for the suspension of executions in capital cases during retrial or amnesty proceedings.
19. Avoid executing death row inmates who have initiated retrial procedures.
20. Introduce a mandatory appeal system against death penalty sentences in order to strengthen legal safeguards against wrongful conviction in capital cases.
21. Provide death row inmates and their families with reasonable advance notice of the scheduled date and time of their executions.
22. Disclose details concerning executions, including the time the execution begins and the time the inmate is subsequently pronounced dead.
23. Introduce an independent mechanism to review the mental health of death row inmates.
24. Revise relevant laws to refrain from imposing solitary confinement on death row prisoners, except in the most exceptional circumstances and for strictly limited periods.
25. Guarantee the strict confidentiality of all meetings between death row inmates and their lawyers, and prohibit censorship and interference with correspondence between them.
26. Guarantee the right to access to the outside world for death row inmates, as much as it is guaranteed for other prisoners.
27. Take appropriate measures to allow defense counsel to be present during interrogations and to have access to all the evidence in order to guarantee that confessions are not obtained by torture or ill-treatment.

### **Detention conditions**

28. Abuse of solitary confinement of prisoners has continued. To this day, a significant number of prisoners who do not meet the requirements for “isolation” stipulated by the Prison Act are designated as falling under “Category 4”, one of the four categories of restrictions established by an order of the Ministry of Justice, which can be described as solitary confinement. As of 10 October 2019, the total number of prisoners who were designated as falling under Category 4 in correctional institutions nationwide was 894 (2.1%), while only four prisoners were isolated under the Prison Act.
29. Abusive confinement in protection cells has frequently occurred. The Prison Act allows for the confinement of inmates in protection cells only in cases in which inmates shout or make noise despite a prison officer’s order to cease doing so, and when such confinement is “particularly necessary” (Article 79 (1)(ii)). Such provision is inconsistent with Rule 45(1) of the UN Standard Minimum Rules for the Treatment of Prisoners, according to which solitary confinement should be used “only in exceptional cases as a last resort.”
30. There have been cases in which inmates were confined to protection cells due to their protests against the treatment in the facilities. For example, a Nepali man, who was arrested and detained on 13 March 2017 at the Shinjuku Police Station on charges of embezzlement of lost property, was confined to a protection cell for being insubordinate.

In addition, after placing him in a protection cell, about 15 staff members surrounded him and put restraining devices on him (handcuffs affixed to the waist belt, along with restraining devices around his knees and ankles). He laid in the protection cell restrained by the devices for two hours. Then, the handcuffs were removed and replaced with handcuffs used for escorting, and he was transferred to the public prosecutor's office. One of the handcuffs was removed during the interrogation at the public prosecutor's office, and the man's family claims he died of traumatic shock caused by muscle crush syndrome following the handcuffs' removal.<sup>4</sup>

31. Correctional facilities across the country remain plagued by a serious shortage of medical personnel and a lack of adequate medical care. There are 190 prison doctors in 177 prisons across the country, 21 fewer than the target number of 211 required by the Act on Special Provisions for the Subsidiary Work and Working Hours of Correctional Medical Officers. As of 1 February 2022, four prisons do not have full-time doctors.
32. Many deficiencies of the prison healthcare derive from the fact that the Ministry of Justice, and not the Ministry of Health, Labor, and Welfare (MHLV), has jurisdiction over medical care in prison. Japan has a national health insurance system managed by the MHLV, but this is not available for prison healthcare since the Ministry of Justice is responsible for the medical treatment of prisoners. Furthermore, since the doctors and other medical staff are also employees of the Ministry of Justice, it is feared that it may be difficult for them to provide medical care in a totally independent manner.
33. In 2017, the East Japan Adult Correctional Medical Center opened in Tokyo, and was expected to provide specialized medical care for adult inmates. Yet, inmates do not have access to adequate medical care, since the center does not cover all the medical care and some prisons may refuse to transfer inmates to the center because of lack of staff or to avoid the trouble of transferring inmates.
34. Many prisoners complain of not having access to medical care when they claim to be ill. For medical treatment that prisons do not provide, the authorities may allow inmates to receive treatment inside the facilities from outside doctors. Nonetheless, between 2018 and 2021, an average of only about 10 outside doctors a year are appointed, and the field in which doctors can be appointed are limited to dental care, psychiatric care, and a few other areas.<sup>5</sup> In addition, prison medical budgets are limited and prisoners are compelled to bear their medical costs when they receive treatment from appointed doctors outside of the prisons.
35. In police detention facilities there are no physicians or other medical professionals. Medical care is not available for detainees other than medical check-ups by outside physicians, which are usually conducted about twice a month. Medical care is not provided in police detention facilities because the primary purpose of detention facilities is to detain suspects during relatively short periods of time between their arrest and the issuance of a detention order. After a detention order is issued by a judge, suspects should be promptly transferred to a correctional facility.
36. With regard to COVID-19 in correctional facilities (excluding police detention facilities), between January 2020 and February 2022, there were 999 cases of COVID-19 infections, with seven deaths. During the same period, a total of 18 prisoners were admitted to external medical institutions due to serious symptoms associated with COVID-19. At Shibuya Police Station, as many as seven detainees were infected with COVID-19 in April

2020, which led to the facility's temporary closure and the transfer of the detainees to another police station.

37. In early April 2020, the Ministry of Justice announced that, as a general rule, it would not allow visitors to meet with inmates at correctional facilities located in the prefectures covered by the state of emergency, with the exception of the inmate's defense counsel.<sup>6</sup> As a result, many of these correctional facilities suspended general visitation altogether, regardless of the situation in each place of detention. These restrictions were in place from 7 April 2020, when the state of emergency was declared, until 25 May 2020, when the declaration of the state of emergency was lifted in the whole country. The Ministry of Justice did not provide alternative methods to replace in-person visitation.
38. Prosecutors may suspend a sentence so that inmates would be compassionately released and have access to medical care outside prisons. During Japan's third UPR, the number of compassionate releases has been sharply decreasing, with an average of 19 per year between 2018 and 2020, compared to an average of 36 per year between 2008 and 2017.<sup>7</sup> This statistic suggests that the requirements for granting compassionate release may have become more stringent in recent years, even if the Japanese government attributes the decline in compassionate releases to improvements in medical care. The government has not made public information concerning the grounds for each compassionate release.
39. Prisoners in Japan's correctional facilities are forced to work for extremely low and inadequate wages. In Fiscal Year 2017, the average monthly remuneration per prisoner was JP¥4,340 (about US\$41) - a very small amount to ensure an adequate standard of living after the release. Article 12 of the Penal Code provides that prisoners who have been sentenced to imprisonment with labor must be engaged in the work that has been assigned to them. Articles 74 and 150 of the Prison Act prescribe that the failure to meet the obligation of work can be punished. On 13 June 2022, the National Diet enacted legislation that amended the Penal Code, making prison labor non-compulsory in limited cases. Defendants sentenced under this new law may engage in prison work or other programs for their rehabilitation. However, involuntary prison work is highly likely to continue being exacted in the form of lawful disciplinary punishment for prisoners who fail to comply with the prison rules and regulations.
40. Correctional institutions have continued the practice of opening and reading the content of letters sent and received by inmates. Therefore, the confidentiality of correspondence between lawyers and prisoners is not guaranteed. In addition, if a prisoner is confined to a protection cell, even a lawyer who has taken up the case regarding the prisoner's treatment or a defense counsel involved in the criminal case is prohibited from visiting the prisoner and exchanging correspondence.
41. The possibility of parole for inmates serving life sentences could be subjected to arbitrary and irrelevant criteria. Inmates who have been sentenced to life imprisonment are eligible for parole if 10 years have passed since the commencement of their sentence, and if they show "signs of substantial reformation," pursuant to Article 28 of the Penal Code. However, a Ministry of justice regulation<sup>8</sup> renders individuals serving life sentences ineligible for parole "when it cannot be recognized that the feelings of society endorse this." There is a serious concern that parole can be denied on the grounds of "feelings of society," even if the sentenced persons have been sufficiently rehabilitated and are no longer at risk of reoffending.

42. There are a considerable number of elderly prisoners serving life sentences in Japan's correctional facilities. At the end of 2020, the number of prisoners serving life terms who were in their 70s was 373 (21.4%), and 118 (6.8%) were in their 80s, or older. The number of inmates sentenced to life imprisonment who have been paroled in recent years has been low: 10 in 2018; 17 in 2019; and 14 in 2020. This has resulted in a steady number of prisoners serving life sentence who have died in prison: 30 in 2017; 24 in 2018; 21 in 2019; and 29 in 2020.

### Recommendations

43. Transfer the management of prison healthcare to the Ministry of Health, Labor, and Welfare.
44. Increase the number of doctors in places of detention and make active use of external medical care, including medical examinations by appointed doctors.
45. Consider the release of suspects held in police detention facilities that are unable to provide detainees with adequate medical assistance.
46. In the event of a virus outbreak within places of detention, consider the release of detainees by making flexible use of the revocation of detention and the parole system to prevent further infections.
47. Repeal current legislation that allows wardens to put inmates in protection cells when they protest against the authorities.
48. Disclose the number of prisoners with mental disabilities who have been placed in solitary confinement for more than 10 years.
49. Abolish compulsory prison work, provide meaningful work opportunities for prisoners, and introduce a wage system that provides for an adequate remuneration for prison labor.
50. Amend legislation to ensure there is no censorship of, and interference with, lawyer-inmate meetings or correspondence.
51. Amend legislation to ensure that inmates in protection cells can meet or correspond with their lawyers.
52. Ensure that alternative channels of communications between prisoners and the outside world, such as phone calls or video calls, are available when general visitation rights are prohibited or temporarily suspended.
53. Increase the use of compassionate releases.
54. Establish objective requirements for parole eligibility and remove subjective requirements such as "feelings of society."

<sup>1</sup> Osaka District Court Judgment, 20 February 2020.

<sup>2</sup> CPR, *Letter of protests regarding the execution of seven inmates on July 6, 2018*, 6 July 2018

<sup>3</sup> Article 139(1) of the Prison Act states: "Wardens of penal institutions are to permit an inmate sentenced to death (except those classified as a detainee awaiting a judicial decision; hereinafter the same applies in this Division) to send or receive letters under the following items except for when it is prohibited by the provisions of this Division, Article 148, paragraph (3), and the next Section:

(i) letters the inmate sentenced to death sends to or receives from their relative;

(ii) letters which the inmate sentenced to death sends and receives in order to carry out business of personal, legal, or occupationally-important concern, such as reconciliation of marital relations, pursuance of a lawsuit, or maintaining a business;

(iii) letters deemed to be instrumental in helping the inmate sentenced to death maintain peace of mind.

(2) Wardens of penal institutions may permit an inmate sentenced to death to send or receive letters other than those set forth in the preceding paragraph when it is deemed that there are circumstances where the sending or receiving is necessary for maintaining a good relationship with the addressee, or for any other reasons, and if it is deemed that there is no risk of disrupting discipline and order in the penal institution."

<sup>4</sup> Business Insider, *16 police staff seized a man by bounding his hand and foot. A Nepalese man died during interrogation by prosecutor*, 29 March 2019; <https://www.businessinsider.jp/post-188176> [in Japanese]

<sup>5</sup> Minister of Justice's reply to inquiries of a National Diet member on 15 June 2022.

<sup>6</sup> On 7 April 2020, the government declared a state of emergency in seven prefectures based on the Act on Special Measures against Pandemic

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Influenza and Other Related Diseases. On 16 May, it expanded the scope of the state of emergency to cover all 47 prefectures nationwide.

<sup>7</sup> Ministry of Justice, Annual Correctional Statistics, 2017-2020

<sup>8</sup> Ministry of Justice Ordinance, Regulations on treatment against those who have committed crimes and delinquent juveniles in society, adopted on 23 April 2008, last amended on 24 April 2020.