



HUMAN
RIGHTS
WATCH

Japan's "Hostage Justice" System

Denial of Bail, Coerced Confessions, and Lack of Access to Lawyers

Japan's "Hostage Justice System"

Denial of Bail, Coerced Confessions,
and Lack of Access to Lawyers

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Summary

You are basically held hostage until you give the prosecutors what they want. This is not how a criminal justice system should work in a healthy society.

—Nobuo Gohara, former prosecutor, quoted in the *Japan Times*, January 5, 2019

The Nakamura family has lost faith in the Japanese legal system. Nakamura, a senior tax accountant, had pancreatic cancer when the police arrested him in October 2016 for fraud. His lawyer made multiple requests for bail to obtain adequate medical treatment, submitting medical evidence that the cancer had spread to Nakamura’s lungs, he had low blood pressure and blood sugar levels, and that his brain was not properly functioning.

The court rejected seven bail applications filed by Nakamura’s lawyer on medical grounds that his cancer was spreading. He was finally released in March 2017. The trial court and Court of First Appeal found him guilty. Nakamura died in May 2019 while awaiting the decision on his second appeal. His family alleges that the prolonged detention and the prison authorities’ failure to provide adequate medical services contributed to his death.

In another case, Tomo A. was arrested in August 2017 for allegedly causing the death of his 1.5-month-old child by allegedly shaking the baby in a way that led to brain damage. The authorities initially presented insufficient medical evidence to him that the shaking was the cause of death. But they investigated Tomo A. and his wife for around 10 months before arresting him. During the approximately nine months he spent in detention awaiting trial and during the trial itself, the prosecutors told him that either he or his wife must have killed their baby and that his wife would be prosecuted if he did not confess. He refused to do so and was acquitted in November 2018 at the District Court. The court of appeal decision also acquitted him in March 2020.

Japan has a legal system widely regarded internationally as competent and impartial, but its criminal justice system functions on laws, procedures, and practices that systematically violate the rights of accused persons. The problems are so deep and so ingrained that domestic critics have nicknamed it the “hostage justice system” (*hitojichi-shiho*), reflecting that suspects are frequently detained prior to trial for long and arbitrary periods—sometimes for up to several months or over a year—to obtain their confessions.

The problems are so widely known that the Japanese language has a word, “*enzai*,” for false accusations that lead to a person becoming a victim of the justice system. The mission statement of a magazine documenting miscarriages of justice describes *enzai*:

Even though you’re innocent, you get treated as a criminal. [That’s] *enzai*. If one person spends their entire life appealing their innocence, they’ll find the walls of justice are incredibly thick. Even if you win a not-guilty verdict, the time stolen from you will never come back. You may never recover the job, family, friends, and financial stability.

This report, based on dozens of interviews with former detainees and their family members, lawyers, prosecutors, and legal experts, documents the routine denial of bail; detention of suspects to obtain confessions; questioning of detainees who wish to remain silent or have asked for a lawyer; questioning of detainees without the presence of a lawyer; and the repeated arrests of detainees to prolong pre-indictment detention. This mistreatment is facilitated by the detention of most suspects in cells inside police stations, where there is almost constant surveillance, including during mealtimes and at the toilet, instead of holding them in specialized detention facilities.

These practices cause great personal hardship and lead to wrongful convictions. They violate internationally guaranteed rights to due process and a fair trial, and to be free from cruel, inhuman, and degrading treatment. Many of these rights are also protected under Japan’s 1946 Constitution, including the right of every detainee to immediate access to legal counsel, the right to due process, and the right against self-incrimination.

Denial of Bail

Problems with the criminal justice system start with suspects being ineligible to apply for bail before indictment and the routine denial of bail by the courts even after indictment to those who remain silent or those who challenge their charges.

Japan's Code of Criminal Procedure allows suspects to be detained up to 23 days before indictment. Articles 203(1) and 205(1) of the Criminal Procedure Code mandate that suspects be brought before a judge within 72 hours of arrest should the prosecutor believe it is necessary to detain them. Pre-indictment detention is limited in principle to 10 days maximum and this extension to a maximum of 10 days is granted only when there are unavoidable circumstances. However, the courts routinely grant two 10-day extensions of the detention, allowing for a 23-day maximum period between arrest and indictment.

The International Covenant on Civil and Political Rights, to which Japan is a party, states that anyone arrested or detained on a criminal charge be “promptly” charged before a court. The United Nations Human Rights Committee, the international expert body that provides authoritative analysis of the Covenant, has said that 48 hours is ordinarily sufficient time to bring someone before a judge and that any longer delay “must remain absolutely exceptional and be justified under the circumstances.”

The Code of Criminal Procedure does not empower the judge who has imposed pre-indictment detention to provide bail. Even after a detainee is indicted and allowed to request bail, those who have not confessed or have remained silent typically have a much harder time persuading a judge to approve their bail request. Judges frequently rule that such defendants are risks to “destroy evidence,” resulting in prolonged and unnecessary detention periods before trial.

Many former detainees and defense lawyers told Human Rights Watch that the denial of bail is used to pressure detainees to confess and as a form of punishment.

Yusuke Doi, a musician, was held for 10 months without bail after being arrested on suspicion of stealing 10,000 yen (US\$90) from a convenience store. His application for bail

was denied nine times. Even though he was ultimately acquitted, a contract that Doi had signed with a record company prior to his arrest to produce an album was cancelled, resulting in financial loss and setting back his career.

Takashi Takano, a lawyer and academic (former professor at Waseda Law School, Waseda University), points out that suspects are offered release if they “tell the truth,” which in practice means: “Confess, no matter whether true or false.” According to Jeffrey Kingston, director of Asian studies at Temple University, Tokyo: “Lengthy pre-trial detention allows prosecutors to isolate and pressure detainees into signing a confession. Detainees who claim innocence are subjected to prolonged detention until they implicate themselves. Bail is extremely difficult for anyone who does not confess.”

Multiple Arrests to Prevent Bail Applications

One of the most egregious ways that prosecutors and police abuse the criminal justice system is by filing new claims related to the same case to circumvent the legal limitation of a maximum of 23 days of pre-indictment detention. Investigators are supposed to finish interrogating a suspect at the end of the pre-indictment period. But they can continue to do so by starting a new pre-indictment detention period by carrying out a new arrest. Suspects remain ineligible for bail until the most recent pre-indictment detention period is over.

Prosecutors repeatedly make new arrests on new charges to induce confessions. After each new arrest, the pre-trial detention period restarts. Police and prosecutors achieve this by splitting a single case into parts. For example, when a corpse is found, suspects are routinely first detained on the charge of “corpse abandonment” and then, a maximum of 23 days later, rearrested for murder.

This practice is used to pressure a detainee into confessing. One person explained what happened after he was charged with manipulating stock prices:

On the evening of the date of expiry of the detention period, I was told that I had been released and was free to go. I gathered my belongings—comforter and clothes—and left. As soon as I left the detention center, I was arrested

outside the building and taken to the police station detention facility and the whole procedure started again. The prosecutor told me that the charge against me was manipulating the price of a stock for one year and they can break it up into two months per charge and arrest me six times for interrogation, and it was better for me to just confess. The prosecutors would yell at me constantly saying, “You are not even human.”

Abusive Interrogations to Obtain Confessions

While reports of violent abuse of suspects are rare in recent cases, investigating officers in Japan have used intimidation, threats, verbal abuse, and sleep deprivation to compel suspects to confess or provide information in violation of international legal protections and contrary to constitutional guarantees.

The Japanese Constitution states that “no person shall be compelled to testify against himself” and a “confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.” It also mandates that no one shall be convicted when the confession is the “only incriminating evidence.”

According to the Japan Federation of Bar Associations:

It is not uncommon that illegal and unreasonable interrogation tactics such as coercive pressure and dispensation of favors are used by investigators, resulting in suspects unintentionally confessing crimes they have not committed. Even if the suspect argues at trial that the interrogations were illegal or unreasonable, there are no means to objectively prove it so that it is possible that false charges could result.

Often, confessions are the result of coercion. The extended pre-trial detention, the prohibition on lawyers being present during interrogation, and the nearly automatic conviction rate for cases that go to trial foster an environment for involuntary confessions. While the law on the books requires the prosecutors to prove the voluntariness of the confessions, in practice, courts require the accused to prove that a confession was made under coercion.

Prohibitions on Communications with Family and Others

Japanese law allows courts to issue a “contact prohibition order,” which puts additional pressure on detainees to confess. These are issued routinely and restrict detainees to meeting and communicating only with their lawyers. They are not allowed to meet, call, or even exchange letters with anyone else, including family members.

Many individuals interviewed by Human Rights Watch cited this ban on communications as a cause of significant anxiety while in detention.

In 2015, Kayo N. was arrested for conspiracy to commit fraud. Kayo N. said that she worked as a secretary at a company from February 2008 to October 2011. In December 2008, the company president asked her to become the interim president of another company owned by her boss while a replacement was sought. She says that she was unaware that the company only existed on paper and that her boss had previously been blacklisted from obtaining loans. After her arrest and detention, the judge issued a contact prohibition order on the grounds that she might conspire to destroy evidence. Kayo N. was not allowed to see anyone but her lawyer for one year, could not receive letters, and could only write to her two adult sons with the permission of the presiding judge. She said:

After I was moved to the Tokyo detention center, I was kept in the “bird cage” [solitary confinement] from April 2016 to July 2017. It was so cold that it felt like sleeping in a field, I had frostbite. I spoke only twice during the day to call out my number. It felt like I was losing my voice. The contact prohibition order was removed one year after my arrest. However, I remained in solitary confinement.

Kayo N. said she did not know why she had been put in solitary confinement. She says that police also interrogated her sons to compel her to confess. The long trial process also exacerbated financial hardships. She was sentenced to three years’ imprisonment.

Unaccountable Prosecutors

Prosecutors exercise wide and often unchecked power in Japan’s criminal justice system, which lawyers and academics often refer to as “prosecutors’ justice.” As in many other countries, prosecutors have the exclusive power to indict. But a judge’s power to dismiss prosecutions is extremely limited and is rarely done over the objections of prosecutors unless there are apparent mistakes in the prosecution.

Japan has a 99.8 percent conviction rate in cases that go to trial, according to 2021 Supreme Court statistics, so the decision to indict or not has enormous significance. One scholar, Prof. Kana Sasakura, says that trials are often reduced to “ceremonies for ratifying prosecutors’ decisions.”

Prosecutors exercise great control over investigations and the use of information obtained during an investigation. Despite reforms in recent years, prosecutors can withhold even key evidence from the defense and from the public at trial, unless it is submitted to the court as evidence. Evidence disclosure amendments introduced by recent reforms are exceptions, but they are only applicable to a minority of cases in which judges decide to use a “pre-trial arrangement proceeding” or “inter-trial arrangement,” including those tried by *saiban’in*, the lay judge system, in which judges, prosecutors, and lawyers discuss disputed points, evidence to be examined, and the plans for the trial process.

Even in the small number of cases using these procedures, prosecutors are not obliged to fully disclose evidence. The requirement to disclose is limited in practice to when the court directs the prosecutors to disclose the particular evidence at the evidence examination stage of the trial, in cases where accused/legal counsel identifies specific evidence to the court and the court chooses to invoke court's authority to direct court procedure. This is a lengthy process, sometimes longer than a year.

Prosecutors sometimes compose statements that differ from what suspects have said. While many detainees refuse to sign false statements, others succumb to pressure or confusion and sign them.

Crucially, prosecutors' requests to keep a suspect in detention are rarely denied. According to the Justice Ministry, 94.7 percent of prosecutors' requests were approved in 2020. During detention, there is minimal judicial oversight of investigations, including whether the time requested is necessary.

Substitute Detention System

The Japanese Code of Criminal Procedure mandates that a criminal suspect must be brought before a judge within 72 hours of arrest (within 24 hours of the filing) if the prosecutor believes it is necessary to further detain the suspect. In the event that detention is allowed, the suspect is supposed to be sent to a specialized detention center under the control of the Ministry of Justice.

However, in practice, a specialized detention center is rarely used before prosecution and suspects are instead held at police stations during the initial detention period, where police investigators are usually located. Most often, suspects are transferred from the police station to the detention center only after indictment, when the pre-indictment period available for interrogation is over. This is commonly referred to as the "substitute detention system" (*daiyo kangoku*).

In 2018, the UN Human Rights Council in its concluding observations on Japan's universal periodic review recommended abolishing the substitute detention system, contending that it "increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession."

Lack of Adequate Health Care

Healthcare services in Japan's penal detention facilities are understaffed and overstretched. In 2013, approximately 260 full-time doctors worked at penal institutions, compared to 316 in 2003, far below the 332 doctors needed according to Justice Ministry figures.

Under the International Covenant on Economic, Social and Cultural Rights, which Japan ratified in 1979, the Japanese government has an international legal obligation to protect and provide for the health care of everyone in government

custody. The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide that prisoners “should enjoy the same standards of health care that are available in the community.”

Insufficient Reforms

Attempts at reforming Japan’s criminal justice system in the past two decades have failed to address fundamental problems. Reform attempts in 2004 included expanding the requirements of evidence disclosure by the prosecution and extending access to court-appointed lawyers in the pre-indictment period for serious offenses. However, these reforms did not address systemic and widespread problems in the investigation process. Prof. Kana Sasakura noted:

The main troubling features of the Japanese criminal process were preserved, including the domination of the process by prosecutors to the detriment of suspects and their legal counsel as well as the judiciary (commonly referred with derision as “*kensatsukan-shiho*” [justice owned by prosecutors]). The process still lacked transparency, and the outcome of the case was still decided in closed interrogation rooms without the participation of legal counsel, and not in open court.

A lay judge system (*saiban-in*) was put in practice in May 2009 to increase public participation in the judicial system. Six lay judges appointed from among the public now serve alongside three professional judges in cases involving serious crimes, including those punishable by death and indefinite imprisonment, and intentional criminal acts intended to cause death. Lay judges preside over cases but are not involved in indictments.

In May 2016, the Code of Criminal Procedure was amended to require audio and video recording of interrogations in cases involving serious crimes and where the prosecutors conduct their own investigation. Yet according to statistics compiled by the Japanese Federation of Bar Associations, the cases mandated by law to have audio and video recording are fewer than 3 percent of all criminal cases. Crucially, interrogations of witnesses or suspects who have not been arrested are exempt from recording, even in the specified category of cases.

United Nations Criticism

In 2013, the UN Committee against Torture expressed concerns about the use of confessions obtained without the presence of a lawyer to secure convictions. The committee also recommended that conditions of detention facilities be improved in line with the newly revised UN Standard Minimum Rules for the Treatment of Prisoners.

In November 2020, the UN Working Group on Arbitrary Detention, in response to claims by Carlos Ghosn—a foreign business executive facing charges of financial irregularity and fraud—observed that the process of arresting and detaining Ghosn was fundamentally unfair as it prevented him from regaining his liberty and from enjoying other fair trial rights, including to freely communicate with legal counsel. The opinion noted that “solitary confinement, the deprivation of exercise, constant light, and the absence of heating, as well as limited contact with family and legal counsel” compromised the suspect’s capacity to defend himself.

The Japanese government responded by calling the opinion “totally unacceptable,” and stated:

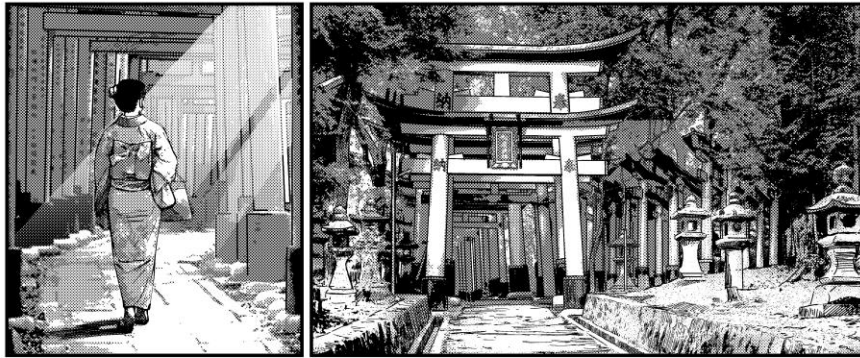
Japan’s criminal justice system sets out appropriate procedures and is administered properly to clarify the truth in criminal cases while guaranteeing the fundamental human rights of individuals concerned. In addition, detainees awaiting a judicial decision at institutions for detention receive treatments which respect their human rights.

In 2014, the UN Human Rights Committee recommended that the Japanese government provide alternatives to detention, including bail, during the pre-indictment period and the right to have a lawyer present during interrogation.

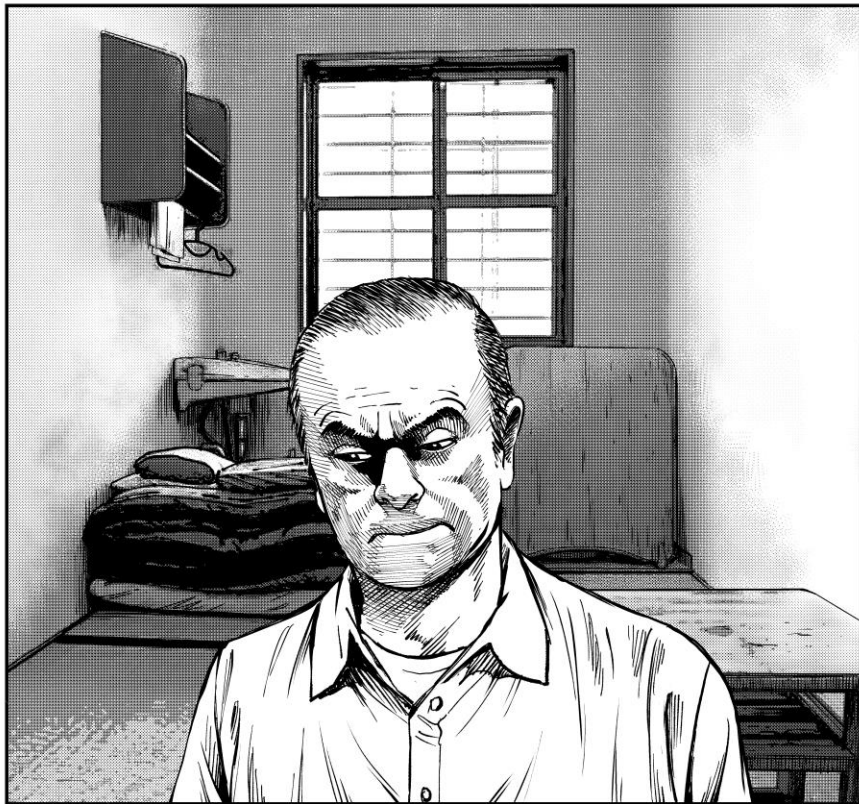
The Human Rights Committee also called for the abolition of the substitute detention system. However, the government’s response did not address the fundamental problems raised by the committee:

The detention of suspects in police detention facilities was very convenient, allowing families to visit the suspect and the lawyer to regularly visit the

suspect. It was not realistic to prohibit the use of detention facilities in police stations. Detainees could appeal to a public detention commission. Detained suspects were always immediately advised that they could choose a lawyer for their defense. If a person could not afford a lawyer, a court would appoint one.



Japan is known around the world as a rights-respecting democracy that protects civil liberties.



However, its justice system is facing international backlash for detaining people awaiting criminal charges unjustly.

This was highlighted by the high-profile case of auto tycoon, Carlos Ghosn, in 2018. He was detained for more than four months on charges of false accounting without a confirmed trial date.



But Ghosn's case was not particularly special in any way, and many suspects and defendants in Japan have had to endure this situation.

Katsuzou Nakamura, a tax accountant, was arrested in 2016. He was detained for more than five months, and eventually charged with violating bankruptcy law.

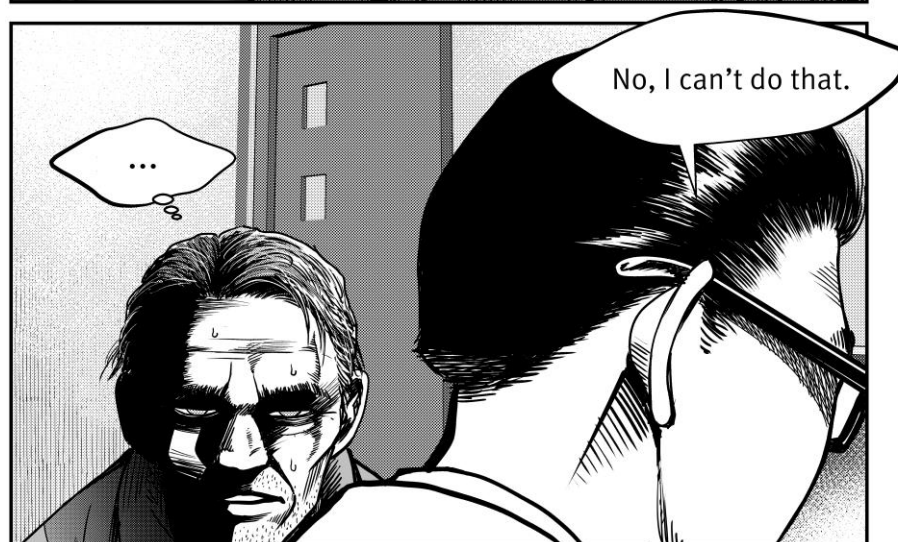


Why am I being attacked by someone I've never met?

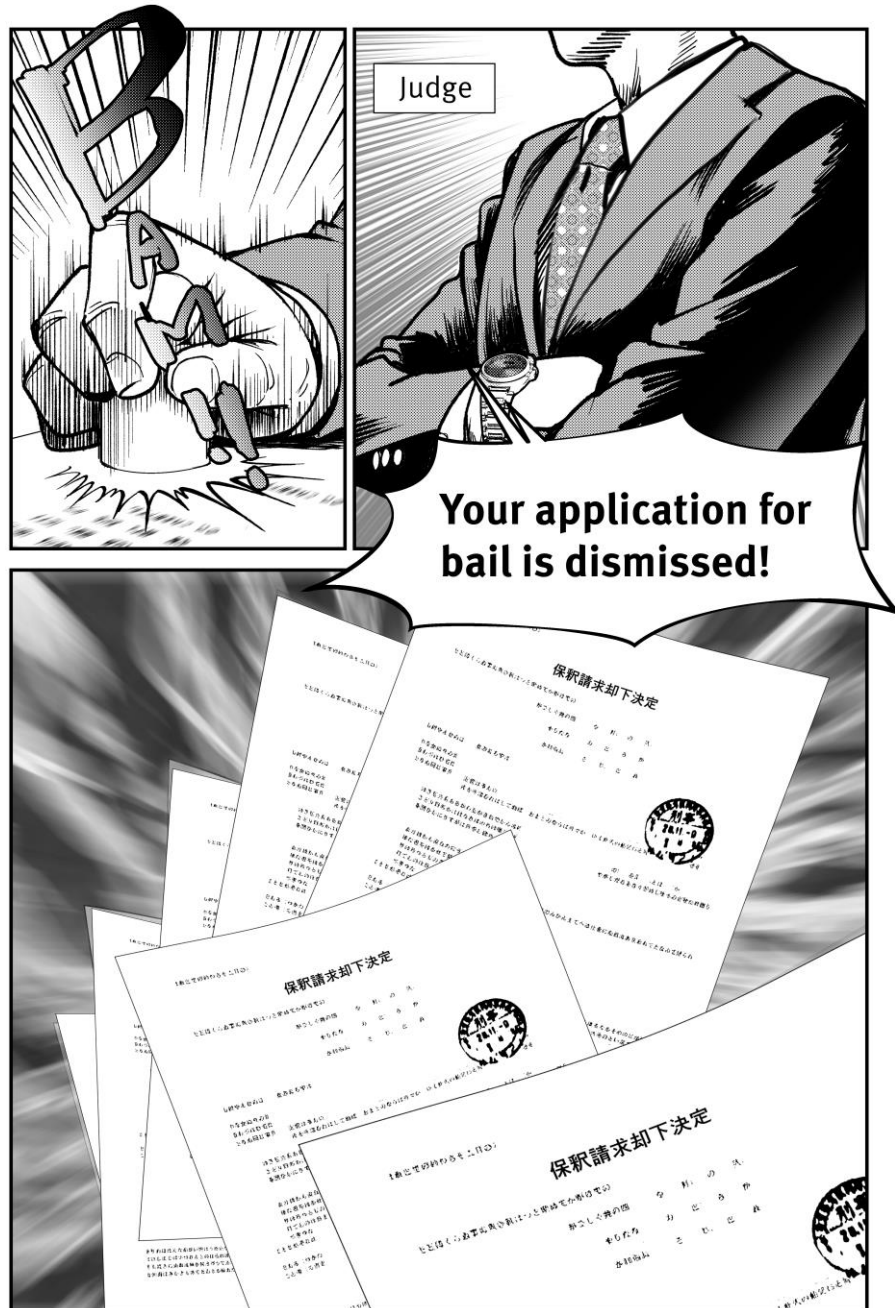


He denied all the charges. The person who pressed charges, the court-appointed lawyer (for the bankruptcy case), was a person who he'd never met and never spoke with. He said many times "Why am I being attacked by someone I've never met?"

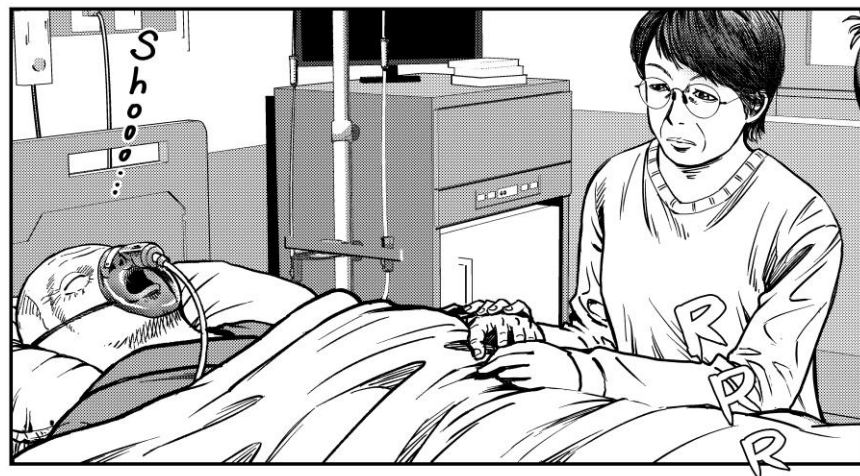
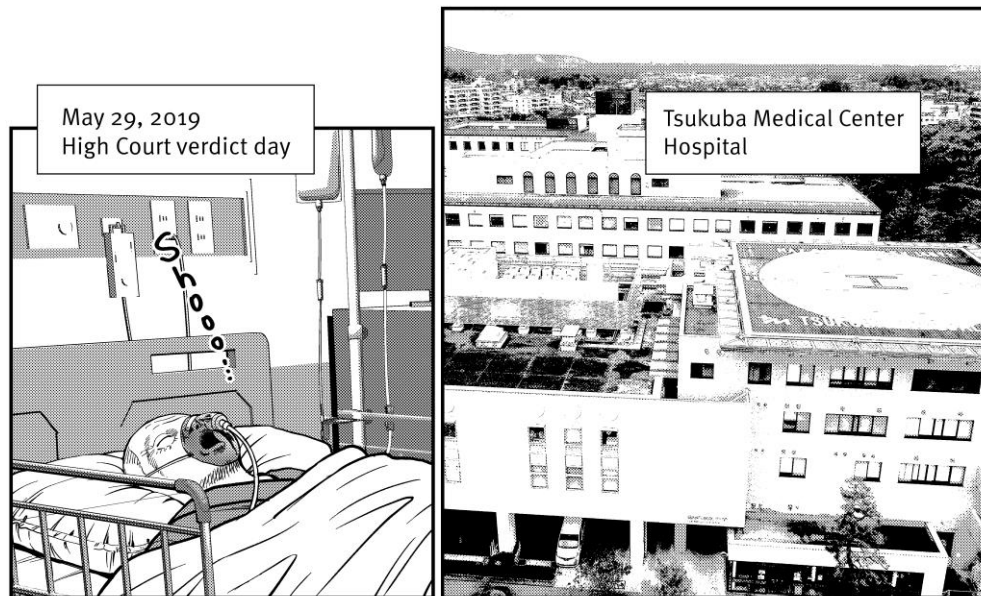
At the time of his arrest, Nakamura had pancreatic cancer. Without access to the right diet and adequate medical care, his health deteriorated rapidly.



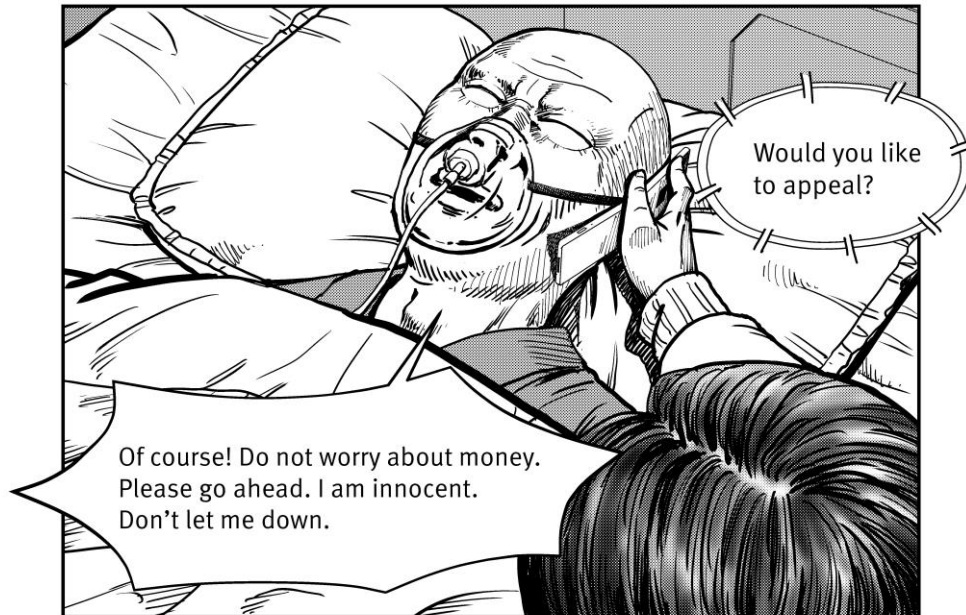
He asked repeatedly to be sent to the hospital. His requests were rejected.
He received no treatment for his cancer.



He tried seven times to request bail, and all were denied.
Nakamura was finally granted bail after 156 days.



May 29, 2019 was verdict day in the superior court. Nakamura couldn't go, and about 3 PM he got a phone call from his lawyer. He said the verdict had been announced.



"Would you like to appeal?" "Of course! Do not worry about money. Please go ahead. I am innocent," Nakamura said. "Don't let me down." It was that evening he passed away.



Koki Takatsu (pseudonym), a construction worker, was accused of child abuse in 2017. He denied the allegations but was detained for more than two years before eventually getting bail.

“My child lost consciousness when she was a month old. I panicked and tried to give her CPR and that broke her ribs.”



“We took her to the hospital.”



If you confess
you will be released.



“Two months later, on March 22, she passed away. It was the beginning of hell for us.

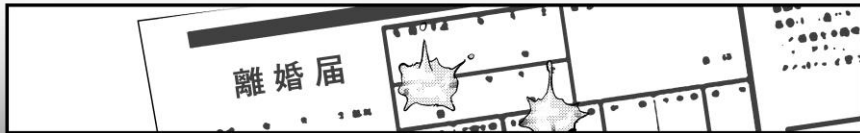
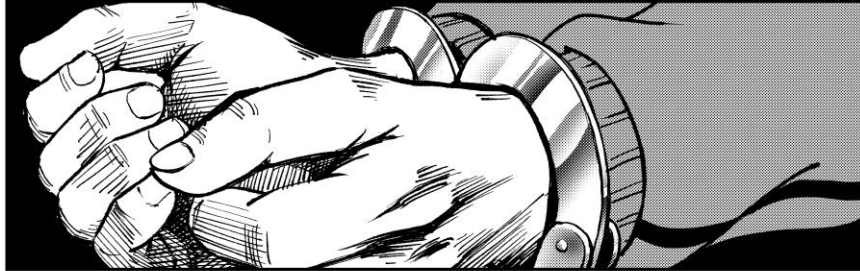
I entered the police station at 5 AM and was there until 7 PM. They said I would be released if I went along with their scenario.”



“I just ended up saying something along those lines just so I could leave. Then they released me. But think about it now, the police forced me to confess. I said I cradled my baby, and the authorities altered it to I had shaken my daughter.”



“After I was arrested in October 2017, I couldn’t have visitors and couldn’t send any letters.”



“I didn’t know what was going on outside and I received divorce papers.”



“The police kept putting pressure on my wife after she returned to her hometown. They said ‘Your husband is a terrible person, who committed this crime.’ ‘You should definitely divorce him.’ It made her feel like she could never be with me again. That’s what she told my mother in the end. It was the first time I really felt defeated, and I seriously wanted to kill myself.”

Key Recommendations

To the Ministry of Justice and the Public Prosecutors Office

- End the misuse of article 89(4) of the Code of Criminal Procedure, which allows the existence of “probable cause to suspect that the accused may conceal or destroy evidence” as an exception to the granting of bail, but is used routinely in cases where there is no such evidence.
- Abolish the practice of multiple arrests by splitting up charges based on the same case.
- Ensure that all suspects following apprehension have prompt access to counsel on a confidential basis.
- Issue directions that will ensure all suspects can be represented by legal counsel during all interrogations.
- Revise standards for requesting contact-prohibition orders so that they are only granted in narrowly defined circumstances in which substantial evidence exists to show the accused has credible plans to flee or conceal or destroy evidence.
- Ensure the right to remain silent by making police and prosecutors to clearly notify the accused of this right in all cases, and end questioning once the accused invokes the right.
- End opposition to bail applications by accused persons opposing their charges.

To the Diet

Revise relevant laws or introduce new laws to:

- Ensure that individuals awaiting trial as a general rule are not detained. Provide the right to apply for bail during pre-indictment detention and reform the bail law to bring it in line with international standards of presumption of innocence and liberty of individual. Revise article 89(4) of the Code of Criminal Procedure which broadly allows the denial of bail when there is no genuine evidence that the defendant is likely to conceal or destroy evidence. Deprive prosecutors the authority to appeal court decisions for bail.

- Explicitly state and put in place a system to ensure that all suspects have prompt access to a lawyer after apprehension on a confidential basis, including during all interrogations.
- Eliminate contact-prohibition orders except for narrowly defined circumstances in which specific contacts would create a genuine security risk.
- Ensure that suspects in custody are informed of the constitutional right to remain silent and the right is respected in practice. Ensure the right to remain silent by requiring ending interrogation once the accused invokes the right. Acknowledge that suspects are not obliged to go through interrogation.
- Establish an independent commission of inquiry into alleged cases of miscarriage of justice due to the “hostage justice system.”

To the Supreme Court

- Establish an independent commission of inquiry into alleged cases of miscarriage of justice due to the “hostage justice system.”

Methodology

Human Rights Watch conducted research for this report in person and online between January 2020 and February 2023 in eight prefectures in Japan—Tochigi, Chiba, Tokyo, Kanagawa, Aichi, Kyoto, Osaka and Ehime. We interviewed 30 individuals who were facing or have faced criminal interrogation and prosecution. We also spoke to 26 lawyers, academics, journalists, prosecutors, and family members of those who have faced criminal interrogation and prosecution.

The research focused on due process and fair trial violations in Japan’s criminal justice system. The report is not an exhaustive survey of human rights violations that criminal defendants in Japan face. Given the justice system’s vast scale, the research did not attempt to be comprehensive, but it indicates important trends and identifies key issues as voiced by defendants, lawyers, and academics. The personal accounts that Human Rights Watch obtained were corroborated by media reports, official documents, and domestic rights groups.

No compensation was paid to interview respondents. Interviews were conducted in Japanese, with Japanese-English simultaneous interpretation. Four interviews were conducted online and the rest were conducted in person.

Human Rights Watch researchers obtained oral informed consent from all interview participants and provided written explanations in Japanese and English about the objectives of the research and how interviewees’ accounts would be used in this report and other related materials. Interviewees were informed that they could stop the interview at any time or decline to answer any questions they did not feel comfortable answering.

In this report, pseudonyms are used for interviewees who requested anonymity.

I. Japan's Criminal Justice System

Japan's criminal justice system was established in accordance with the principles of the post-World War II constitution of 1946.¹ This system is summarized below.

Trial System

Japan has a three-tiered court structure. The first court is either the district court or a summary court depending on the severity of the penalty for the charged offense. Summary courts are used for minor crimes, for example, punishable by fine or lesser penalty. The high court is the court of second instance. The Supreme Court is the final court of appeal.² In the district court, a single judge decides cases except for certain crimes, for example those with higher statutory penalties that go before a three-judge panel.

In May 2009, Japan undertook a system of lay judges (*saiban-in*) for serious offenses such as homicide, robbery causing death or injury, arson of inhabited buildings, drug smuggling, and kidnapping for ransom. In this system, fact-finding and sentencing are conducted by a panel of three professional and six lay judges chosen from the public. These judges jointly make factual determinations and determine sentences after conviction, while professional judges handle issues of legal interpretation.³ Citizen participation was introduced to respond to criticism that the justice system was government-controlled and was intended to “reposition the public as actors, not bystanders, in governance.”⁴

A majority vote is sufficient for a lay judge tribunal to reach a verdict. However, at least one professional judge and one lay judge must concur in the majority's conclusion in the event of a guilty verdict.⁵

¹ Constitution of Japan, November 3, 1946, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (accessed May 11, 2023).

² “The Japanese Judicial System,” Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html (accessed May 11, 2023).

³ Supreme Court of Japan, “Outline of Criminal Justice in Japan,” 2023, https://www.courts.go.jp/english/vc-files/courts-en/Material/Outline_of_Criminal_Justice_in_JAPAN_2023.pdf (accessed May 8, 2023).

⁴ “The Japanese Judicial System,” Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/justice_system_reform.html (accessed May 11, 2023).

⁵ *Ibid.*

If the accused or the prosecutor are dissatisfied with the judgment in the first instance, they can appeal to a court of second instance to overturn the judgment. All appeals for criminal cases are handled by a three-judge panel of the high court. An appeal to the court of second instance can be made on the grounds of non-compliance with procedural law at trial, an error in the interpretation or application of law in the judgment, excessive severity or leniency of the sentence, or an error in fact-finding that would clearly affect the judgment outcome.⁶

A second appeal to the Supreme Court can only be made due to circumstances including a constitutional violation, an error in its interpretation, or conflict with Supreme Court or high court precedents.⁷

Investigation

The first step in the criminal procedure is an investigation, which is typically triggered by a victim, witness, or the police, depending on the type and nature of the offense.⁸

The main investigative authorities are police officers and prosecutors. In general, police conduct the initial investigation. The prosecutor then reviews the case to assess the chances of success and conducts further investigation. However, in corruption cases involving politicians, corporate crimes, and others, the Public Prosecutors Office can make arrests and conduct its own investigations. These are mainly done by special investigation units of district public prosecutors' offices in Tokyo, Osaka, and Nagoya, but it is used by other district offices as well.⁹

⁶ Supreme Court of Japan, "Outline of Criminal Justice in Japan," 2023, https://www.courts.go.jp/english/vc-files/courts-en/Material/Outline_of_Criminal_Justice_in_JAPAN_2023.pdf accessed May 8, 2023).

⁷ Ibid.

⁸ "Criminal Justice System in Japan," United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 2019, https://www.unafei.or.jp/publications/pdf/CJSJ_2019/00CJSJ_2019.pdf (accessed May 8, 2023).

⁹ Public Prosecutors Office, "Q&A," <http://www.kensatsu.go.jp/qa/qa2.htm> (accessed April 2, 2021). Ministry of Justice, "Own investigation and international investigation," http://www.moj.go.jp/keiji1/keiji_keijio7.html (accessed May 11, 2023).

“Prosecutors’ Justice”

Japanese legal experts have referred to the criminal justice system as “prosecutors’ justice”—a reference to the broad and often unchecked powers of prosecutors¹⁰ who routinely secure long periods of detention from judges to investigate suspects, often with minimal judicial oversight.¹¹ A prosecutor’s request to detain a suspect is rarely denied.

¹⁰ Human Rights Watch interview with Professor Kana Sasakura, Skype, January 24, 2020.

¹¹ Human Rights Watch interview with Professor Kana Sasakura, Skype, January 24, 2020. Article 247 of the Code of Criminal Procedure states that, “Prosecution shall be instituted by a public prosecutor” and the authority to prosecute is dominated by the prosecutor, with wide-ranging discretionary powers to indict. Teruo Kawamoto, a victim of Minamata disease (Minamata disease is a neurodegenerative disorder caused by poisoning by a mercury compound, first identified by Japanese doctors working in the Japanese fishing town of Minamata, where mercury was discharged into the bay by a large chemical company, Chisso Corporation, from 1932 until 1968) who led the victim movement, was indicted by the Tokyo District Public Prosecutor’s Office for causing injury (*Kawamoto* case) when he got in a minor scuffle with the representative of the Goi factory of the Chisso Corporation in 1947. While the Tokyo District Court found him guilty, the Tokyo High Court ruled that “comparing the laches and delay by state institutions to investigate the responsibility of Chisso which has caused serious and extensive damage, with the swift move to hold a victim accountable for comparatively minor criminal charges – in addition, also taking into account the facts that acts of Chisso employees have not been indicted -- this Court decides that it is inevitable to estimate and conclude the intentional or serious negligence of prosecutors who play a part of state institutions. Therefore, this Court concludes that, taking into account the documents on facts related to this issue additionally presented by the defense counsel, the suspension of prosecution would not cause harm to society, and rather, the prosecution causes more harm as it makes a mistake that the state becomes complicit with the culpable corporation, and therefore this case amounts to the misuse of discretionary power on prosecution.” The Tokyo high court found that the prosecutorial power was abused and therefore dismissed the indictment. (Tokyo High Court judgment on Teruo Kawamoto, June 14, 1977, https://www.courts.go.jp/app/hanrei_jp/detail3?id=20491).

However, the Supreme Court disagreed, ruling that, “It is clear that indictment does not immediately become invalid even if it resulted from divergence from prosecutor’s discretionary power, as current legal system allows prosecutors to have wide discretionary power over indictment. Considering that the Code of Criminal Procedure lists various clauses related to the use of this discretionary power (Art. 248 of the Code of Criminal Procedure), that prosecutors are supposed to use prosecution authority as representatives of common good (Art. 4 of Public Prosecutor’s Office Act), and that authority outlined in the Code of Criminal Procedure must be exercised in good faith by sustaining public welfare and ensuring fundamental human rights and not to abuse it (Art. 1 of the Code of Criminal Procedure, Article 1.2 of the Rules of Criminal Procedure), it is true that it cannot be denied that there could be cases that divergence from prosecutor’s discretionary power invalidates indictment. However, it should be said that such case is limited to extreme situation, such as the institution of prosecution itself amounts to a crime” and “It is unthinkable that this case falls under the extreme situation that results in invalidation of indictment, even from the findings and record of the original court.” Supreme Court, Judgment, December 17, 1980, https://www.courts.go.jp/app/files/hanrei_jp/200/050200_hanrei.pdf?fbclid=IwAR1Q-jltyVAQiEtnolryw7sPacboNjAPfeKCTow1EkWXIFndu81hCRSptgY (accessed May 11, 2023).

Further, the Supreme Court previously ruled that “even if arrest procedures involve illegalities as [the defendant lawyer] claims, that would not make the process of indictment violate the Article 31 of the Constitution and make it invalid,” demonstrating that an indictment does not immediately become invalid for illegal acts of investigative authority (Supreme Court, Judgment, July 21, 1966, https://www.courts.go.jp/app/files/hanrei_jp/785/051785_hanrei.pdf?fbclid=IwAR2SLUJsBD6QVBovlgcDj3hO7rohq4wREzYalx-Mqn2dRAcNnodenm8Umi4 (accessed May 11, 2023)). In fact, the Supreme Court has never invalidated a public prosecutor’s prosecution due to the abuse of the prosecutorial power.

According to court statistics, 94.7 percent of prosecutors' requests were approved in 2020.¹² Prosecutors can appeal the rare unfavorable order.¹³

As in many countries, prosecutors have exclusive power to prosecute or drop charges.¹⁴ Given Japan's 99.8 percent conviction rate at trial,¹⁵ the decision to indict or not becomes the most significant decision in the criminal trial process. As a result, trials have been described as "ceremonies for ratifying prosecutors' decisions."¹⁶

Article 247 of the Code of Criminal Procedure establishes that only the public prosecutor can institute a criminal prosecution.¹⁷ The discretion of prosecutors to file charges or decline to prosecute is broad; prosecutors can refuse to prosecute even if well-grounded suspicion exists and if they believe the suspect is guilty. Prosecutors rely on a wide range of factors in deciding whether to prosecute, including a suspect's character, age, environment, the gravity of the offense, the situation when the crime was committed, and circumstances after the offense.¹⁸

Prosecutors exercise enormous control over the use of information obtained during an investigation.¹⁹ Despite some reforms in recent years, prosecutors can legally withhold key evidence from the defense after indictment and from the public at trial. Evidence disclosure amendments introduced by recent reforms are only applicable to a minority of cases in which judges decide to use a "pre-trial arrangement proceeding" or "inter-trial arrangement," including those tried by *saiban'in*, the lay judge system, in which judges,

¹² In 2020, prosecutors requested detention of 96,328 people, of which district courts and summary courts issued detention orders to 91,221 people and turned down 5,104 people (detention order issue rate of 94.7 percent). The secretariat office of the Supreme Court Annual report of judicial statistics (2020) Chart 15 "Statistics related to court orders," <https://www.courts.go.jp/app/files/toukei/163/012163.pdf> (accessed May 11, 2023).

¹³ David Ted Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, (Oxford: Oxford University Press, 2001), p. 36.

¹⁴ According to the government, the indictment rate is 37 percent of all people arrested (a figure obtained by dividing the number of indicted persons by the total number of indicted persons and non-indicted persons in all suspected criminal cases). Justice Ministry, "Frequently Asked Questions on the Japanese Criminal Justice System," <http://www.moj.go.jp/EN/hisho/kouhou/20200120enQandA.html> (accessed May 11, 2023).

¹⁵ In 2020, of 47,117 people who finished their first instance criminal lawsuits, 45,685 were found guilty and 72 were acquitted. The Secretariat Office of the Supreme Court, Annual report of judicial statistics (2020) Chart 21 "Statistics related to first instance lawsuits," <https://www.courts.go.jp/app/files/toukei/169/012169.pdf> (accessed May 11, 2023).

¹⁶ David Ted Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, (Oxford: Oxford University Press, 2001), p. 215.

¹⁷ Code of Criminal Procedure, art. 247, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 11, 2023).

¹⁸ *Ibid.*, art. 248.

¹⁹ *Ibid.*, art. 247.

prosecutors, and lawyers discuss disputed points, evidence to be examined, and the plans for the trial process.²⁰

Even in the small number of cases using these procedures, prosecutors are not obliged to fully disclose evidence. The requirement to disclose is limited to that which is necessary to determine the probative value of evidence requested by prosecutors, and those related to the claims or facts scheduled to be proven by an accused or legal counsel. This is often a lengthy process, sometimes longer than a year.²¹

Prosecutors compose statements of defendants or witnesses in their own words and change or embellish the statements to present a stronger case. While many defendants refuse to sign false statements, many others succumb to pressure or confusion and do so.²²

In a Supreme Prosecutor's Office survey in 2011, over one-quarter of prosecutors interviewed admitted to being instructed to write confession statements that differed from what suspects said (6.5 percent responded that "it applies very well" and 20 percent responded that "it applies in some cases").²³ Interrogators compile statements that are presented to the suspect to sign during interrogation. In practice, defense lawyers cannot be present for the interrogation process, including the signing of statements.²⁴ As the criminal justice system is geared towards convicting an overwhelming majority of individuals who face trial, this creates pressure on prosecutors to secure convictions.

²⁰ Kana Sasakura, "Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?" in Saul J. Takahashi (ed.), *Civil and Political Rights in Japan* (London: Routledge, 2019). Code of Criminal Procedure, Article 316.2-32.

²¹ Code of Criminal Procedure, art. 316 (13.2), art. 316 (14), art. 316 (15.1), art. 316 (17.1), art. 316 (20), <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 11, 2023).

²² David Ted Johnson, "The Japanese Way of Justice: Prosecuting Crime in Japan," *Oxford University Press*, 2001. Page number 243

²³ "The Supreme Court research finds that one in four prosecutors 'has been advised to produce reports different from testimony,'" *Nikkei Shimbun*, March 10, 2011, https://www.nikkei.com/article/DGXNASDG1003V_Q1A310C1CR8000/?fbclid=IwAR1we4oYWKfMtcLoGrnsJtQXs9mh2b5CrsYtPjkqLaRNp24WPbFenjdw6Rg (accessed May 11, 2023). Ministry of Justice, "Kensatsu no Arikata Kento Kaigi (Review Commission on How the Prosecution Should Be) No.12 meeting minutes," March 10, 2011, http://www.moj.go.jp/kentou/jimu/kentou01_00029.txt (accessed May 11, 2023).

²⁴ Japan Federation of Bar Associations, "Declaration Calling for the Establishment of the Right to Have the Assistance of Counsel: Counsel's Presence at Interrogation Changes the Criminal Justice System," October 4, 2019, https://www.nichibenren.or.jp/en/document/statements/2019_1.html (accessed May 11, 2023).

Almost one-third of prosecutors said in the 2011 survey that they believed that an acquittal would hurt their promotion prospects.²⁵

Prosecutors are not only the cornerstone of Japan's criminal justice system, but also have significant influence in the legislative process. According to David Ted Johnson, an academic and expert on Japan's criminal justice system, "Since prosecutors hold almost all key posts in the Ministry of Justice [and most of the laws in Japan are proposed by the government, most often] the bureaucrats who possess the main lawmaking and law-revising powers are the same officials who apply those laws to suspects."²⁶ Therefore, it is extremely difficult to revise any laws related to criminal justice, in particular investigation, to limit the power of prosecutors.

Prosecutors often have exclusive access to investigative material. While defense counsel can talk to suspects under arrest, the standard is that they cannot receive the disclosure of the written statements of suspects, witnesses, or victims; investigation reports, including expert opinions; or evidence that is not used at trial or presented to the court until and unless prosecutors choose to submit evidence to the court to support their claim.²⁷

Megumi Wada, a lawyer, said:

The lack of access to prosecutors' evidence reports denies the defense counsel to adequately prepare rebuttals. I represented a British citizen who had been charged with using cocaine while traveling in Japan. The prosecution made a false declaration to the court that the expert certification was incomplete, even though it had in fact been completed. However, because we had no access to it, we could not rebut appropriately.²⁸

²⁵ David McNeil, "Travesty of justice: legal reform unlikely despite erroneous convictions," *Japan Times*, January 16, 2016, <https://www.japantimes.co.jp/news/2016/01/16/national/crime-legal/travesty-justice-legal-reform-unlikely-despite-erroneous-convictions/#.Xslk2fZFxPZ> (accessed May 11, 2023). Ministry of Justice, "Kensatsu no Arikata Kento Kaigi (Review Commission on How the Prosecution Should Be) No.12 meeting minutes," March 10, 2011, http://www.moj.go.jp/kentou/jimu/kentou01_00029.txt (accessed May 11, 2023).

²⁶ David Ted Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, p. 120.

²⁷ Kana Sasakura, "Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?" in Saul J. Takahashi (ed.), *Civil and Political Rights in Japan* (London: Routledge, 2019).

²⁸ Human Rights Watch interview with Megumi Wada, Tokyo, January 14, 2020.

Weak Judiciary

Courts in Japan have been widely criticized as being weak and unwilling to challenge the prosecution's account, resulting in an extremely high conviction rate.²⁹ There is a widely held perception among lawyers that judges are unwilling to challenge prosecutors. Several individuals interviewed who were facing or had faced criminal trials said the judge accorded greater importance to prosecution than to defense arguments. Nobuo Gohara, a lawyer and former prosecutor, said:

The extraordinarily high conviction rate indicates that in Japan, whether a suspect is guilty or not is almost solely decided by prosecutors. Even if the prosecutors wrongly prosecute a suspect, it is extremely difficult to reverse that decision in court. The reality is that only a few judges take claims of innocence seriously. And this has led to some false convictions.³⁰

An example of favorable treatment of prosecutors is the different standards applied to sharing information with media.

Defense counsel are prohibited from sharing information obtained during pre-trial discovery.³¹ A 2004 amendment to the Code of Criminal Procedure gave defense counsel the "right to request discovery," but also mandated it should only disclose the information for the purpose of preparing cases.³² On the other hand, the National Public Service Act sets the obligation to preserve secrecy; it stipulates that "an official must not divulge any secret which may have come to the official's knowledge in the course of duties. This also

²⁹ Human Rights Watch interview with Professor Kana Sasakura, Skype, January 24, 2020. The roots of the courts' subservience can be traced back to the constitutional history of Japan. In the pre-war Meiji era (1868-1912), Japan adopted its first modern constitution. The criminal justice system in that period was based on principles of the inquisitorial system with very little separation between the prosecution and the court.²⁹ According to Toshikuni Murai, professor emeritus at Hitotsubashi University and an expert in criminal law, "The state dominated the prewar system to such a degree that in the courtroom the public prosecutor sat along with the judge up on the stand, overlooking the defense lawyer and defendant. This arrangement was abolished when Japan adopted the adversarial system, giving partisans equal opportunity to argue their case before the judge, and the prosecution now sits opposite the defense." "Order in the Court: Explaining Japan's 99.9% Conviction Rate," *Nippon*, January 19, 2019, <https://www.nippon.com/en/japan-topics/c05401/order-in-the-court-explaining-japan%E2%80%99s-99-9-conviction-rate.html> (accessed May 11, 2023).

³⁰ Yuka Royer, "The 99.9 percent: Japan's justice system under scrutiny after Ghosn arrest," *France24*, December 9, 2018, <https://www.france24.com/en/20181207-japan-justice-99-system-carlos-ghosn-arrest-nissan-kelly> (accessed May 11, 2023).

³¹ Code of Criminal Procedure, arts. 281-4.

³² Code of Criminal Procedure, art. 281-4.

applies after the official has left the position.”³³ Nonetheless, prosecutors often share information with media.

Unchecked discretion and the high conviction rate place prosecutors in a position of greater significance than judges in the criminal justice system. Colin Jones, a Doshisha University law professor, said:

While the top official at the Justice Ministry is ostensibly the administrative vice-minister, in reality, he is inferior both in terms of seniority and pay grade to the prosecutor general and several other top prosecutors and, unlike most other senior bureaucrats, their uppermost ranks are appointed through a process that involves attestation by the emperor.³⁴

According to Hiroshi Segi, a former Supreme Court researcher and former Osaka High Court judge, the reality of judges in Japan is that “all judges perform their duties subordinate to the Supreme Court and its Secretariat and are bound exclusively by the unwritten rules and guidelines of the organization.” He notes that if you are a person who has expressed some opinion [i.e. an opinion different from what is implicitly approved by the Supreme Court] in judgments, articles, etc., you will be disadvantaged in posting and promotion.³⁵

From an overarching perspective, the deference that courts show to the investigating and prosecution agencies reflects their being sympathetic to the government and not viewing themselves as a truly independent branch of government.

Officially, all judges are independent in the exercise of their conscience and bound only by the constitution and the laws.³⁶ In practice, their independence is curtailed by the

³³ National Public Service Act, art. 100, <https://www.japaneselawtranslation.go.jp/en/laws/view/2713>. The United Nations Guidelines on the Role of Prosecutors provide that prosecutors keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise. UN Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990).

³⁴ Colin P.A. Jones, “A spotlight on Japan’s criminal justice system,” *Japan Times*, December 13, 2018, <https://www.japantimes.co.jp/opinion/2018/12/13/commentary/japan-commentary/spotlight-japans-criminal-justice-system/#.XsPbrzhKhPY> (accessed May 11, 2023). Imperial Household Agency, “Appointment ceremony of certification officers,” <https://www.kunaicho.go.jp/about/gokomu/kyuchu/ninshokan/ninshokan.html> (accessed May 11, 2023).

³⁵ Hiroshi Segi “Zetsubo no Saibansho,” Kodansha, 2014, p.52, 114~115. (accessed May 11, 2023).

³⁶ Constitution of Japan, art. 76.

Supreme Court's control over promotions, discipline, pay, and assignments (the location of the court to which a judge is assigned is part of a tightly controlled hierarchical bureaucracy).

Lower court judges are supervised by the Supreme Court Secretariat, which assigns roles and salaries. Lower court judges often defer to the government to receive better Supreme Court career assignments.

The government has the authority to appoint the justices of the Supreme Court, including the chief justice.³⁷

The Supreme Court has been extremely hesitant to use its constitutional power of judicial review of legislative action. In the past 75 years, the Supreme Court has only struck down 11 laws on constitutional grounds. On the rare occasion that the court does exercise this power, the government or parliament have sometimes defied those orders.³⁸

In 2006, former Chief Justice of the Japan Supreme Court Kouichi Yaguchi commented on the independence and authority of the Japanese judiciary:

You folks look at the post-war judiciary, and you say the Japanese judiciary should use its authority and power to declare laws unconstitutional more often. But how can a second-class bureaucracy perform that kind of responsibility, even if given that responsibility by the Constitution? Maybe now the judiciary is in a more spirited position to state its views. There is no future for the Japanese judiciary if it doesn't do that.³⁹

Historically, the relationship between the prosecution and the judiciary has been very close. In recent years, attempts have been made to create more separation between them.

³⁷ In appointing Supreme Court Judges, the prime minister often relies on people nominated by the career judiciary. However, some experts argue that while the prime minister's role might seem like a formality it informs the selection of nominees by the career judiciary since the judiciary will only nominate someone whose appointment is likely to be approved. For example, Eric Bennett Rasmusen and J. Mark Ramseyer, "Why are Japanese Judges so Conservative in Politically Charged Cases?" *American Political Science Review*, Vol. 95, No. 2, June 2001, pp. 331-44.

³⁸ "Why has Judicial Review Failed in Japan" *Washington University School of Law*, (2011) volume 88, issue 6, p. 1426.

³⁹ Shingo Miyake, *Shijo to Ho: Ima Nani ga Okiteirunoka* (Tokyo: Nikkei BP, 2007), p. 282, quoted in David S. Law, "Why Has Judicial Review Failed in Japan?," *Washington University Law Review* 88(6), 2011, p. 1437.
https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1061&context=law_lawreview.

The UN Guidelines on the Role of Prosecutors state that prosecutors should be strictly separated from judicial functions.⁴⁰ Lawyers and experts believe that the present arrangement in Japan does not allow for this. According to Prof. Sasakura, a prosecutor is generally assigned to a single court, creating familiarity and rapport between the judge and the prosecutor that favors the prosecution over the defense.⁴¹

A Tokyo prosecutor speaking to Human Rights Watch on condition of anonymity strongly disagreed with this assessment and said that the relationship had changed in recent years:

In the past two decades as a prosecutor, I have never had dinner or drinks with a judge alone. In the past 15 years, I have never spoken to a judge about a case in the absence of a defense counsel. The system is more transparent now. In the past, judges served as prosecutors for a brief period and vice versa but that practice has stopped in the past 15 years. However, judges can still become officials of the Ministry of Justice other than those of the prosecutors' offices, such as Criminal Affairs Bureau, Civil Affairs Bureau and Human Rights Bureau.⁴²

Recent Reform

2004 Reforms

Japan has undertaken two major attempts at reforming the justice system in the past two decades. The first was based on recommendations of the Justice System Reform Council established by the Japanese cabinet in 1999 that were submitted to the prime minister in June 2001.⁴³ These proposed introduction of graduate law schools, alternate dispute resolution in civil procedure, and the introduction of the lay judges (*saiban'in*) system for serious crimes. An act establishing the *saiban'in* system was adopted by the Diet, the Japanese parliament, in May 2004. The *saiban'in* system started functioning in May

⁴⁰ UN Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990), art. 10.

⁴¹ Human Rights Watch interview with Prof. Kana Sasakura, Skype, January 24, 2020.

⁴² Human Rights Watch interview with Hiro W., Tokyo, January 22, 2020.

⁴³ Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century, The Justice Reform Council, June 12, 2001, <https://japan.kantei.go.jp/judiciary/2001/0612report.html> (accessed May 11, 2023).

2009.⁴⁴ The act also expanded the discovery and evidence disclosure requirements for prosecution and defense.

The 2004 amendments to the criminal procedure code also allowed suspects the right to have a court-appointed counsel in the pre-indictment period for serious offenses, crimes punishable by death, life imprisonment, and intentional criminal acts intended to cause a person's death, which was by 2018 expanded to all cases requesting detention. However, defense lawyers still do not have the right to attend interrogations. Previously, suspects were only allowed access to a court-appointed counsel after indictment.⁴⁵

Some lawyers and legal academics welcomed the 2004 reforms. The *saiban'in* system has facilitated more public participation in the justice system, and to some extent diluted the rigidity of the judicial bureaucracy in decision making.⁴⁶

However, critics maintain there has been no fundamental change in adjudication of criminal cases since decisions cannot be made without the agreement of professional judges. The evidence disclosure amendments were also only applicable to trial by *saiban'in*. According to Colin P.A. Jones, a professor at Doshisha Law School in Kyoto, the lay judge system “exists to allow judges to continue generating similar results with less criticism.”⁴⁷

Perhaps most importantly, the 2004 reforms did not address the systemic and widespread problems in the investigation process. According to Prof. Sasakura:

The main troubling features of the Japanese criminal process were preserved including the domination of the process by prosecutors to the detriment of suspects and their legal counsel as well as the judiciary, commonly referred with derision as “*kensatsukan-shiho*” [prosecutors’

⁴⁴ The Japanese Judicial System, Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html (accessed May 11, 2023).

⁴⁵ Ibid.

⁴⁶ Daniel H. Foote, “Citizen Participation: Appraising the Saiban'in System,” *Michigan State International Law Review*, Vol. 22, No. 3, 2014, pp. 755-75, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2573197 (accessed May 11, 2023).

⁴⁷ David McNeil, “Travesty of justice: legal reform unlikely despite erroneous convictions,” *Japan Times*, January 16, 2016, <https://www.japantimes.co.jp/news/2016/01/16/national/crime-legal/travesty-justice-legal-reform-unlikely-despite-erroneous-convictions/#.Xslk2fZFxPZ> (accessed May 11, 2023).

justice]. The process still lacked transparency, and the outcome of the case was still decided in closed interrogation rooms without the participation of legal counsel, and not in open court.⁴⁸

2016 Reforms

Several cases of wrongful convictions and prosecutorial misconduct after the 2004 reforms received public attention, highlighting the need for more comprehensive reform. In 2007, two cases of wrongful convictions were widely publicized. In the Himi case in Toyama prefecture, Hiroshi Yanagihara was convicted in a rape case based on a confession. After he had served his three-year sentence and was released on parole in 2006, the actual perpetrator of the crime came forward and confessed. Yanagihara was exonerated in 2007.⁴⁹

In the Shibushi case in Kagoshima prefecture, a dozen people, including some older people, were prosecuted on suspicion of election act violations, such as candidates distributing distilled spirits (*shochu*) and cash to villagers, which incur only fines. The claims were later found to be false and invented by investigators. Yet some of those charged confessed and were released, while those who maintained their innocence had their bail requests turned down repeatedly. In one case, a suspect was detained for 395 days. The case was eventually dismissed and all suspects acquitted.⁵⁰ One person died during the trial and another attempted suicide.⁵¹ According to media reports of other cases, police ordered one woman to shout her confession out a window and forced one man to stomp on papers with the names of his loved ones.⁵² The ruling acquitting the suspects stated they “were forced to confess because of the persistent long hour marathon questioning almost every day by investigators.”⁵³

⁴⁸ Kana Sasakura, “Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?” in Saul J. Takahashi (ed.), *Civil and Political Rights in Japan*, (London: Routledge, 2019). See Reform Committee on Legal Affairs and Prosecutor’s Practices, “Supporting document for Committee member Shinozuka’s comment – proposals for the topics of the reform committee on legal affairs and prosecutor’s practices,” July 29, 2020, <http://www.moj.go.jp/content/001329728.pdf> (accessed May 11, 2023).

⁴⁹ Ibid.

⁵⁰ Norimitsu Onishi, “Coerced Confessions: Justice Derailed in Japan,” *New York Times*, May 7, 2007, <https://www.nytimes.com/2007/05/07/world/asia/07iht-japan.1.5596308.html> (accessed May 11, 2023).

⁵¹ Norimitsu Onishi, “Pressed by Police, Even Innocent Confess in Japan,” *New York Times*, May 11, 2007, <https://www.nytimes.com/2007/05/11/world/asia/11japan.html> (accessed May 11, 2023).

⁵² Ibid.

⁵³ Ibid.

Atsuko Muraki, then a senior official of the Ministry of Health, Labor, and Welfare, was detained for more than five months in 2009 after being indicted on allegations of falsification of public documents related to postal service laws. Even though this relatively minor crime was most likely to result in a suspended sentence even if she was found guilty, the prosecution alleged that a bureaucrat under Muraki's supervision had fabricated and issued the certificate on Muraki's instruction.⁵⁴ Her bail application was denied three times and she spent 164 days in detention.⁵⁵ She maintained her innocence throughout and was later acquitted.⁵⁶ A prosecutor in the Osaka District Public Prosecutors Office was later found guilty of tampering with evidence in the case.⁵⁷

Following public outrage over examples of wrongful convictions and prosecutorial misconduct, the Ministry of Justice set up a commission to review the Public Prosecutors Office. The commission, *Kensatsu no Arikata Kento Kaigi* (Review Commission on How the Prosecution Should Be), issued its final report in March 2011 and the Justice Ministry then constituted a special subcommittee of the Legislative Deliberation Council.

The special subcommittee was asked to submit recommendations to “build a new criminal justice system for the new era.”⁵⁸ The subcommittee submitted its final recommendations in July 2014. The Diet passed a bill based on the recommendations in June 2016, and the new regulations came into force in June 2019.⁵⁹ The 2016 reforms introduced five major changes to the criminal procedure code:

- Mandatory video recording of interrogations in certain types of crimes;
- Introduction of plea bargaining between the prosecutor and the defendant;
- Widening the scope of judicially approved wiretapping as an investigative tool;

⁵⁴ “Railroaded: One Woman’s Battle Against Japan’s “Hostage Justice,” *Nippon*, February 27, 2019, <https://www.nippon.com/en/people/e00156/railroaded-one-woman%E2%80%99s-battle-against-japan%E2%80%99s-hostage-justice.html> (accessed May 11, 2023).

⁵⁵ *Ibid.*

⁵⁶ Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals,” <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals> (accessed May 11, 2023).

⁵⁷ Dustin Dye, “Osaka prosecutor pleads guilty to tampering with evidence,” *Foreign Policy Blogs*, March 19, 2011, <https://foreignpolicyblogs.com/2011/03/19/osaka-prosecutor-pleads-guilty-of-tampering-with-evidence/>, (accessed May 9, 2023).

⁵⁸ Kana Sasakura, “Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?” *Civil and Political Rights in Japan*, (Routledge, February 2019).

⁵⁹ The Japanese Judicial System, Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html, (accessed May 5, 2023).

- Expanding the scope of evidence that must be disclosed in trials; and
- Victim protection.

These reforms have had only a limited effect in improving the criminal justice system. Mandatory video recording of interrogations is only required in cases involving serious crimes tried by lay judges, cases where prosecutors conduct their own investigations, and those in which suspects have an intellectual disability; this is only 3 percent of criminal cases.⁶⁰

The video recording requirement also does not apply to interrogations of suspects who have not yet been arrested, or to witnesses. Plea bargaining is limited to cases in which a third party provides information in return for immunity. It does not involve cooperation or a confession in which an accused faces lesser charges or receives a lighter sentence.⁶¹

The 2016 reforms also introduced a new list of crimes in which suspects' communications may be intercepted with a judicial warrant. These include the use of explosives, arson, murder, bodily harm, confinement of people, kidnapping of a minor, human trafficking, robbery, fraud, and violations of the law against child prostitution and child pornography.⁶² Wiretapping and interception of communication can only be requested if investigators believe that the crimes are committed by a group of people.

One significant amendment was that the presence of someone from the telecommunications company that manages the communication facility where the interception takes place was no longer required.⁶³ Widening the scope of wiretapping with judicial warrants is not necessarily problematic. But within the context of a prosecutorial system in which prosecutors already have enormous power, the door for unchecked prosecutorial misconduct has been expanded.

⁶⁰ Ibid.

⁶¹ Kana Sasakura, "Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?" in Saul J. Takahashi (ed.), *Civil and Political Rights in Japan*, (London: Routledge, February 2019).

⁶² Act on Communications Interception During Criminal Investigations, Act No. 137 of 1999, amended by Act No. 54 of 2016, Annexed Table II.

⁶³ Act on Communications Interception During Criminal Investigations, Act No. 137 of 1999, amended by Act No. 74 of 2011, art. 12. Act on Communications Interception for Criminal Investigation art.20-1, 23-1.

The expansion of the disclosure of evidence and victim and witness protection were much needed measures. The 2016 reforms require prosecutors to disclose the list of evidence in their possession upon the request of defendants or lawyers and for some cases put on pre-trial arrangement and inter-trial arrangement proceeding by the court.⁶⁴ However, the evidence to which defense counsel have access is limited to that which falls under the certain categories specified in the criminal procedure code, unless prosecutors disclose evidence at their discretion.⁶⁵

The reform amendments also provide for victim protection when a witness is at risk of retaliation, to share witness information on the condition of defense counsel not disclosing it, or to withhold identifying information. Defense counsel can challenge such withholding of information on the grounds that it is not warranted and will impact the right to a fair trial.⁶⁶

Prof. Sasakura, among many others, was disappointed with the reforms: “In the end, the emphasis of the reform was not to limit the use of confessions or statements, but rather to create new methods for the prosecution to obtain confessions or statements.”⁶⁷

2020 Reform Attempts

Japanese authorities arrested then-Nissan Chairman Carlos Ghosn on November 19, 2018, and charged him with financial misconduct. He was detained for 108 days before obtaining bail. The entrance to his house was electronically monitored but he fled Japan for Lebanon in December 2019.

The detention of Ghosn led to renewed domestic and international attention to Japan’s “hostage justice system.” Partly in response to this international criticism, then-Justice Minister Masako Mori tasked the Ministry of Justice with establishing a new Reform Committee on Legal Affairs and Prosecutors’ Practices.⁶⁸ The committee, which began

⁶⁴ Code of Criminal Procedure, arts. 316-14(3), (4).

⁶⁵ Code of Criminal Procedure, arts. 316-14, 15, 20.

⁶⁶ Code of Criminal Procedure, arts. 157-6, 299-4.

⁶⁷ Kana Sasakura, “Criminal Justice Reform of 2016: A Solution to the Infamous Problems in Japanese Criminal Procedure?,” in Saul J. Takahashi (ed.), *Civil and Political Rights in Japan* (London: Routledge, 2019).

⁶⁸ Ministry of Justice, “Reform Committee on Legal Affairs and Prosecutor’s Practices,” http://www.moj.go.jp/hisho/seisakuhyouka/hishoo4_00001.html (accessed May 11, 2023).

deliberations in July 2020, included lawyers, legal scholars, private sector representatives, a former judge, a former police official, and a former prosecutor. Its mandate was to review the ethics of prosecutors, the transparency of the administration of prosecutor offices, and whether current criminal justice procedures were contrary to international standards.⁶⁹

Many committee members recommended that Japan’s criminal justice procedures be brought into compliance with international standards. Specifically, they emphasized the need to ensure the presence of defense counsel at interrogations of suspects, urging for this reform to be implemented swiftly, even before any legislative amendments. Other recommendations included expanding mandatory audio and video recordings to the entire process in all cases and ensuring that a defendant’s denial of a charge or refusal to make a statement not be used as grounds to deny bail.⁷⁰

However, a retired police officer and a retired prosecutor argued that reform of the criminal procedure law should not be discussed at all. In response, Justice Minister Mori told the committee while “some members are hesitant to discuss criminal procedures,” the international community and the Japanese public had criticized Japan’s criminal procedures even prior to the case of Carlos Ghosn and that it was necessary to review them. “We must take this fact seriously,” she said.⁷¹

In September 2020 Mori resigned together with the entire cabinet and Prime Minister Shinzo Abe. The committee finally submitted its report to Justice Minister Yoko Kamikawa in December 2020, but failed to reach clear conclusions on criminal procedures. The report contained opinions both for and against the proposed reforms, only suggesting that “appropriate measures be taken to ensure that the entire criminal justice system, including on the presence of defense counsel, is discussed” at the next scheduled review of the Code of Criminal Procedure—expected to take place in 2022.⁷²

⁶⁹ The Reform Committee on Legal Affairs and Prosecutor’s Practices, “The minutes of the 1st meeting of the Reform Committee on Legal Affairs and Prosecutor’s Practices,” July 16, 2020, <http://www.moj.go.jp/content/001334234.pdf> (accessed May 11, 2023).

⁷⁰ The Reform Committee on Legal Affairs and Prosecutor’s Practices, “The report of the Reform Committee on Legal Affairs and Prosecutor’s Practices,” December 2020, <http://www.moj.go.jp/content/001337339.pdf> (accessed May 11, 2023).

⁷¹ The Reform Committee on Legal Affairs and Prosecutor’s Practices, “The minutes of the 4th meeting of the Reform Committee on Legal Affairs and Prosecutor’s Practices,” September 10, 2020, <http://www.moj.go.jp/content/001334230.pdf> (accessed May 11, 2023).

⁷² The Reform Committee on Legal Affairs and Prosecutor’s Practices, “The report of the Reform Committee on Legal Affairs and Prosecutor’s Practices,” December 2020, <http://www.moj.go.jp/content/001337339.pdf> (accessed May 11, 2023).

In 2022, the Ministry of Justice launched a 10-member "Committee on criminal procedures regarding the Revised Code of Criminal Procedure." The Committee has met once every one to two months since July 2022, but it has not yet reached the stage of compiling its recommendations. The meetings are closed to the public and are not open to the media. Only the meeting minutes are disclosed a few weeks after the meeting is held.⁷³ Of the 10 members selected by the Ministry of Justice, 5 are judges and prosecutors from the Ministry of Justice, the Public Prosecutors Office, the National Police Agency, and the courts, all of which have a backward-looking perspective toward reform to solve "hostage justice." Only a limited number of the rest of the members are supportive of such reform. The selection of the committee members and the manner in which the meetings are held, which are not open to the public, underline the Ministry of Justice's regressive attitude toward reforming "hostage justice," and it seems unlikely that the Committee will be a source of positive recommendations for reform.

⁷³ Ministry of Justice "'Committee on criminal procedures regarding the Revised Code of Criminal Procedure,'" https://www.moj.go.jp/shingi1/shingio6100001_00053.html (accessed April 28, 2023).

II. Violations of Due Process

Denial of Bail and Multiple Arrests

International human rights law provides that any pre-trial restrictions on criminal suspects must be consistent with the right to liberty, the presumption of innocence, and the right to equality under the law.⁷⁴ Pre-trial detention imposed on suspects as a means of punishment, to pressure confession, or because a defendant cannot afford bail is inconsistent with those rights.⁷⁵

The International Covenant on Civil and Political Rights (ICCPR), which Japan ratified in 1978, codifies the right to liberty: “Everyone has the right to liberty and security of person.”⁷⁶ A person’s liberty may not be curtailed arbitrarily, either through arbitrary laws or through the arbitrary enforcement of the law. To comply with the covenant, “deprivation of liberty must be authorized by law” and “must not be manifestly unproportional, unjust or unpredictable.”⁷⁷

Hidemi T. was arrested in September 2018 on suspicion of abusing her 7-month-old son and charged with causing injury. The charge was later dropped due to insufficient evidence. She said:

⁷⁴ The UN Human Rights Committee has stated: “[B]y reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.” UN Human Rights Committee, General Comment No. 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Twenty-first session, 1984), para. 7.

⁷⁵ See, for example, UN Human Rights Committee, General Comment No. 8, Right to liberty and security of persons (Sixteenth session, 1982), para. 3: “Pre-trial detention should be an exception and as short as possible.” United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110. “Pre-trial detention shall be used as a means of last resort in criminal proceedings...alternatives to pre-trial detention shall be employed at as early a state as possible. Pretrial detention shall last no longer than necessary.”

⁷⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 9(1). Japan ratified the ICCPR in 1978.

⁷⁷ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, (Arlington: N P Engel Publisher, 1993), pp. 172-73; see also *Van Alphen v. the Netherlands*, Human Rights Committee, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (1990), para. 5.8.

My son was 7 months old when he fell backward while pulling himself up to stand, seriously injuring himself and losing consciousness – he was rushed to the emergency room. One morning a month and a half later, police suddenly came to our house and searched it. They then polygraphed my husband and me and questioned us until around 6 p.m. A few months later, police and prosecutors each asked me to appear before them, so I voluntarily complied with both requests, was interviewed, and signed statements. I did not run and hide, but one morning, one year after my son's serious injury, the intercom rang, and the police suddenly came to our house, arrested me, and took me into custody. I was really surprised. The court initially decided to detain me for 10 days, but my quasi-appeal against the detention decision was approved and I was released in three days. The prosecutor then decided not to prosecute me, so I was never brought to trial. However, I don't think there was any need for my arrest at all.⁷⁸

Denial of Bail

Japan's Code of Criminal Procedure does not allow bail before a suspect is formally indicted, allowing for suspects to be detained for some time without the possibility of bail. The criminal procedure code stipulates that when bail is requested after indictment, bail must be granted except in cases in which the offense is serious, the defendant is a previous convict or a habitual offender, there is probable cause to suspect that the accused may conceal or destroy evidence, or their residence is unknown.⁷⁹

The ICCPR provides for bail for individuals in pre-trial detention: "It should not be the general rule that persons awaiting trial shall not be detained in custody, but release may be subject to guarantees to appear for trial."⁸⁰ Pre-trial detention also compromises the presumption of innocence, affirmed in the ICCPR as necessary for a fair trial: "Everyone

⁷⁸ Human Rights Watch interview with Hidemi T., Teams, February 15, 2023.

⁷⁹ Code of Criminal Procedure, art. 89, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 4, 2023).

⁸⁰ ICCPR, art. 9(3).

charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”⁸¹

Detainees in Japan are not allowed to request bail while in pre-indictment detention. Even when a detainee is indicted and finally allowed to request bail, those who have not confessed or have remained silent often have a harder time persuading a judge to approve their bail request, as judges view such defendants as risks to “destroy evidence.”⁸² This results in even longer detention.

Takashi Takano, a lawyer and academic, contended that judges believe that they are the ones who will be blamed by the public if any “scandal” should occur, such as a defendant fleeing or threatening a witness or victim. Therefore, to prevent that from happening, they will not grant bail unless they can be absolutely sure that there is no risk of the suspect fleeing or destroying evidence. However, it is almost impossible to prove that there is no such risk. As a result, defendants who refuse to admit their guilt – even people who are sick or older – are not allowed bail, resulting in excessive detention.⁸³ One individual arrested and indicted for extortion said, “I applied for bail many times, and it was always refused on the grounds for ‘fear to conceal evidence.’ If evidence was yet to be found, why had they arrested me?”⁸⁴

Megumi Wada, a criminal defense lawyer, said:

There are six specific grounds to deny bail [in Japan] and in all other cases bail should be granted. Article 90 of the code allows for discretionary grant of bail on health reasons and social conditions. However, bail is denied in most cases claiming innocence and often on very flimsy grounds. According to government figures, bail is granted in about 30 percent of cases. However, what the government does not mention is the time that it takes to get bail after indictment.⁸⁵

⁸¹ ICCPR, art. 14(2).

⁸² “Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals,” <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals>, (accessed May 5, 2023).

⁸³ Human Rights Watch interview with Takashi Takano, Tokyo, January 20, 2020.

⁸⁴ Human Rights Watch interview with Nao D., Osaka, January 23, 2020.

⁸⁵ Human Rights Watch interview with Megumi Wada, Tokyo, January 14, 2020.

While bail was granted for most cases in the 1970s, obtaining bail has since become more difficult. A senior lawyer practicing for the past four decades estimates that in the 1970s around 60 percent of defendants were granted bail and the process was quite simple:

Forty years ago, the basement of the bar association building sold a small one-page form for bail petition with only names and a few other details and bail was granted. Now 20-page-long bail petitions with sound legal arguments submitted by legal counsel are denied by the court, just with a template citing legal provisions without giving specific reasons.⁸⁶

The bail rate dropped to as low as 12 percent in 2003.⁸⁷ By 2019, it had increased to 33 percent. According to court statistics, the percentage of defendants who obtained bail before the conclusion of their court proceedings was 34 percent in 2018 and 26 percent in 2015. While courts do not break down the bail data into those who confessed to a crime and those who denied guilt, it is reported by the Japan Federation of Bar Associations that only 7.4 percent of those denied guilt got pre-trial bail in 2015 despite the fact that many cases take more than a year to start the trial process.⁸⁸

Many people told Human Rights Watch about bail being denied as a form of punishment for not confessing. Former prosecutor Nobuo Gohara has spoken out about the denial of bail to keep suspects hostage until they confess:

If you admit to the crime you're arrested for, you're released on bail relatively quickly. However, if you dispute the charges or claim innocence you will be detained longer. You won't be released on bail and your detainment will last weeks. You are basically held hostage until you give

⁸⁶ Human Rights Watch interview with Takashi Takano, Tokyo, January 20, 2020.

⁸⁷ Japan Bail Support Association, "Statistics on bail," <https://www.hosyaku.gr.jp/bail/data/> (accessed May 12, 2023).

⁸⁸ While there is no publicly available data breaking down the number of bail releases according to those confessed and those not, according to Lawyer Takashi Takano, the Supreme Court confidentially provided statistics only to the Japan Federation of Bar Associations, and it indicated that only 7.4 percent (322 people out of 5,275 people) who denied guilt obtained pre-trial bail. See "Cause and measures on hostage justice," Takashi Takano Blog on criminal justice, January 18, 2019, <http://blog.livedoor.jp/plltakano/archives/65939038.html> (accessed May 11, 2023).

the prosecutors what they want. This is not how a criminal justice system should work in a healthy society.⁸⁹

One Tokyo prosecutor with two decades' experience said that conditions of bail have become less stringent over the past two decades and that there has been a significant increase in the number of cases in which bail was granted and in suspects then fleeing. He said that in the past there was a strong tendency that bail was granted only to suspects who were likely to get a suspended sentence, while those likely to receive actual sentences were denied bail. In his opinion, bail is now granted broadly to some likely to receive actual sentences because of the seriousness of the crime:

We [prosecutors] don't want to keep opposing bail. The solution lies in making the trial proceedings more efficient. Bail should be granted reasonably, however, anyone who flees should be adequately punished.⁹⁰

Below are examples of cases in which the right to bail appeared to have been arbitrarily denied:

Case of Kazuya Yoshino

Kazuya Yoshino was charged and arrested in Tokyo in 2010 for injury causing death. He said:

My application for bail was rejected five times. The prosecutor opposed my bail on the grounds that I will intimidate the witnesses and conceal evidence. I was finally granted bail after more than 10 months. It is said that in the Japanese justice system more than 99 percent of suspects are found guilty once prosecuted. I feel lucky in being one of the very few who was acquitted in this justice system because I met a talented lawyer. But I still lost more than a year of my life to the process of arrest, detention and trial when my work was going well and my life was so fulfilled. Of course, I had

⁸⁹ Jake Adelstein, "Is international scrutiny of Japan's criminal justice system fair?" *Japan Times*, January 5, 2019, <https://www.japantimes.co.jp/news/2019/01/05/national/media-national/international-scrutiny-japans-criminal-justice-system-fair/#.XsLEyGhKhPY> (accessed May 6, 2023).

⁹⁰ Human Rights Watch interview with Hiro W., Tokyo, January 22, 2020.

to keep paying for my lawyer, residence and other fees even during detention, when I could not earn money. Although I was acquitted, I lost liberty, credibility and social standing, and no one apologized to me for the fake story made up by police and prosecutor to find me guilty. I was given money to compensate for the few hundred days that I was held, however I was making considerably more than that before being arrested. The income, credibility and work that I had lost won't come back. My life has completely changed since that incident.⁹¹

Yoshino said he was chased and attacked many times by a drunk individual and fought back in self-defense, knocking the assailant who hit the ground and became unconscious. Yoshino asked for an ambulance to be called. The person later died and Yoshino was charged with injury causing death. He maintained that he acted in self-defense and was acquitted by the court. Even after acquittal, he feels that people are reluctant to socialize or do business with him, resulting in isolation and economic hardship.⁹²

Case of Natsu E.

Natsu E. was arrested in Tokyo in 2011 for bringing a prohibited substance into Japan from Hong Kong. She denied the charges. She spoke about her experience trying to get bail:

My bail application was denied more than 10 times. I was finally released and also acquitted. There were never sound reasons given for denial of bail. The police had all the evidence in their possession; how could I have interfered with the investigation.⁹³

Case of Yusuke Doi

In 2012-2013, Yusuke Doi, a musician, was held for 10 months without bail after being arrested on suspicion of stealing 10,000 yen (US\$90) from a convenience store. His application for bail had been denied nine times. He was eventually acquitted.⁹⁴

⁹¹ Human Rights Watch interview with Kazuya Yoshino, Tokyo, January 11, 2020.

⁹² Ibid.

⁹³ Human Rights Watch interview with Natsu E., Tokyo, January 12, 2020.

⁹⁴ Human Rights Watch interview with Yusuke Doi, Osaka, January 23, 2020.

Case of Kayo N.

Judges have the discretion to set the bail amount. In certain cases, the bail is set at an amount higher than the suspect can reasonably pay. Kayo N. was indicted in the Tokyo District Court in 2015-2016 for conspiracy to defraud a bank. She had 41 hearings for her case. Her bail application was turned down several times. She told Human Rights Watch:

Finally, when I was granted bail, the bail amount was set at 3 million yen (\$27,000). The entire process had bankrupted me, and my sons were young so they did not have much savings – it is the same as being told to borrow money to deposit bail.⁹⁵

Case of Takao S.

Takao S. was detained for 430 days in Osaka detention center in 2016-2018 on charges of breach of trust and false entries in the original of electric notarized deeds. He said:

My court-appointed lawyer told me that I could not search for or look into evidence unless I receive bail, because there were more than 10 boxes of evidence [disclosed by prosecutors] and they could not be brought into the meeting room. The defendant cannot even look at 10 boxes of evidence. So it is same as not allowing the defendant to contest [the charges]. The defendant cannot defend at all.⁹⁶

Case of Haru T.

Haru T. was detained at the Tokyo Detention Center for 966 days in 2012-2014 on charges of violating the Financial Instruments and Exchange Act and other laws. He spoke of the difficulties of defending himself in a complicated financial case while in detention, where detainees have no access to the internet, email, or a telephone. He said:

I could not get real-time information to defend myself. I needed books on finance, but it took two weeks just to receive one book. I am a financial specialist and I would be able to choose a relevant book by myself if I were

⁹⁵ Human Rights Watch interview with Kayo N., Tokyo, January 13, 2020.

⁹⁶ Human Rights Watch interview with Takao S., Ehime, July 5, 2019.

free. But books were chosen by my lawyer who did not specialize in finance, so it was difficult to obtain books that I wanted.

Lawyers, prosecutors and judges were not financial specialists. I was deeply frustrated by the fact that trials went on without basic understanding of finance. I wanted to bring in the opinions of finance specialists in order to make them understand how absurd the financial scheme [argued by the prosecutors] was, but I could not do so in custody – I would have been able to ask specialists if I were free.⁹⁷

Case of Shinobu Yamagishi

Shinobu Yamagishi, the former president of Pressance Corporation, a real estate company listed on the first section of the Tokyo Stock Exchange, was arrested in December 2019 and prosecuted in a case of corporate embezzlement investigated by the special investigation unit of the Osaka District Public Prosecutors Office. The prosecutor's office declined to appeal the Osaka District Court's decision to acquit him on October 28, 2021. He said:

I was held in custody for 248 days following my arrest. My lawyer explained in detail and convincingly why I would not flee or destroy evidence in applying for bail, but the prosecutor's arguments were extremely poor. They even argued that I might flee to the US citing that my daughter was living there at that time. I think I requested bail six times, but the court kept turning them down. I really can't believe it.

I was questioned dozens of times by the prosecutor before my arrest, but I never dreamed that I was a suspect and thought I was being interviewed as a witness.

Yamagishi said he repeatedly explained his innocence to the prosecutor and that he was unaware of any crime. He said he believed Japan's "hostage justice" system is unjust:

⁹⁷ Human Rights Watch interview with Haru T., Tokyo, Aug 6, 2019.

I was indicted, confined to a small cell of about three tatami mats in the detention center, unable to move freely, and forced to endure hours of sitting without being able to do anything. It was a really hard time. I didn't even know when I would be able to get out. It was a very hard 248 days mentally, thinking that the only way to get out of here was to make a false confession. I think that imprisonment would be easier because you know when you can get out and you can work.

Yamagishi pointed out that under the current justice system in Japan, if there is clear evidence against you, you get bail because you have no other choice than to confess, but if you are innocent and there is no evidence, you are more likely to be locked up until you are tried.

Yamagishi also said that being in custody hampered his defense. Even though he hired a team of over 10 defense attorneys with different areas of expertise, as long as he was locked up it was hard for him to communicate with them effectively in order to provide a solid defense in what was a complex case requiring specialist knowledge, for example about evidence related to financial affairs. Eventually he did secure bail and was able to attend defense team meetings and provide information to his lawyers in a timely manner. It was only because of that, he said, that he was able to mount an effective defense and secure an acquittal.

However, if I had not had the money to organize the dream team defense team, I would have gotten false conviction [*enzai*] because I would have been locked up in detention under this hostage justice system and would not have been able to mount an effective defense. I think it is not right to be found innocent if you had money, and to be guilty if you did not have money. The hostage justice that locks up those fighting against *enzai*, false accusation, for a long time should be stopped.⁹⁸

⁹⁸ Human Rights Watch interview with Shinobu Yamagishi, Kyoto, February 27, 2023.

Case of Atsuko Muraki

One of the grounds to deny bail, the risk of “destroying evidence,” is interpreted very broadly and is frequently used to keep people in custody, particularly those who refuse to confess.

Atsuko Muraki, then a senior official in the Ministry of Health, Labor, and Welfare, was detained for five months in 2009 after being indicted for falsifying public documents related to postal service laws (see details of her case above). Her bail application was denied three times and was held for the period even though this relatively minor crime was likely to end up with a suspended sentence if she were found guilty. She claimed her innocence throughout and was acquitted in 2010.⁹⁹

Shibushi Case

In the Shibushi case (discussed above) in Kagoshima prefecture in 2007, a dozen citizens, including some older people, were prosecuted on suspicion of election act violations, which only incur fines. The claims were later found to be false. Those who confessed were released sooner than those who maintained their innocence; they had their bail requests turned down repeatedly. The longest detention stretched to 395 days. In the end, the case was dismissed, and all suspects were acquitted.¹⁰⁰

Multiple Arrests

One of the ways that prosecutors misuse the legal system is to split an alleged case into separate parts, allowing them to detain a suspect beyond the 23-day limit. This is often done repeatedly, resulting in a suspect being detained for multiple 23-day periods before indictment. There are cases in which suspects continue to be detained for more than a year, sometimes for several years before judgment; in such cases, this multiple rearrest could precede post-indictment detention. The “new” charges are often not new at all but rather a bad faith effort by police and prosecutors to coerce a confession. One individual arrested for possession of marijuana told Human Rights Watch:

⁹⁹ “Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals,” <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals> (accessed May 5, 2023).

¹⁰⁰ Ibid.

I was arrested a second time when I was already in police detention for cultivating marijuana. In the interrogation room at the police station, with my waist-ropes tied to a chair, I was shown the arrest warrant and they put a handcuff to my left wrist. However, I was not satisfied with the situation, and I asked that I be allowed to contact my lawyer before both my hands were handcuffed. Then the police officers loudly cursed and tried to forcibly cuff my right hand as well. Four police officers repeatedly pulled and twisted my hands, arms, and handcuffs in an attempt to bring my right and left wrists closer so that both hands can be handcuffed. The pain was particularly intense when the handcuffs were twisted in such a way as to bite into my left wrist, and I felt as if they were working as leverage and breaking my bones. I still have scars on my left wrist. On the day of the injury and the following day, I repeatedly asked the police to take me to the hospital but was not allowed. Eventually, the wound became infected and became swollen from the back of my hand to my elbow. Then on the fifth day after the injury, I finally saw the police-commissioned doctor.¹⁰¹

Yasutaka Sado was prosecuted for a violation of the Financial Instruments and Exchange Act for stock market manipulation. He was arrested in October 2017 and remained in custody for 14 months before being released on bail. He explained his experience in 2017:

On the evening of the date of expiry of the 20-day detention period, I was told that I had been released and was free to go. I gathered my belongings [comforter and clothes] and left. As soon as I left the detention center, I was arrested outside the building and taken to the police station detention facility and the whole procedure started again. The prosecutor told me that the charge against me was manipulating the price of a stock for one year and they can break it up into two months per charge and arrest me six times and it was better for me to just confess. The prosecutors would yell at me saying, “You are not even human.” The guards would inspect my notebooks monthly and read my observations on the detention and interrogation.¹⁰²

¹⁰¹ Human Rights Watch interview Yoshi M., Tokyo, January 11, 2020.

¹⁰² Human Rights Watch interview with Yasutaka Sado, Tokyo, January 16, 2020.

In 2015, Tomomi Tsuruta was charged with causing injury and assault. He said he was rearrested while in the Tokyo detention center:

The original injury charge was broken up into other charges. The police kept telling me that my charges could be broken up further and I can be repeatedly arrested so it was better for me to confess. The prosecutors and the police never told me that I had a right to remain silent.¹⁰³

Taiki Shimoyama said that he was arrested and rearrested nine times on theft charges. He was prosecuted on two of the charges; the other seven were dropped. The charges of stealing two cars were broken up into stealing a license plate, stealing a car, and driving a car without registration, among others.¹⁰⁴

One particularly egregious example of this practice occurs when a person suspected of a killing is first detained on the charge of “corpse abandonment” and then, a maximum of 23 days later, rearrested for murder.¹⁰⁵

For example, Akira Ono was first arrested in November 2020 on the charge of corpse abandonment of his wife, for which he was indicted on December 4. The same day, he was rearrested for murder, for which he was indicted on December 25.¹⁰⁶

In another case, Yoshito Sato was first arrested and indicted in December 2020 on the charge of corpse abandonment of a woman whom he allegedly murdered after breaking into her house. He was then rearrested on the charge of robbery and forcible sexual intercourse and murder on January 6, 2021, for which he was indicted on January 26.¹⁰⁷

¹⁰³ Human Rights Watch interview with Tomomi Tsuruta, Chiba, January 15, 2020.

¹⁰⁴ Human Rights Watch interview with Taiki Shimoyama, Aichi, January 17, 2020.

¹⁰⁵ Brad Adams, “Japan’s Hostage Justice System,” *The Diplomat*, January 10, 2019, <https://thediplomat.com/2019/01/japans-hostage-justice-system/> (accessed May 5, 2023).

¹⁰⁶ “Missing woman in Inzai city – husband rearrested for murder,” *Chiba Nippo*, December 4, 2020, <https://www.chibanippo.co.jp/news/national/745419> (accessed May 11, 2023).

¹⁰⁷ “A man arrested, after committing sexual violence and murdering a woman,” *Asahi Shimbun*, January 6, 2021, <https://www.asahi.com/articles/ASP163HYFP16UTIL003.html> (accessed May 11, 2023). “A man prosecuted again for forcible sexual intercourse murder,” *Sankei News*, January 26, 2021 <https://www.sankei.com/affairs/news/210126/afr2101260011-n1.html> (accessed May 11, 2023).

Failure to Allow Counsel During Interrogations

Japan's Code of Criminal Procedure provides for the right of criminal suspects to legal counsel:

The accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from, counsel or prospective counsel upon the request of any person entitled to appoint counsel.¹⁰⁸

The Japanese constitution also provides for the right to competent counsel. "At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State."¹⁰⁹

Previously, court-appointed counsel was available only after indictment. However, a 2004 amendment to the Code of Criminal Procedure extended the right to ask for court-appointed counsel to suspects held in pre-indictment detention if they cannot appoint one.¹¹⁰

The prosecutor has the authority to decide the timing and the duration of the meeting of an accused with a lawyer when it is necessary for the investigation.¹¹¹ While in the past it was not uncommon to deny access, in recent years prosecutors have used this power less frequently.¹¹² Crucially, however, police and prosecutors do not allow lawyers to be present during interrogations.¹¹³ Megumi Wada, a lawyer practicing criminal law, said:

Lawyers are not allowed to be present at the interrogation. There is no law prohibiting lawyers from accompanying the accused in the interrogation

¹⁰⁸ Code of Criminal Procedure, art. 39.

¹⁰⁹ Constitution of Japan, art. 37.

¹¹⁰ The Japanese Judicial System, Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html (accessed May 4, 2023).

¹¹¹ Code of Criminal Procedure, art. 39.3.

¹¹² Japan Federation of Bar Associations, "Manual on counsel's meeting with the accused," June 2018, <https://www.f-bengoshikai.com/wp-content/uploads/2016/11/793f0897a544f9102d7381993e47991a-1.pdf> (accessed May 11, 2023).

¹¹³ Call to Eliminate Japan's "Hostage Justice" System by Japanese Legal Professionals, <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals>. (accessed May 11, 2023).

before the police or the prosecutor. Some provisions of the internal code addressed to the police officers envisage the presence of a lawyer. Yet, the police and the prosecutors don't allow it.¹¹⁴

At the 6th Meeting of the Reform Committee on Legal Affairs and Prosecutor's Practices in October 2020, the Ministry of Justice commented that "we are not aware that the Public Prosecutors Office has decided officially that lawyers should not be present during defendant's interrogations," and that "whether or not to allow the presence of a defense counsel during an interrogation of a suspect by a prosecutor is to be determined by the prosecutor conducting the interrogation, in an appropriate manner for each case, taking into consideration the risk of impairing the function of the interrogation, the honor and privacy of stakeholders, the confidentiality of the investigation, and others," thus making clear its view that having such presence is possible and each prosecutor has discretion over it.¹¹⁵

Based on this, some Reform Committee members repeatedly requested to start trial runs of suspects having counsel during interrogations. However, the Public Prosecutors Office has not issued any guidance to its prosecutors that such presence is possible. To Human Rights Watch's knowledge, there is no information that the presence of a lawyer has started to be allowed during interrogations throughout Japan.

Some interviewees told Human Rights Watch that they were not informed of the right to counsel at the time of arrest or before their first interrogation.

Case of John O.

John O. was in Tokyo for a business trip when he was arrested in 2019 for possessing 0.8 grams of marijuana. His interrogation was carried out by the organized crime unit. John O. asserted that he was never told that he had the right to contact a lawyer:

After being taken to the police station, I was interrogated for seven to eight hours till it was morning. The interrogating officers yelled at me when I told

¹¹⁴ Human Rights Watch interview with Megumi Wada, Tokyo, January 14, 2020.

¹¹⁵ For further details, please see the minutes of the 6th Meeting of the Reform Committee on Legal Affairs and Prosecutor's Practices (October 15, 2020), <http://www.moj.go.jp/content/001334227.pdf>, pp. 16-17. (accessed May 11, 2023).

them that I intended to remain silent. They did not tell me that I had a right to get a lawyer. The police officers told me that the process would become easier if I chose to confess.¹¹⁶

John O. confessed on the second day after arrest, was sentenced to a six-months' prison sentence with probation, and then left Japan.

Case of Natsu E.

In August 2011, Natsu E. (discussed above) was arrested at Haneda airport in Tokyo under the Stimulants Control Act on charges of bringing a prohibited substance into Japan. She said she was not aware that she could confer with a lawyer. She said:

I did not know that I had a right to have a lawyer and no one told me that. They asked me leading questions and put words in my mouth in a way that clearly makes me guilty. The interrogation at the airport lasted for six to seven hours without a break. I was menstruating and not feeling well, but I was not allowed to go to the bathroom or use sanitary products. I was called in for interrogation by the prosecutor nearly 20 times. My longest interrogation with the prosecutor lasted nine hours, on average it lasted two to three hours. The prosecutor put great pressure on me to confess.¹¹⁷

Case of Hidemi T.

Hidemi T., whose case is mentioned above, was arrested and charged with assault on suspicion of abusing her 7-month-old son. The charge was later dropped due to insufficient evidence. She described to Human Rights Watch her experience of requesting counsel:

The interrogation in custody was so bad, but it was not recorded or videotaped and there was no lawyer present. I don't think the interrogation would have been that bad if there had been a recording and videotaping, or if a lawyer were present. After I was released, the police contacted me and

¹¹⁶ Human Rights Watch interview with John O., Skype, January 10, 2020.

¹¹⁷ Human Rights Watch interview with Natsu E., Tokyo, January 12, 2020.

said they wanted me to come for questioning for what they had not asked. I replied, “Okay, but please let my lawyer be present.” They then said, “Well, then we don’t need to question you.” There was no further request for interrogation – and the charge was dropped.¹¹⁸

Case of Shinobu Yamagishi

Shinobu Yamagishi (whose case is discussed above), told Human Rights Watch that his request for a lawyer during his interrogation was denied:

I think it was around the third day after my arrest – I asked the prosecutor if I could have a lawyer in the interrogation room because I was worried about the wording of my statement, and I did not want to fall into a word trap. However, the prosecutor said that was not possible and refused.

Yamagishi also told Human Rights Watch that he thinks he would not have been arrested in the first place if lawyers were allowed to be present at interrogations. The main reason why the prosecutors decided to arrest and prosecute him was because they had obtained statements from two people who had already been arrested saying falsely that he was both aware of the crime and involved in it. But Yamagishi said that he had seen the official video recordings of the interrogations of his two accusers and they showed that the prosecutors had obtained the statements implicating him by putting pressure on them:

The prosecutor shouted at them with a loud voice while slamming the desk, and each of them was told by the prosecutor, “The damage to the company will be more than one or two billion yen. Are you prepared to take that on?” “If you don’t tell us if Mr. Yamagishi was involved, the weight of your responsibility will change” and so on – in a pressured manner. So, they ended up signing false statements. One of them asked the prosecutor to retract his statement the next day because he had lied, but he was ignored.

¹¹⁸ Human Rights Watch interview with Hidemi T., Teams, February 15, 2023.

At the trial the judge questioned the credibility of the statements on the basis of the official video recordings of the interrogations and did not accept them as trial evidence, one reason Yamagishi was acquitted.

Yamagishi said he believes that if lawyers had been present at the interrogations of the two defendants who were pressured to accuse him, the prosecutors would not have been able to intimidate them and get false statements signed by them and he would never have been arrested:

What was even more surprising after the acquittal was that the prosecutors office is an organization with absolutely no internal review mechanism. I am the president of a private company, and when a private company is involved in misconduct of this magnitude, there is no question that they will apologize, establish a third-party committee to investigate the causes, and implement reforms to prevent that from happening again. But the prosecutors' office completely lacks this process. I sincerely hope that the same injustice that happened to me will not happen to anyone else in the future, but there is no doubt that the injustice will continue, because the prosecutors' practice and system don't change even when their misconduct is apparent.¹¹⁹

Violation of Right to Remain Silent

The Japanese Code of Criminal Procedure provides for the right of suspects to remain silent.¹²⁰ However, Japanese authorities interpret the criminal procedure code to require detainees to face interrogations throughout their time in detention. Exercise of the right to remain silent does not stop the questioning and investigators continue pressuring suspects to answer questions and confess to their alleged crimes.¹²¹

Case of Yasutaka Sado

Yasutaka Sado, discussed above, was arrested in October 2017 and remained in custody for 14 months before being released on bail. He said:

¹¹⁹ Human Rights Watch interview with Shinobu Yamagishi, Kyoto, February 27, 2023.

¹²⁰ Code of Criminal Procedure, arts. 291, 311, 316-9.

¹²¹ Japan Federation of Bar Associations, "Opinions on building new criminal justice system, part 1," June 14, 2012, https://www.nichibenren.or.jp/library/ja/opinion/report/data/2012/opinion_120614_2.pdf (accessed May 11, 2023).

I attempted to maintain silence but was constantly berated, being told things like “you are maintaining silence because you are guilty” or “don’t you understand how much trouble you are causing to others by maintaining silence?” I was interrogated by the prosecutors three times a day, mornings from 9 a.m. to noon, afternoons from 1 p.m. to 4 p.m., and nights from 7 or 9 p.m. to 10 p.m. This continued for 20 days. The only break was a lawyer meeting or a visit to the hospital.¹²²

Sado asserted that his arrest and detention caused him great financial hardship and emotional stress. Both his parents were unwell and in a nursing home and his requests to communicate with them or to be released on bail even for a short period to visit them were turned down.¹²³

Case of John O.

John O. (discussed above) was in Tokyo on a business trip in 2019 when he was arrested for possession of 0.8 grams of marijuana. Plainclothes police officers stopped him as he was leaving a bar in the Roppongi entertainment district of Tokyo. After he failed to produce a passport, which he had left at his hotel, the police arrested him and took him to the police station. During a search at the police station, officers found marijuana hidden in his shoes. John O. said that his interrogation was carried out by the organized crime unit. He said that during his interrogation, the officers yelled at him when he said that he intended to remain silent. He said they did not tell him he had a right to remain silent but that the process “would become easier” if he confessed.¹²⁴

Case of Hidemi T.

Hidemi T. (detailed above) described to Human Rights Watch how her interrogation continued after she exercised her right to remain silent:

I told the police that I would remain silent immediately after my arrest. The police then became frustrated and continued to interrogate me, still trying to get me to confess that I had assaulted my son.

¹²² Human Rights Watch interview with Yasutaka Sado, Tokyo, January 16, 2020.

¹²³ Ibid.

¹²⁴ Human Rights Watch interview with John O., Skype, January 10, 2020.

She said the police interrogation continued for three to five hours every day, and that the interrogations involved attacks on my character, such as being told that “You are lying all over the place and completely in a mess” and “The people at the infant care institution also said you’re putting on the mask of a good mother. They said you’re disgusting.”¹²⁵

Case of Shinobu Yamagishi

Shinobu Yamagishi (detailed above), the former president of Pressance Corporation, described why he did not keep complete silence:

Immediately after my arrest, the prosecutor repeatedly told me that I should not keep silent. When I told him that my lawyers had instructed me to keep silent, he accused my lawyers, saying, “If I were your lawyer, I would never tell you to keep silent.”

Yamagishi said the prosecutor sought to persuade him from the beginning that remaining silent was cowardly and unfair to the justice process. He said that after his arrest his lawyer advised him to keep completely silent. But because of the prosecutor’s insistence that complete silence appeared cowardly and unfair, and he also felt that it was unreasonable to remain silent when he had done nothing wrong, so he did not keep complete silence.¹²⁶

Abusive Investigation Practices

The Japanese Constitution states that “no person shall be compelled to testify against himself.”¹²⁷ The Code of Criminal Procedure also provides that a “confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.”¹²⁸ It also mandates that no one shall be convicted when the confession is the “only incriminating evidence.”¹²⁹

¹²⁵ Human Rights Watch interview with Hidemi T., Teams, February 15, 2023.

¹²⁶ Human Rights Watch interview with Shinobu Yamagishi, Kyoto, February 27, 2023.

¹²⁷ Constitution of Japan, art. 38.

¹²⁸ Code of Criminal Procedure, art. 319.

¹²⁹ Ibid.

However, many former detainees and Japanese law experts report that investigating officers sometimes attempt to coerce or force confessions and judges are willing to rely on them even if they are the only strong evidence.¹³⁰

The Japanese criminal justice system places a great deal of emphasis on obtaining confessions from suspects. Often the confessions are not genuinely voluntary. The extended pre-trial detention, the absence of lawyers at the time of interrogation, and a very high conviction rate creates an enabling environment for forced confessions. The conviction rate of 99.8 percent of accused who go to trial also creates a feeling of hopelessness in people who would otherwise contest the charges.

Takashi Takano, a lawyer and academic, said suspects are offered release if they “tell the truth,” which in practice means: “Confess, no matter whether true or false.”¹³¹

According to Jeffrey Kingston, director of Asian Studies at Temple University in Tokyo:

Lengthy pre-trial detention allows prosecutors to isolate and pressure detainees into signing a confession. Detainees who claim innocence are subjected to prolonged detention until they implicate themselves. Bail is extremely rare for anyone who does not confess.¹³²

Several individuals spoke about the singular focus of the prosecution to get them to confess. Under pressure, it is not uncommon for suspects at trial to retract confessions made during interrogation. Yet in practice courts require the accused to prove that their confession was made under coercion. According to the Japan Federation of Bar Associations:

It is not uncommon that illegal and unreasonable interrogation tactics such as coercive pressure and dispensation of favors are used by investigators,

¹³⁰ Danielle Demetriou, “Hostage justice’: How Japan secures confessions and convictions,” Al-Jazeera, January 29, 2020, <https://www.aljazeera.com/news/2019/01/justice-japan-secures-confessions-convictions-190125072905430.html> (accessed May 5, 2023).

¹³¹ Human Rights Watch interview with Takashi Takano, Tokyo, January 20, 2020.

¹³² Danielle Demetriou, “Hostage justice’: How Japan secures confessions and convictions,” Al-Jazeera, January 29, 2020, <https://www.aljazeera.com/news/2019/01/justice-japan-secures-confessions-convictions-190125072905430.html> (accessed May 5, 2023).

resulting in suspects unintentionally confessing crimes they have not committed. Even if the suspect argues at trial that the interrogations were illegal or unreasonable, there are no means to objectively prove it so that it is possible that false charges could result.¹³³

One interviewee arrested for third-party bribery said that he was repeatedly told, “confess and this [daily non-stop interrogation] will end.” The prosecutor told him that “he would be wasting his money fighting this case because everyone gets convicted.”¹³⁴

According to the lawyer Takashi Takano, both police officers and prosecutors fully utilize “hostage justice” as a tool to obtain confessions. They tell suspects that if they do not admit guilt during the investigation process, they will not be allowed bail, and will also be put on “contact prohibition” so that they will not be able to see their families until the trial is over. Furthermore, many Japanese lawyers advise that “there is no point to fight – even if you are convicted, you will get a suspended sentence” and “if you admit, you can get out on bail.” Takano believes that as a result of this practice, there are many hidden false convictions in Japan.¹³⁵

Police and prosecutors sometimes use intimidation, verbal abuse, threats, and sleep deprivation to compel suspects to confess or provide information, according to lawyers and victims. Extended detention periods and lack of limits on interrogation create a hostile and intimidating environment for suspects. According to one individual charged with theft and later acquitted, during interrogation the police officer said, “You are trash and have no right to have the interview videotaped.”¹³⁶

Ichiro H., who was accused of tearing down a protest banner made of paper, was interrogated by police officers all day long for three days. When he argued that he had “mistakenly torn down the banner without realizing that there was a banner” and that he had “no intention of tearing it down,” the police officer insisted that “this was impossible”

¹³³ The Japanese Judicial System, Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html (accessed May 5, 2023).

¹³⁴ Human Rights Watch interview with Kazu Y., Aichi, January 18, 2020.

¹³⁵ Human Rights Watch interview with Takashi Takano, Tokyo, January 20, 2020.

¹³⁶ Human Rights Watch interview with Yusuke Doi, Osaka, January 23, 2020. Also <https://www.j-cast.com/tv/2017/06/22301320.html?p=all> (accessed May 5, 2023).

and slammed the desk, shouting at him furiously, “you know, there’s no way you can get away with such an excuse!” When Ichiro H. kept on insisting, the police officers finally agreed with his argument on the second day of the interrogation. The charge was later dropped. Ichiro H. said:

I was really witnessing a scene of police rage, just like I had seen on a TV drama. I had read about the experience of a person who had undergone severe interrogations by the police, so I was prepared and was able to push through my argument. But I think there are people whose hearts would break under that kind of interrogation.¹³⁷

The Intimidating tactics that prosecutors use are highlighted by the case of Hiroshi Ichikawa—a prosecutor for almost 13 years before he was made to resign for threatening to kill a suspect during an interrogation.

He claimed that what he did was not unusual. He said he had heard prosecutors yelling at suspects and one of his superiors “boasting about how he kicked the shin of a suspect underneath the desk.” He attributed his behavior to the pressure of obtaining a confession from his boss. He also admitted to forcing a suspect to sign a confession under the instruction of another superior. “After I grilled the suspect for eight hours, I got him to sign this statement even though he didn’t say a single word of it.” Reflecting on his experience and training as a prosecutor, he wrote:

I was taught that winning is everything. And with the de facto power to detain someone who insists they’re innocent all the way up to their trial, we usually win. However, that doesn’t always mean that justice is served.¹³⁸

A Tokyo prosecutor told Human Rights Watch on condition of anonymity the “importance” of a confession in the Japanese criminal justice system. However, he denied that there was widespread use of coercion:

¹³⁷ Human Rights Watch interview Ichiro H., Tokyo, February 1, 2023.

¹³⁸ Jake Adelstein, “Is international scrutiny of Japan’s criminal justice system fair?” *Japan Times*, January 5, 2019, <https://www.japantimes.co.jp/news/2019/01/05/national/media-national/international-scrutiny-japans-criminal-justice-system-fair/#.XsLEyGhKhPY> (accessed May 6, 2023).

Prosecutors try to encourage confessions. The police and prosecutor are often criticized for obtaining forcible confessions. Of course, pressure and force are not good things. We believe that the suspects should look back at what they did, reflect, and apologize to the victim—that is why we encourage confessions. The method to do so sometimes gets extreme and there are several cases of police and prosecutors compelling suspects to confess. However, in my experience, in a large number of cases suspects initially deny the charges but in the course of interrogation confess to their crimes. We really want to make them feel bad about their actions using lawful means.¹³⁹

Case of Hidemi T.

Hidemi T. (detailed above) described her interrogation:

I told him [the police interrogator] that I would remain silent, but the police interrogation did not stop. He told me things like: “Your son is suffering aftereffects because of you”; “Your son’s brain is empty and he will be disabled for the rest of his life. Never think that he will become an abled person”; “Your son is not your comfort, you will have to take care of him for his entire life. You should do it all by yourself – don’t let your husband share that burden”; “You are lying all over the place and completely in a mess”; “The people at the infant care institution also said you're putting on the mask of a good mother. They said you're disgusting”; “You are abnormal”; “I feel so sorry for your husband”; “It’s different from medical debate around SBS [Shaken Baby Syndrome] – it is simply your lie”; and “Children grow up watching their parents' backs – there is no way you can show your back.

During her interrogation, Hidemi T. said interrogators repeatedly called her a liar, but, she said, the most painful part was the way they ridiculed her son's disability. She said that all the measures taken against her—the arrest, the exposure to the media, and the attacks on her character—were aimed at getting her to confess.

¹³⁹ Human Rights Watch interview with Hiro W., Tokyo, January 22, 2020.

“When each interrogation was over,” she said, “the police interrogator seemed upset that he failed again to get a confession.”-

Hidemi T. said she believed she was lucky to get released after only three days after the court approved her lawyer’s appeal against the detention order. “I was told that it is very rare for such an appeal to be approved,” she said. “The judge in charge of the hearing happened to know about SBS, so I think I was really lucky.”

However, Hidemi T. also believes that the interrogations she underwent from male police interrogators were particularly uncomfortable for her as a woman:

In police detention, bras are not allowed. I could not wear a bra during interrogation either, it was summer and I felt very uncomfortable being in a closed room with two male police interrogators while my body lines were visible in my thin clothes. I could not concentrate on the interrogation because it bothered me. After my lawyer made a request, I was allowed to wear a bra only during interrogation. I think all female suspects should be given the opportunity to wear a bra during interrogation. Japan has a culture where women do not walk outside without a bra. It was really disgusting.¹⁴⁰

Case of Yasutaka Sado

Prolonged interrogation and sleep deprivation are sometimes used as tactics to “break” accused who are unwilling to confess. Yasutaka Sado (see details of his case above) described his experience in 2017:

At times, I was interrogated beyond the lights out time of 9 p.m. although I had a bad rash and was on medication that induced sleep. On other occasions, I would have my medicine and sleep at 9 p.m. and then be woken up at 9:30 p.m. to be interrogated until around 11 p.m.¹⁴¹

¹⁴⁰ Human Rights Watch interview with Hidemi T., Teams, February 15, 2023.

¹⁴¹ Human Rights Watch interview with Yasutaka Sado, Tokyo, January 16, 2020.

Case of Kazuya Yoshino

Kazuya Yoshino, who was prosecuted and tried for “injury causing death” (see details of his case above), talked about his being interrogated in 2010:

I told the police my version of events clearly, but they treated the story as if it were a completely different case. Immediately after arrest, the interrogation continued throughout the night – then around 5:30 a.m. they took me to a detention center and the interrogation started again after breakfast. On the second day of my detention, I was taken to see a prosecutor. The prosecutor wanted me to confess that I was in rage and punched the attacker many times to hurt him. I was being interrogated from morning until evening by the police and the prosecutor. As soon as my interrogation with the police ended, I was taken – tied by a rope and in handcuffs – to see the prosecutor. I was made to wait there until around 8 p.m. The actual interrogation by the prosecutor was very brief and I was asked if I “had changed my mind” and would “talk now.” That happened every day – being harassed and forced to confess. ¹⁴²

Case of Yoshi M.

Tokyo police arrested Yoshi M. in 2016 on suspicion of possessing marijuana. Ten months earlier, the police had stopped him, taken him to the police station, performed a marijuana pre-test on a plant fragment in his possession, and told him that the results were negative. However, he was told that the police would not let him leave unless he gave his name and cellphone number, detaining him for more than four hours. The police told him that he was not under any suspicion and could not be arrested – which Yoshi M. believed and gave his name and cellphone number, allowing him to leave the police station.

However, the police called him 10 months later and told him that the substance was marijuana. He told Human Rights Watch that at the police station the police arrested him and detained him for approximately two months:

¹⁴² Human Rights Watch interview with Kazuya Yoshino, Tokyo, January 11, 2020.

I was bullied by the police. They constantly yelled at me while in detention.¹⁴³

Case of Tomomi Tsuruta

Tomomi Tsuruta was indicted in May 2015 for allegedly causing physical assault and injury to his girlfriend (discussed above). He denied having injured her and maintained that she became unwell after consuming alcohol. He described being interrogated during his detention:

[M]y first interrogation was with the prosecutor on the day following my arrest and lasted for five minutes. However, everyone is made to wait from 9 a.m. to 4:30 p.m. till everyone is done. After that, the police interrogated me daily for next 20 days. There was a lot of pressure to confess, and the police officers banged on the table, shouted, and slammed the doors to intimidate me.¹⁴⁴

Case of Nao D.

Nao D. was charged with extortion in Nara prefecture and arrested in March 2018. He said that the psychological torture of daily interrogations and low possibility of bail led him to a point where he was ready to confess, even though he maintains he was innocent. He said he was broken and would have confessed to something he didn't do; but "the only reason I didn't confess was that I had promised my wife to fight with my lawyers no matter how many years it takes."¹⁴⁵

Nao D. said that the psychological pressure to confess affected him to the point that even if he attempted to speak, words would not come out.¹⁴⁶ He felt that the judge and the prosecution were overly friendly with each other and the mistakes of the prosecutor were overlooked, while his defense counsel was kept under pressure. "To me," said Nao D., "the judges and the prosecutors looked to be on the same team."¹⁴⁷

¹⁴³ Human Rights Watch interview with Yoshi M., Tokyo, January 11, 2020

¹⁴⁴ Human Rights Watch interview with Tomomi Tsuruta, Chiba, January 15, 2020.

¹⁴⁵ Human Rights Watch interview with Nao D., Osaka, January 23, 2020.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

Case of Yasu I.

Yasu I. said that his court-appointed counsel advised him to confess even though he denied the charges. He was arrested for indecent assault in Tokyo based on CCTV footage. He has been told that a work colleague had called police identifying Yasu I. as the assailant after seeing the footage. However, he was not prosecuted as it turned out to be a case of mistaken identity.¹⁴⁸ He was nonetheless fired from his job immediately after arrest. While the decision to fire him was later withdrawn, he had to give up on returning to work. The episode continues to haunt him:

If you Google my name, the news of my arrest comes up. The fact that I was not indicted was not reported. The one-sided, pre-finalized and uncertain information will continue to remain as if it were fact – as a result, it not only causes disadvantages both publicly and privately, but I will have to live in constant anxiety and fear for the rest of my life, and I won't be able to regain my honor.¹⁴⁹

Case of Daisuke Ito

Daisuke Ito was arrested in 2020 for assault and charged with causing injury. However, he maintains that he is not guilty and acted in self-defense. He told Human Rights Watch: “I had to resort to violence, albeit with my bare hands, to protect myself and a friend from the person who threatened with a knife. I was stabbed in the stomach with the knife.”

Ito's attacker was arrested and admitted to the police's allegations, thus he was swiftly prosecuted, fined, and released. But about 10 days after the incident, the police came to Ito's house and arrested him. Ito said that the police strongly urged him to plead guilty to the assault charge and rejected his claim of self-defense. He told Human Rights Watch:

I think the police wanted to punish us both with a summary fine. But I was not convinced. Then the police told me that if I continued to plead self-defense, it would become a case of denial, which keeps me in custody for a longer period. The police also said that I might be kept in custody until the

¹⁴⁸ Human Rights Watch interview with Yasu I., Tokyo, January 20, 2020.

¹⁴⁹ Ibid.

trial starts or even after that. The nuance was that if I maintained my innocence, I would not be able to leave police custody.

Ito said it was particularly hard for him to take the decision to maintain his innocence because he runs a company that requires his constant presence. He said that if he had remained in custody until his trial started, his company would have gone bankrupt. In the event he was released on bail the day after his indictment.¹⁵⁰

Case of Tomohiro Ishikawa

Tomohiro Ishikawa was arrested for bribery in January 2010 when he was a member of parliament, for violation of the Political Funds Control Act committed when he was a secretary for the then Democratic Party president Ichiro Ozawa. He was held in a small unheated cell for three weeks and interrogated for 12 hours daily. He eventually admitted to a lesser offense. He maintains that his confession was forced:

Japanese prosecutors are very persistent. They write the plot out before they make the arrest. Then they force you to confess according to their storyline. In my interrogation, they didn't write down what I had said. [Instead] they would show me what they had prepared beforehand, then demand I sign it. Many times, I told them I would not sign, because it [the statement] was not what I had said.¹⁵¹

After 22 days of detention, Ishikawa signed an interrogation report admitting false recording on the political funds report. However, at his trial in June 2011 the Tokyo District Court rejected all statements of Ishikawa that the prosecutors submitted as evidence. The court ruled that Ishikawa was “under heavy psychological pressure, making compromises in order not to make [Ichiro] Ozawa [his former boss] guilty” and therefore the prosecutor’s investigation was illegal.¹⁵² Ishikawa had secretly recorded his interrogation by the prosecutor of the Tokyo District Public Prosecutors Office in May 2010 while on bail, and

¹⁵⁰ Human Rights Watch interview with Daisuke Ito, Teams, February 9, 2023.

¹⁵¹ Rupert Wingfield-Hayes, “Carlos Ghosn and Japan's ‘hostage justice’ system,” BBC, December 31, 2019, <https://www.bbc.com/news/world-asia-47113189> (accessed May 6, 2023).

¹⁵² “Tokyo District Court to reject some of the interrogation report of Ozawa’s former secretary,” *Asahi Judiciary*, July 24, 2011, <https://judiciary.asahi.com/articles/2011072300001.html> (accessed May 11, 2023).

this recording became the deciding factor in the court’s ruling to reject Ishikawa’s statements.

When it became public that the prosecutor had prepared a false investigation report, the Ministry of Justice disciplined him by cutting his salary; the prosecutor then resigned.¹⁵³

Tomohiro Ishikawa was ultimately convicted in 2014 for violating the Political Funds Control Act. He was charged with receiving a bribe from a construction company and making a false declaration about 400 million yen (\$3.6 million) used by Ozawa's asset management organization to purchase land while he was Ozawa's secretary.

During the investigation, Ishikawa had signed an interrogation report saying that he had “received approval from former President Ozawa,” but at the trial he said that the statement on the report was not true. Ishikawa denied receiving the money from the construction company and fought the case in the court, but the Tokyo District Court ruled that he and others received bribes and sentenced him to two years’ imprisonment, suspended for three years in September 2011. This decision was confirmed by the Supreme Court in September 2014.

In another trial in which Ozawa was prosecuted for lying in a political funds declaration, the Tokyo District Court strongly criticized the interrogation report of Ishikawa that said he was approved by former President Ozawa to record false in the political funds reports. The court said that the prosecutor's investigation was illegal and unjust, and refused to use the entire interrogation report as evidence. It acquitted Ozawa, a ruling later confirmed by the Supreme Court.

Case of John O.

John O. (see case details above) said that his interrogation after arrest was carried out by the organized crime unit, which interrogated him for seven to eight hours a day. He was later taken for interrogation by a prosecutor. John O. said:

¹⁵³ “Former special prosecutor and others not prosecuted in Rikuzankai case,” *Nikkei Shimbun*, June 27, 2012, https://www.nikkei.com/article/DGXNASDG27043_X20C12A6MM8000/ (accessed May 11, 2023).

I was brought to the prosecutor's office in handcuffs and tied with a long rope to many other people. Once seated, I was handcuffed to the chair. It was very humiliating. The prosecutor told me to sign a confession statement, which I signed because of the advice from the public defender.¹⁵⁴

He described the long-term effects of his encounter with Japan's justice system:

I cried every day and every night during my 31-day detention in solitary confinement. I have started having panic attacks since my release and ended up seeking therapy for Post Traumatic Stress Disorder (PTSD); I have no history of panic attacks.... I still have trouble sleeping.¹⁵⁵

Case of Koki T.

Koki T. was accused of being responsible for the death of his infant child. He was arrested in 2017 and placed in pre-trial detention for more than two years until he was released on bail in 2019. Two years later, the Tokyo high court acquitted him. He described the way he was questioned:

I entered the police station around 5 a.m. for voluntary questioning and it lasted until around 7 p.m. They would not let me go home. They said I would be released that day if I said that I had shaken the baby. So, I unwillingly wrote a statement that goes along with their scenario. Then they released me. I said I had cradled my baby, but they altered it into I had shaken my child. I think that was a forced confession.¹⁵⁶

False conviction (enzai) case on online threats of mass murder

In a widely publicized case in June and July 2012, online threats of mass murder in Yokohama and Osaka were posted on the cities' webpages.¹⁵⁷ By the end of September

¹⁵⁴ Human Rights Watch interview with John O., Skype, January 10, 2020.

¹⁵⁵ Ibid.

¹⁵⁶ Human Rights Watch interview with Koki T., Kanagawa, October 17, 2021.

¹⁵⁷ Jake Adelstein, "How Japan's Cyberterrorist Lost Game of Cat and Mouse," Daily Beast, February 25, 2013, <https://www.thedailybeast.com/how-japans-cyberterrorist-lost-game-of-cat-and-mouse>, (accessed May 11, 2023).

2012, police had arrested four people, who initially denied the charges. However, two of the four confessed after several days in detention: a 19-year-old university student and a 28-year-old man in Fukuoka Prefecture. The student said that he was told: “If you deny ... you will end up in jail.... If you were to be sent to prosecutors, you will have to go through trial where many will come watch, and your real name will be reported.”¹⁵⁸

In October 2012, a person claiming responsibility sent an email to a lawyer confessing and providing details on how the threats were made. According to the email, the purpose of doing this was “solely to entrap the police and prosecutors and expose their shameful status to the world.” In February 2013, authorities arrested Yusuke Katayama, alleging that he was the real culprit. He was subsequently convicted and sentenced.¹⁵⁹

Case of Ichiro H.

Ichiro H., one of the security personnel at the screening of a film on World War II-era “comfort women” under the Japanese imperial army, was prosecuted in September 2020 for assaulting a participant in a protest against the film screening. He was sentenced to a fine by the court. He said:

On the first day of the questioning, the prosecutor was aggressive, saying from the very beginning that there should be no doubt that I had pushed the person. When I said, “I didn't push,” the prosecutor became hostile toward our security activities. It was as if they had to hunt down anti-social elements. It was very difficult to get the prosecutor to revise the statement from the one he had already made up. The questioning went on for a very long time. I wanted the prosecutor to remain neutral and conduct the questioning in a solemn manner.¹⁶⁰

¹⁵⁸ Japan Federation of Bar Associations, “JFBA President’s statement on the police investigation result of the false accusation case on e-mail threat based on PC remote control,” December 19, 2012, <https://www.nichibenren.or.jp/document/statement/year/2012/121219.html> (accessed May 11, 2023).

¹⁵⁹ “Katayama sentenced for 8 years by Tokyo District Court for controlling remotely,” Nikkei Shimbun, February 4, 2015, <https://www.nikkei.com/article/DGKKZ082788850U5A200C1CC0000/> (accessed May 11, 2023).

¹⁶⁰ Human Rights Watch interview with Ichiro H., Tokyo, February 1, 2023.

Prohibition-of-Contact Orders

Courts in Japan often issue so-called “prohibition-of-contact orders,” which limit detainees’ ability to meet and communicate only with their lawyers. Under these orders, any type of communication between a detainee and others outside of the detention center is strictly controlled. Accused persons are not allowed to meet, or even write to or receive letters from anyone else, including family members.¹⁶¹ Additionally, pre-trial detainees are not allowed to call anyone including their lawyers.

These rules contravene international human rights standards, which provide that “[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by corresponding in writing and using, where available, telecommunication, electronic, digital and other means” and by “receiving visits.”¹⁶² In addition, “[e]very prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury.”¹⁶³

The Code of Criminal Procedure permits contact prohibition orders “when there is probable cause to suspect that the accused under detention may flee or conceal or destroy evidence.”¹⁶⁴ In practice, 38.3 percent of people detained receive a contact prohibition order, while courts granted more than 90 percent of prosecutors’ requests.¹⁶⁵ Many former

¹⁶¹ Code of Criminal Procedure, art. 81. (“The court may, when there is probable cause to suspect that the accused under detention may flee or conceal or destroy evidence, upon the request of a public prosecutor or ex officio, prohibit the accused from having an interview with persons other than those prescribed in Article 39, paragraph (1) [defense counsel], or censor the documents or articles sent or received by the accused, prohibit the sending or receiving of said documents or articles, or seize said documents or articles.”) See also “Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals,” <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals>, (accessed May 5, 2023).

¹⁶² United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly resolution 70/175, annex, adopted on 17 December 2015, rule 58.

¹⁶³ *Ibid.*, rule 68.

¹⁶⁴ Code of Criminal Procedure, art. 81, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 11, 2023).

¹⁶⁵ According to 2020 judicial statistics, 94,048 people were issued detention orders; prosecutors requested contact prohibition order to 39,855 people; and of them courts granted the order to 36,008 people. The approval rate is 90 percent. The Secretariat office of the Supreme Court, Annual report of judicial statistics (2020) Chart 15 “Statistics related to court orders,” <https://www.courts.go.jp/app/files/toukei/163/012163.pdf>, and chart 17 “Statistics on criminal miscellaneous cases,” <https://www.courts.go.jp/app/files/toukei/165/012165.pdf> (accessed May 11, 2023).

detainees told Human Rights Watch that the contact prohibition order was a major source of anxiety while in detention.

Megumi Wada, a criminal defense lawyer, told Human Rights Watch:

Contact prohibition orders are granted in many cases and cause significant pain for the accused. The legal grounds for issuing a contact prohibition order must be specific and it has to be a substantial risk of fleeing or a substantial risk of destroying evidence. However, the contact prohibition order is granted in a large number of cases and often without giving detailed, cogent reasoning.¹⁶⁶

However, a prosecutor in Tokyo disagreed that contact prohibition orders were granted very frequently. Speaking to Human Rights Watch on condition of anonymity, he said:

In my experience, contact prohibition orders are granted in very few cases. Generally, they are granted in cases of organized crime, drug-related crimes, economic crimes, and crimes committed through conspiracy involving several people. For example, if someone confesses everything including the involvement of senior members of the organization, there will be no contact prohibition order. We request contact prohibition only when a suspect covers up for an organization or accomplice, or when a suspect tells a lie. In many cases, even if we request contact prohibition, the judge will deny it. In certain cases, there is limited contact prohibition only restricting contact with some individuals.¹⁶⁷

In detention centers, detainees also have extremely limited contact with other detainees. Several interviewees said that detainees are allowed to talk with their fellow inmates only on rare and specified occasions.

¹⁶⁶ Human Rights Watch interview with Megumi Wada, Tokyo, January 14, 2020.

¹⁶⁷ Human Rights Watch interview with Hiro W., January 22, 2020.

Case of Kayo N.

Kayo N., who was arrested in December 2015 on charges of fraudulently obtaining a bank loan (discussed above), was placed under a contact prohibition order. She was not allowed to see anyone, except for lawyers, for one year. Kayo N. said:

I was unable to receive letters and could only write to my sons if the presiding judge allowed. In the Tokyo detention center, I was kept in the “bird cage,” [solitary confinement] from April 2016 to July 2017. It was so cold that it felt like sleeping in a field. I had frostbite. Solitary confinement was incredibly depressing. I spoke only twice during the day to call out my number. It felt like I was losing my voice. The contact prohibition order was removed one year after my arrest, but I remained in solitary confinement.¹⁶⁸

Case of Yusuke Doi

Yusuke Doi, who was charged with stealing 10,000 yen (\$90) from a convenience store in June 2012, had his request for bail was denied nine times. Ultimately, he was detained for 300 days with a contact prohibition order in force for nine months. And he was acquitted. After his arrest, his mother found a time-stamped photo on his smartphone showing him with a friend in his room 15 minutes before the incident. However, authorities still did not lose their suspicion of him. After the indictment, the mother reviewed in detail the disclosed security camera footage, which revealed that Doi's fingerprints found on the automatic door of the convenience store were from his previous visit to the store before the incident, finally proving his innocence.

Prosecutors and government officials contend that contact prohibition orders are primarily used in cases involving organized crime or where there were accomplices. However, Doi was not involved in a serious crime or was part of an organized crime network, and authorities were not making those allegations either. He said that prolonged detention and the feeling of isolation led him to contemplate suicide. He believed that judges imposed such orders as a punishment.¹⁶⁹

¹⁶⁸ Human Rights Watch interview with Kayo N., Tokyo, January 13, 2020.

¹⁶⁹ Human Rights Watch interview with Yusuke Doi, Osaka, January 23, 2020.

Case of Tetsu F.

Tetsu F., a tax accountant, was arrested in 2019 for conspiring to commit fraud by allegedly helping a client fraudulently obtain a loan. He consistently asserts that he has absolutely no involvement in his client's fraud and cannot accept being called an accomplice, because he was simply consulting with his client in good faith as an accountant. He was held in a detention center for six months before obtaining bail. In March 2022, the district court sentenced him to two years and six months in prison, with four-years suspended. He said:

The first time I saw a judge was on the day after my arrest. The contact prohibition was ordered. The judge was very mechanical about it, and the order was just read out without any emotion. The prohibition order remained for 22 days until indictment, and after that it was partially lifted for my wife and child.¹⁷⁰

Tetsu F. described the emotional and financial toll of the contact prohibition order and being denied bail stemming from being prosecuted for what he said was good-faith professional advice without any involvement in fraud:

I was fired from my job. I voluntarily surrendered my accountancy license for now. My son was in middle school and my wife had no employment. My elderly mother had to move from her village to provide support. The newspapers reported my personal, identifying details, and it comes up when googling my name.... This worried me the most.¹⁷¹

Tetsu F. also described the impact of being boxed in due to the contact prohibition order on his trial:

I was shocked to learn that my client made a false statement, that he had followed my instructions as his tax accountant. I really wanted to prove my innocence in court, but I was detained for six months and was completely

¹⁷⁰ Human Rights Watch interview with Tetsu F., Osaka, January 23, 2020.

¹⁷¹ Ibid.

cut off from all information. Because of that, the evidence to make my case was scattered, and I had to go to trial without sufficient time to prepare.¹⁷²

Case of Nao D.

Nao D. (detailed above), who was arrested in Nara in March 2018 on charge of extortion, was placed under a contact prohibition order for nine months. He said he requested removal of the order nearly 20 times, mostly to being allowed to see his wife. He said that his lawyer was his only window into the world.¹⁷³

Case of Koki T.

Koki T. (detailed above) was accused of being responsible for the death of his infant child and detained before judgment for more than two years. He was later acquitted. He said:

After I was arrested, I couldn't have visitors and couldn't send any letters (except to my lawyers). I didn't know what was going on around me—and suddenly received divorce papers from my wife. It was the first time I really felt defeated, and I seriously wanted to kill myself.¹⁷⁴

Right to Prepare an Adequate Defense

A prohibition-of-contact order can limit the ability of an accused to prepare or assist their lawyer in preparing their defense.

Prohibition-of-contact orders can make it extremely difficult for an accused under a prohibition-of-contact order to change lawyers, since the only person they can make this request to is their current lawyer.

Case of Aki K.

Aki K. was arrested in 2016 on charges of possession of marijuana. The prosecution obtained a contact prohibition order immediately. She told Human Rights Watch:

¹⁷² Human Rights Watch interview with Tetsu F., Osaka, January 23, 2020.

¹⁷³ Human Rights Watch interview with Nao D., Osaka, January 23, 2020.

¹⁷⁴ Human Rights Watch interview with Koki T., Kanagawa, October 17, 2021.

My lawyer did not communicate my messages to my sister asking for clothes and money. It was January and very cold. The lawyer insisted that I should confess. I was innocent and wanted to change my lawyer. However, the lawyer never communicated this to my sister and remained my lawyer as I was being interrogated by the prosecutor. My sister and I had been running a restaurant for 10 years and when I was arrested the lawyer told my sister about my arrest with customers present.¹⁷⁵

Aki K. described the personal, emotional, and financial consequences of her arrest, which included having to close her restaurant even though she was never indicted. She had been a “spiritual counselor” for 15 years prior to her arrest, and said having an arrest on her record, even without an indictment, has cost her most of her students and 80 percent of her income. She attributed her mother’s poor physical and mental health to the trauma of her arrest.¹⁷⁶

Case of Haru T.

Haru T., who was detained at the Tokyo Detention Center for 966 days on charges of violating the Financial Instruments and Exchange Act and other offenses (discussed above), was placed under a contact prohibition order throughout that period. He said:

What is difficult about “hostage justice” is not only about the length of detention but also that you cannot change your lawyer. For the 966 days that I was detained I could not even see my family with the contact prohibition. My acquaintance from finance work who observed my trial even said, “You might want to change your lawyer who does not know finances.” I knew that during my detention, but how can you say to your lawyer that you are incompetent so please bring someone else, while the only person you can see is your lawyer?¹⁷⁷

¹⁷⁵ Human Rights Watch interview with Aki K., Tokyo, January 21, 2020.

¹⁷⁶ Ibid.

¹⁷⁷ Human Rights Watch interview with Haru T., Tokyo, August 6, 2019.

Case of Takao S.

Takao S., who was detained for 430 days in the Osaka detention center in 2016-2018 on charges of breach of trust and other offenses (discussed above), described his difficulties changing lawyers under a contact prohibition order:

My family and supporters thought that I should change my counsel after they met with my lawyer for the district court trial. But I was on the contact prohibition order, so their message did not reach me. I was finally able to change my lawyer for my appeal court proceeding after receiving bail. If the contact prohibition order was not placed at the district court trial phase and I was able to communicate with my family without going through my lawyer, I would have changed my counsel and I believe the result of the district court trial would have been better.¹⁷⁸

Lack of Adequate Health Care

In accordance with the International Covenant on Economic, Social and Cultural Rights, which Japan ratified in 1979, the Japanese government has an international legal obligation to protect and provide for the health care of everyone in government custody.

Healthcare services in Japan's penal detention facilities are understaffed and overstretched. In 2013, approximately 260 full-time doctors worked at penal institutions, compared to 316 in 2003, far below the 332 doctors needed according to Justice Ministry figures.¹⁷⁹

Several former detainees spoke about denial of adequate health treatment. The diary of one prisoner—a cancer patient—which Human Rights Watch reviewed, describes a “sense of despair” at not being given medical treatment, physical weakness, and exhaustion. On October 10, 2016, he wrote that his head and knees were hurting, and his vision dimmed. He consistently noted that he informed the interrogating officer about his medical

¹⁷⁸ Human Rights Watch interview with Takao S., Ehime, July 5, 2019.

¹⁷⁹ Meeting of experts on medical care in correctional facilities, Justice Ministry, “Report on medical care in correctional facilities,” January 21, 2014, <http://www.moj.go.jp/content/000118361.pdf> (accessed May 11, 2023).

condition, but the interrogation continued, even on Sundays. On October 28, 2016, he fell unconscious with a high-grade fever and flu during an interrogation and was taken to a private hospital. He was interrogated again the next day. His diary read: “My brain is so blurred that I can’t even understand the questions. I told the police that I can’t speak.”

III. Japanese Law and International Legal Standards

Arrest, Detention and Bail

The Japanese Code of Criminal Procedure requires that any person arrested in a criminal case must be presented before a judge within 72 hours of the arrest.

International human rights law recognizes the right to bring proceedings before a court to challenge the lawfulness of detention from the moment of apprehension as an essential guarantee in ensuring judicial review of the legal basis of detention from the outset.¹⁸⁰

The 72-hour period is contrary to international standards. Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Japan is a party, provides that any person arrested or detained on a criminal charge should be brought “promptly” before a judge or other authority authorized by law to exercise judicial power.¹⁸¹ The UN Human Rights Committee, the independent expert body that interprets the ICCPR, states in its General Comment No. 35 (2014) on liberty and security of person, that “48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing” and that “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.”¹⁸²

The Code of Criminal Procedure also stipulates that when a court authorizes pre-trial detention, an accused is supposed to be sent to a specialized detention center under the Ministry of Justice.¹⁸³ However, in practice these specialized detention centers are rarely used and suspects are kept at police stations during the initial detention period, where police investigators are usually located.

¹⁸⁰ UN Human Rights Committee, General Comment No. 35, Right to liberty and security of persons (112th session, 2014), <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person> (accessed May 11, 2023).

¹⁸¹ ICCPR, art. 9.

¹⁸² UN Human Rights Committee, General Comment No. 35, Right to liberty and security of persons (112th session, 2014), para. 33, <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person> (accessed May 11, 2023).

¹⁸³ Code of Criminal Procedure, art. 64.

In 2008, the Human Rights Committee in its concluding observations on the fifth periodic report of Japan under the ICCPR recommended abolishing the substitute detention system:

The Committee reiterates its concern that, despite the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the substitute detention system (*daiyo kangoku*), under which suspects can be detained in police detention facilities for a period up to 23 days to facilitate investigations, without the possibility of bail and with limited access to a lawyer especially during the first 72 hours of arrest, increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession.¹⁸⁴

The Human Rights Committee reiterated its concerns and recommendations in 2014 in its concluding observations on the sixth periodic report of Japan under the ICCPR.

Japanese law does not empower the judge who has imposed pre-indictment detention to provide bail.¹⁸⁵ The Japanese Code of Criminal Procedure states that when bail is requested after indictment, it must be granted except when the offense is serious, the defendant is a previous convict or a habitual offender, there is probable cause to suspect that the accused may conceal or destroy evidence, or residence is unknown.¹⁸⁶

This is inconsistent with Article 9(3) of the ICCPR, which states that “It should not be the general rule that persons awaiting trial shall not be detained in custody, but release may be subject to guarantees to appear for trial.”¹⁸⁷ Pre-trial detention must be based on an individualized determination that it is reasonable and necessary, and for such purposes as to prevent flight, interference with evidence, or the recurrence of crime.¹⁸⁸

¹⁸⁴ UN Human Rights Committee, Concluding observations on the fifth periodic report of Japan, October 30, 2018, <https://digitallibrary.un.org/record/646529?ln=en> (accessed May 11, 2023).

¹⁸⁵ Code of Criminal Procedure, art. 88 and art. 207(1), <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 11, 2023).

¹⁸⁶ Code of Criminal Procedure, art. 89, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 4, 2023).

¹⁸⁷ ICCPR, art. 9(3).

¹⁸⁸ The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990) established that:

Under international law, any pre-trial restrictions must also be consistent with the right to liberty, the presumption of innocence, and the right to equality under the law.¹⁸⁹ Pre-trial detention imposed on criminal defendants as a means of punishment, to pressure an accused to confess, or because the individual cannot afford bail is inconsistent with those rights.¹⁹⁰

Article 9(1) of the ICCPR sets out the right to liberty: “Everyone has the right to liberty and security of person.”¹⁹¹ A person’s liberty may not be curtailed arbitrarily, either through arbitrary laws or through the arbitrary enforcement of the law in a given case. To comply with Article 9, “Deprivation of liberty must be authorized by law” and “must not be manifestly unproportional, unjust or unpredictable.”¹⁹²

Pre-trial detention also implicates the presumption of innocence, affirmed in Article 14(2) of the ICCPR as one of the necessary guarantees for a fair trial: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”¹⁹³

“(b) Pre-trial detention may be ordered only if there are reasonable grounds to believe that the persons concerned have been involved in the commission of the alleged offenses and there is a danger of their absconding or committing further serious offences, or a danger that the courts of justice will be seriously interfered with if they are left free;

(c) In considering whether pre-trial detention should be ordered, account should be taken of the circumstances of the individual case, in particular the nature and seriousness of the alleged offence, the strength of the evidence, the penalty likely to be incurred, and the conduct and personal and social circumstances of the person concerned, including his or her community ties.”

¹⁸⁹ See, for example, “[B]y reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.” UN Human Rights Committee, General Comment No. 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Twenty-first session, 1984), UN Doc. HRI/GEN/1/Rev.9 (vol. 1)(2008), para. 7.

¹⁹⁰ See, for example, UN Human Rights Committee, General Comment No. 8, Right to liberty and security of persons (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (vol. 1)(2008), p. 179, para. 3: “Pre-trial detention should be an exception and as short as possible.” United Nations Standard Minimum rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110, paras 6.1&6.2. “Pre-trial detention shall be used as a means of last resort in criminal proceedings... alternatives to pre-trial detention shall be employed at as early a state as possible. Pretrial detention shall last no longer than necessary.”

¹⁹¹ ICCPR, art. 9(1).

¹⁹² Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, (Arlington: N P Engel Publisher, 1993), p. 172-73; see also *Van Alphen v. the Netherlands*, Human Rights Committee, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (1990), para. 5.8.

¹⁹³ ICCPR art 14(2). See also, UN Human Rights Committee, Working Group on Arbitrary Detention, Opinion No.59/2020, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Versi on.pdf (accessed May 11, 2023).

In 2014, the UN Human Rights Committee recommended that the Japanese government provide alternatives to detention, including bail, during the pre-indictment period.¹⁹⁴

Access to Counsel

Japan's constitution provides for the right to competent counsel. "At all times, the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State."¹⁹⁵

Japanese law also provides for the right of a suspect to communicate confidentially with their counsel. The Code of Criminal Procedure states: "The accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from counsel or prospective counsel upon the request of any person entitled to appoint counsel."¹⁹⁶

Before 2006, court-appointed counsel was available only after indictment. However, a 2004 amendment to the Code of Criminal Procedure extended the right to pre-indictment detainees to request court-appointed counsel if they were unable to appoint counsel themselves.¹⁹⁷

However, Japanese law does not specifically provide for a lawyer to be present during interrogations and in practice, police and prosecutors do not allow lawyers to accompany the accused during interrogations. In many cases, the first interrogation happens without the suspect having spoken to a lawyer. In certain cases, a time limit is placed on the lawyer's meeting with the defendant.

The failure to provide access to lawyers from the outset and limitations on access to counsel violates the right to adequate preparation of a defense and to communicate with a

¹⁹⁴ Human Rights Committee, Concluding observations on the sixth periodic report of Japan, CCPR/C/JPN/CO/6, August 20, 2014, para. 18.

¹⁹⁵ Constitution of Japan, art. 37, http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html (accessed May 4, 2023).

¹⁹⁶ Code of Criminal Procedure, art. 39, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 4, 2023).

¹⁹⁷ The Japanese Judicial System, Japan Federation of Bar Associations, https://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html (accessed May 4, 2023).

lawyer of the defendant's choice. Article 14(3) of the ICCPR states that every person charged with a criminal offense should, "have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."¹⁹⁸

The UN Human Rights Committee stated in a general comment that "The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications"¹⁹⁹ This has been interpreted to mean having prompt access to counsel without restrictions, including during interrogation.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that, "The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances ... when it is considered indispensable by a judicial or other authority in order to maintain security and good order."²⁰⁰ Allowing detainees access to a lawyer while being questioned certainly does not in most cases threaten Japan's security or public order.

Judicial Oversight of Prosecutorial Decisions

Under Japanese law, prosecutors have sole authority to decide whether to prosecute a suspect. Prosecutors exercise great control over investigations and the use of information obtained during investigations.²⁰¹

The lack of judicial oversight over prosecutorial decisions in Japan led the UN Working Group on Arbitrary Detention to observe in 2018 that "too much prosecutorial discretion

¹⁹⁸ ICCPR, art 14(3)(b). See also, UN Human Rights Committee, Working Group on Arbitrary Detention, Opinion No.59/2020, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Version.pdf (accessed May 11, 2023).

¹⁹⁹ UN. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 34.

²⁰⁰ UN Office of the High Commissioner for Human Rights, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention> (accessed May 5, 2023).

²⁰¹ Code of Criminal Procedure, art. 247, <https://www.japaneselawtranslation.go.jp/en/laws/view/2056/en> (accessed May 3, 2023).

with insufficient judicial oversight may result in an environment conducive to the discriminatory application of law.”²⁰²

The UN Working Group on Arbitrary Detention in 2020 noted that a suspect, “was also denied access to the pleadings and had to reconstruct the prosecutors’ investigation on the basis of questions he was asked during the interrogations.”²⁰³

Abusive Interrogations

Investigating officers in Japan have used intimidation, threats, verbal abuse, and sleep deprivation to compel suspects to confess or provide information.

The Japanese Constitution states that “no person shall be compelled to testify against himself.”²⁰⁴ Moreover, the infliction of torture by any public officer and cruel punishments are absolutely forbidden.”²⁰⁵

Under the constitution, confessions that are compelled may not be used as evidence.²⁰⁶ The Code of Criminal Procedure specifically provides that a “confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.” It also mandates that no one shall be convicted when the confession is the “only incriminating evidence.”²⁰⁷

International human rights treaties to which Japan is party, notably the ICCPR²⁰⁸ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁰⁹ prohibit all forms of mistreatment of persons in custody. Japan however is

²⁰² UN Human Rights Committee, Working Group on Arbitrary Detention, Opinion No.55/2018, para 78, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_55.pdf (accessed May 11, 2023).

²⁰³ UN Human Rights Committee, Working Group on Arbitrary Detention, Opinion No.59/2020, para 77, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Version.pdf (accessed May 11, 2023).

²⁰⁴ Constitution of Japan, art. 38.

²⁰⁵ *Ibid.*, art. 36.

²⁰⁶ *Ibid.*, art. 38.

²⁰⁷ Code of Criminal Procedure, art. 319 (1) & (2) .

²⁰⁸ ICCPR, art. 7.

²⁰⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987.

not a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights or the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which contain individual complaint mechanisms.

The UN Committee against Torture in 2013 expressed concerns about the use of confessions obtained without the presence of a lawyer to secure convictions. The committee also recommended that conditions of detention facilities be improved in line with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).²¹⁰

The UN Working Group on Arbitrary Detention, in November 2020, responding to claims by Carlos Ghosn, a foreign business executive facing charges of financial irregularity and fraud, said that the process of arresting and detaining Ghosn was fundamentally unfair as it prevented him from regaining his liberty and from enjoying other fair trial rights, including to freely communicate with legal counsel.²¹¹ The working group added that “solitary confinement, the deprivation of exercise, constant light, and the absence of heating, as well as limited contact with family and legal counsel” compromised the suspect’s capacity to defend himself.²¹²

Communication Bans

Courts in Japan often issue prohibition-of contact” orders, under which detainees can meet and communicate only with their lawyers and are not allowed to meet, or even correspond with anyone else, including their family members.²¹³ Courts can partially lift the ban based on a specific request from a detainee.

²¹⁰ Committee against Torture, Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/JPN/CO/2, June 28, 2013, para. 11. See generally, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, January 8, 2016.

²¹¹ UN Human Rights Committee, Working Group on Arbitrary Detention, Opinion No.59/2020, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_59_Advance_Edited_Version.pdf (accessed May 11, 2023).

²¹² *Ibid.*

²¹³ Code of Criminal Procedure, art. 81. “Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals,” <https://www.hrw.org/news/2019/04/10/call-eliminate-japans-hostage-justice-system-japanese-legal-professionals> (accessed May 5, 2023).

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide 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.”²¹⁴

As the Human Rights Committee notes in a general comment, certain conditions of detention (such as denial of access to family) may result in arbitrary detention.²¹⁵ Prohibition-of-contact orders also contravene the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provide for the right of detainees to maintain communication with the outside world, particularly family members and legal counsel.²¹⁶

Right to a Prompt Trial

Everyone has the right to be tried “without undue delay.”²¹⁷ The UN Human Rights Committee, in a general comment, stated that the right of accused to be tried without undue delay “is not only designed to avoid keeping persons too long in a state of uncertainty about their fate,” but if they are held in pre-trial detention, “to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case.” The committee said that what is reasonable needs to be assessed in the circumstances of each case, taking into account “the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.” When suspects are denied bail by the court, “they must be tried as expeditiously as possible.”²¹⁸

²¹⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Resolution adopted by General Assembly on 17 December 2015, A/RES/70/175, January 8, 2016, rule 58.

²¹⁵ UN Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person) CCPR/C/GC/35, January 16, 2014, para. 59.

²¹⁶ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15 and 19 <https://www.un.org/ruleoflaw/blog/document/body-of-principles-for-the-protection-of-all-persons-under-any-form-of-detention-or-imprisonment/> (accessed May 11, 2023).

²¹⁷ ICCPR, art. 14(3)(c).

²¹⁸ UN Human Rights Committee, General Comment No. 32, on the right of the accused to be tried without undue delay, U.N. Doc. CCPR/C/GC/32 (2007), para. 35. “The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the

IV. Recommendations

To the Japanese Prime Minister and Government

- Publicly commit to reforming the criminal justice system to ensure that the rights of all persons to due process of law and to a fair trial, including access to counsel and bail, are fully respected.
- Sign and ratify the Optional Protocol to the UN International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment so that Japanese law ensures access to an individual complaint mechanism under international law.

To the Ministry of Justice and the Public Prosecutors Office

- Improve the practice of responding to bail requests to bring it in line with international standards of presumption of innocence and liberty of the individual. Ensure that prosecutors refrain from appealing against court decision for bail.
- End the misuse of article 89(4) of the Code of Criminal Procedure, which allows the existence of “probable cause to suspect that the accused may conceal or destroy evidence” as an exception to the granting of bail, but is used routinely in cases where there is no such evidence.
- Abolish the practice of multiple arrests by splitting up charges based on the same case.
- Ensure that all suspects following apprehension have prompt access to counsel on a confidential basis.
- Ensure suspects have access to counsel throughout their detention, including during interrogations.
- Issue directions that will ensure all suspects can be represented by legal counsel during all interrogations.

manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place ‘without undue delay.’”

- Revise standards for requesting contact-prohibition orders so that they are only granted in narrowly defined circumstances in which substantial evidence exists to show the accused has credible plans to flee or conceal or destroy evidence.
- Ensure the system permits detainees, with necessary supervision, to communicate regularly with family and friends by long distance, electronic, digital, and other means, including telephone, email, and video calls, in addition to letter correspondence and visits.
- Ensure the right to remain silent by making police and prosecutors to clearly notify the accused of this right in all cases, and end questioning once the accused invokes the right.
- Ensure that all suspects and defense counsel have access to all investigators' evidence and materials that the prosecution plans to offer in court against the accused, that are in advantage of the accused, or that are exculpatory.
- Implement safeguards such as electronic recordings of all interrogations for all criminal offenses, including detainees, suspects, and witnesses, and ensure that recordings are provided to the defendant and made available for use in trials.
- Adopt measures to end coercive interrogations, including the right to have counsel present during all interrogations and the setting of strict time limits for the duration and methods of interrogations. Consistent with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "No detained person while being interrogated shall be subject to violence, threats or methods of interrogation" that impairs their capacity of decision or judgment.
- Take measures to ensure separation between the functions of investigation, detention, and prosecution in line with the concluding observations on the fifth periodic report of Japan to the UN Human Rights Council in 2018, which recommended abolishing the substitute detention system (*daiyo kangoku*), referring to concerns that the system increases the risk of prolonged and abusive interrogations aimed at obtaining confessions.
- Establish a system of regular monitoring and review of detainees' physical and mental condition by qualified medical personnel, independent of the Ministry of Justice, throughout detention and release such medical records to detainees and their legal counsel, and allow access to personal doctors.
- Introduce necessary draft laws in the Diet to implement the recommendations in this report.

To the Diet

Revise relevant laws or introduce new laws to:

- Ensure that individuals awaiting trial as a general rule are not detained. Provide the right to apply for bail during pre-indictment detention and reform the bail law to bring it in line with international standards of presumption of innocence and liberty of individual. Revise article 89(4) of the Code of Criminal Procedure which broadly allows the denial of bail when there is no genuine evidence that the defendant is likely to conceal or destroy evidence. Deprive prosecutors the authority to appeal court decisions for bail.
- Ensure that defendants in detention are tried as expeditiously as possible and never detained longer than necessary.
- Abolish the customary practice of multiple arrests by splitting up charges based on the same set of facts.
- Ensure to bring suspects before a judge within 48 hours of being taken into custody.
- Explicitly state and put in place a system to ensure that all suspects have prompt access to a lawyer after apprehension on a confidential basis, including during all interrogations.
- Ensure that confessions made during interrogations without defense counsel cannot be used as evidence at trial, unless the accused agrees to do so.
- Eliminate contact-prohibition orders except for narrowly defined circumstances in which specific contacts would create a genuine security risk.
- Ensure that detainees, with necessary supervision, can communicate regularly with family and friends by long distance, electronic, digital, and other means, including telephone, email, and video calls, in addition to letter correspondence and visits.
- Ensure that suspects in custody are informed of the constitutional right to remain silent and the right is respected in practice. Ensure the right to remain silent by requiring ending interrogation once the accused invokes the right. Acknowledge that suspects are not obliged to go through interrogation.
- Ensure that all suspects and their counsel have access to all evidence, including police and interrogation records, evidence in advantage of the accused, exculpatory evidence, and evidence to be presented at trial.
- Implement safeguards such as electronic recordings of all interrogations for all criminal offenses, including detainees, suspects, and witnesses, and ensure that recordings are available for use at trial.

- Abolish the substitute detention system (*daiyo kangoku*) to ensure the functions of investigation and detention are kept separate as recommended by the UN Committee against Torture.
- End coercive interrogations by ensuring the right to have counsel present during all interrogations, and the setting of strict time limits for the duration and methods of interrogation for all criminal offenses.
- End the abuse of prosecutorial powers by effectively limiting and clearly defining the discretionary powers of public prosecutors to indict suspects and oppose bail. Deprive prosecutors the authority to appeal the court decision for bail.
- Establish a system of regular monitoring and review of the detainee’s physical and mental condition by qualified medical personnel, independent from the Ministry of Justice, throughout the period of detention, and release such medical records to the detainees and their legal counsel, and allow access to personal doctors.
- Establish an independent commission of inquiry into alleged cases of miscarriage of justice due to the “hostage justice system.”

To the Supreme Court

- Establish an independent commission of inquiry into alleged cases of miscarriage of justice due to the “hostage justice system.”
- Hold periodic trainings for judges on the rights of the accused and fair trial provisions under international human rights law.
- Evaluate judges for promotion solely on their professional competence without considering how they ruled in cases involving the government.
- Instruct judges to exercise judicial oversight over the conduct of prosecutors to protect the rights of the accused in line with international legal standards.

To the Judiciary

- Apply the bail and detention law in line with international standards of presumption of innocence and liberty of individual.
- Do not approve arrest and detention order requests by prosecutors for multiple arrests cases that split up the charges based on the same set of facts.

- Ensure that all suspects in pre-trial detention have access to a lawyer throughout their detention, including during questioning of suspects by the court.
- Confessions made during an interrogation without the presence of a defense counsel shall be treated as confessions that might not have been made voluntarily, and shall not be used as evidence at trial, unless the accused agrees to them.
- Only approve prosecutors' request for contact-prohibition orders, limited by extent and duration, in narrowly defined circumstances in which such an order is allowed under international standards.
- Ensure that all suspects and their counsel have access to all evidence, including records of police investigation and interrogation, evidence in advantage of suspect, and evidence to be presented at trial.
- Use the suspension of detention (Code of Criminal Procedure article 95) proactively for people who are ill or strongly suspected of being ill, if the person desires, in order to realize necessary medical examination and treatment by doctors including family doctors.

To Prosecutors

- End opposition to bail applications by accused persons opposing their charges.
- Ensure that opposition to bail applications is only made in line with international standards on the presumption of innocence and liberty of the individual.
- Ensure that all suspects after apprehension have prompt access to a lawyer on a confidential basis, including during all interrogations.
- Allow legal counsel to be present during all interrogations.
- Only seek applications for contact-prohibition orders, limited by extent and duration, in narrowly defined circumstances in which such an order is allowed under international standards.

Acknowledgments

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The report was edited by Kanae Doi and Brad Adams, former executive director in the Asia division.

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Annex 1

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February 28, 2023

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

HUMAN
RIGHTS
WATCH

HRW.org

Re: Human Rights Violations in Japan's Criminal Justice System

Dear Minister Saito,

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

We have recently undertaken research focusing on due process and fair trial concerns in Japan's criminal justice system for a report we plan to publish in mid-2023. In order to ensure that all views are reflected in our reporting, we would appreciate your response to our findings.

Human Rights Watch conducted research on Japan's criminal justice system between January 2020 and February 2023 in eight of Japan's 47 prefectures—Ehime, Tokyo, Kanagawa, Chiba, Aichi, Osaka, Kyoto, and Tochigi. We interviewed individuals who were facing or have faced criminal interrogation and prosecution. We also spoke to lawyers, academics, journalists, prosecutors, and family members of those who have faced criminal interrogation and prosecution.

Our research is not an exhaustive survey of all human rights violations that criminal defendants in Japan face, but it indicates important trends and identifies key issues as voiced by defendants, lawyers, and academics. The personal accounts that Human Rights Watch obtained were corroborated by media reports, official documents, and domestic rights groups.

In order that our reporting remains fair and accurate, we remain committed to reflecting in our report any written responses provided by the ministry by March 21, 2023. We are particularly interested in learning about the latest steps taken by the ministry to address the key concerns raised below.

Key Findings

Human Rights Watch's research on Japan's criminal justice system has focused on the denial of bail to criminal suspects as a way to obtain confessions of crimes.

Under Japan's Code of Criminal Procedure, suspects are ineligible to apply for bail before indictment, and that courts routinely deny bail after indictment, especially for those who do not confess. Many former detainees and defense lawyers told Human Rights Watch that the denial of bail is used to pressure detainees to confess and as a form of punishment. We have documented the repeated arrests of detainees in order to prolong pre-indictment detention.

The Code of Criminal Procedure allows suspects to be detained up to 23 days before indictment. Our research found that the 23-day detention limit often is no real limitation, as investigators and prosecutors repeatedly make new arrests on new charges to induce confessions and detain suspects repeatedly for additional periods. Police and prosecutors achieve this by splitting a single case into parts. After each new arrest, the pre-trial detention period restarts. The authorities interpret the code to subject detainees to interrogation throughout this period.

The International Covenant on Civil and Political Rights, to which Japan is a party, states that anyone arrested or detained on a criminal charge be "promptly" charged before a court. The United Nations Human Rights Committee, the body that provides authoritative interpretations of the Covenant, has said that 48 hours is ordinarily sufficient time to bring someone before a judge and that any longer delay "must remain absolutely exceptional and be justified under the circumstances." In Japan, however, judges routinely allow investigators' requests for arrest and detention.

The Japanese Constitution states that "no person shall be compelled to testify against himself." The Code of Criminal Procedure also provides that a "confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence." It also mandates that no one shall be convicted when the confession is the "only incriminating evidence." However, several interviewees told Human Rights Watch that confessions are the result of coercion, as the extended pre-trial detention, the prohibition on lawyers being present during interrogation, and an almost automatic conviction rate for cases that go to trial provide an enabling environment for involuntary confessions. Exercise of the right to remain silent does not stop the questioning, as investigators continue pressuring suspects to answer questions and confess to their alleged crimes. Our research found that it is not uncommon for suspects to be yelled at and verbally abused.

Particularly egregious is the prohibition on lawyers being present during the questioning of suspects. We have found that police question detainees who have said they wish to remain silent or have asked for a lawyer, and question detainees without the presence of a lawyer.

Even when detainees are indicted and finally allowed to request bail, those who have not confessed or who have remained silent often have a harder time persuading a judge to approve their bail request, as judges view such defendants as risks to "destroy evidence."

This mistreatment is facilitated by the detention of most suspects in cells inside police stations, where there is almost constant surveillance, including during mealtimes and at the toilet, rather than in proper detention facilities.

Courts can also issue a “prohibition of communication” order, under which detainees can meet and communicate only with their lawyers, but are not allowed to meet, call, or even write letters to anyone else, including their family members. Prosecutors are granted wide and often unchecked power in Japan’s criminal justice system. Many individuals told Human Rights Watch that this ban on communications was a cause of significant anxiety while in detention.

These practices cause great personal hardship and can lead to wrongful convictions. They violate detainees’ internationally guaranteed rights to due process and a fair trial, and to be free from cruel, inhuman, and degrading treatment. Many of these rights are also protected under Japan’s Constitution, including the right of every detainee to have immediate access to legal counsel and the right against self-incrimination. Attempts at reforming Japan’s criminal justice system in the past two decades have failed to address these fundamental problems.

To ensure that our reporting is fair and accurate, Human Rights Watch respectfully requests your response to our findings and any other information you could provide. Please send your responses to our Japan Director, Kanae Doi, at [REDACTED] by March 21, 2023 so they can be reflected in our reporting. Please feel free to contact us should you have any questions or require further information.

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

Sincerely,



Elaine Pearson
Asia Executive Director
Human Rights Watch

Annex 2

(Japanese original)

Received on March 2, 2023

国際 NGO ヒューマン・ライツ・ウォッチ様

平素よりお世話になっております。

先般、御送付いただいた調査結果に関する報告書につきましては、参考として拝受いたしました。

もともと、御依頼いただいた件につきましては、法務省において貴団体の調査に携わっており、大変申し訳ございませんが、事実関係を含め、調査結果に関する見解を責任をもって回答することは困難であり、対応いたしかねます。

御理解いただけますよう、よろしくお願いいたします。

法務省刑事局広報担当

(English translation)

"We have received your report on the results of your research for our information. Regarding your request however, the Ministry of Justice is not involved in your organization's research, and we are very sorry that we cannot respond to it as it is difficult to responsibly provide our opinions on your research results, including the facts. We appreciate your understanding.

Public Relations, Criminal Affairs Bureau, Ministry of Justice"

Japan’s “Hostage Justice” System

Denial of Bail, Coerced Confessions, and Lack of Access to Lawyers

Japan’s criminal justice system systematically denies due process to thousands of people by subjecting suspects to questioning without a lawyer, repeated detentions to obtain confessions, and denial of bail. These practices—often called “hostage justice” — lead to widespread abuse, coerced confessions, and wrongful convictions.

Japan’s “Hostage Justice” System documents the abusive treatment of criminal detainees, including stripping them of their right to remain silent, and coercing them to confess through repeated arrests to prolong pre-indictment detention. This mistreatment is facilitated by the detention of most suspects in cells inside police stations, where there is almost constant surveillance, including during mealtimes and at the toilet, instead of holding them in specialized detention facilities. The report documents how Japanese courts routinely issue “prohibition of communication” orders, under which detainees can meet and communicate only with their lawyers and are not allowed to meet with anyone else, including their family members.

Human Rights Watch research found that judges routinely allow investigators’ requests for arrest and prolonged detention. Investigators often use detention for separate, minor crimes, or splitting up charges based on the same set of facts, as an excuse to rearrest and detain suspects repeatedly for extended periods. Detainees are not allowed to request bail while in pre-indictment detention. Even when the detainee is indicted, those who have not confessed or who have remained silent have a harder time getting bail, resulting in even longer detention.

Human Rights Watch calls on the Japanese government to urgently reform its criminal justice system to ensure that the rights of all persons to due process of law and to a fair trial, including access to counsel and bail, are fully respected in line with international standards.



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