Call to Eliminate Japan’s “Hostage Justice” System by Japanese Legal Professionals

Signed by 1,010 professionals

The long-term detention in the Carlos Ghosn case has triggered surprise and criticism overseas, leading to doubts about Japan’s integrity as a democratic nation that guarantees human rights.

Japan’s criminal justice practices have long been described as “hostage justice (hitojichi-shiho)”. The Code of Criminal Procedure of Japan allows suspects to be detained up to 23 days before indictment. The authorities interpret the code to oblige detainees to face interrogations throughout this period. 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. It is not uncommon for suspects to be yelled at from close range. Furthermore, suspects are not allowed to have lawyers present during questioning.

Most suspects are detained in cells located inside police stations and placed under constant police surveillance, including during mealtimes or in toilets. Courts can also issue a prohibition of communication order, under which detainees can meet and communicate only with their lawyers and are not allowed to meet, call, or even write letters to anyone else, including their family members.

Judges routinely allow investigators’ requests for arrest and detention. The 23-day detention limit often has no substance, as investigators sometimes use arrest/detention powers for separate, minor crimes as an excuse to interrogate suspects about the main crime or split up consolidated crimes in order to detain suspects repeatedly for additional periods.

Detainees are not allowed to request bail while in pre-indictment detention. Even when the detainee is indicted and finally allowed to request bail, those who have not confessed or 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 results in an even longer detention period. Ms. Atsuko Muraki, then senior official of the Ministry of Health, Labor, and Welfare, was detained for four months after indictment on postal service laws violation and falsification of public documents even though this minor crime was most likely to end up with a suspended sentence even if she was found guilty. She claimed her innocence throughout and was later acquitted (postal abuse case, judgement finalized in 2010). In the Shibushi case in Kagoshima prefecture, a dozen citizens, including some elderly people. were indicted on suspicion of election act violations, which only incur fines. The claims were later found to be false and just a fiction of the investigators, yet those who confessed were released sooner whereas those who maintained their innocence 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 (judgement finalized in 2007). This is a systemic problem, as suspects who do not confess are detained for a long period of time in Japan.

Japan’s criminal justice practices – stretching suspects’ detention until they confess, forcing detainees to face investigators’ questions without the presence of lawyers and stripping them of their right to remain silent, and coercing them to confess including false confessions - have long been called “hostage justice” and a cause of wrongful convictions. However, the criminal justice reforms including the latest post-2000s reforms did not address this issue and these problems remain to date.

The "hostage justice" system uses detention beyond its original purpose of securing suspects’ appearance in court and violates the human rights guaranteed by the Constitution of Japan, including physical freedom, the right to remain silent, and the right to a fair trial. The practice to refuse the release of those who deny their crimes can violate the prohibition of torture, as it uses sufferings caused by prolonged detention and interrogation to force confession. It also violates international human rights standards including the presumption of innocence, the prevention of torture, and access to counsel during questioning.

Japanese lawyers have, for a long time, strongly criticized "hostage justice," which does not meet international standards. We once again call for the elimination of Japan’s “hostage justice” and raise our voice with those who share the universal value of human rights.

■Secretariat■

Kaku Imamura (Attorney at Law)

Kana Sasakura (Professor at Konan University)

Kanae Doi (Japan Director, Human Rights Watch)

From Wikipedia

n October 2007, the [BBC](https://en.wikipedia.org/wiki/BBC) published a feature giving examples and an overview of "'Forced confessions' in Japan".The case was called "[Shibushi Case](https://ja.wikipedia.org/wiki/%E5%BF%97%E5%B8%83%E5%BF%97%E4%BA%8B%E4%BB%B6)".

SHIBUSHI, Japan — The suspects in a vote-buying case in this small town in western Japan were subjected to repeated interrogations and, in several instances, months of pretrial detention. The police ordered one woman to shout her confession out a window and forced one man to stomp on the names of his loved ones.

In all, 13 men and women, ranging in age from their early 50s to mid-70s, were arrested and indicted. Six buckled and confessed to an elaborate scheme of buying votes with liquor, cash and catered parties. One man died during the trial — from the stress, the others said — and another tried to kill himself.

But all were acquitted this year in a local district court, which found that their confessions had been entirely fabricated. The presiding judge said the defendants had “made confessions in despair while going through marathon questioning.”

The Japanese authorities have long relied on confessions to take suspects to court, instead of building cases based on solid evidence. Human rights groups have criticized the practice for leading to abuses of due process and convictions of innocent people.

In addition, Hiroshi Yanagihara, who was convicted in November 2002 for attempted rape and rape due to forced confession and the identification by the victim despite an alibi based on the phone record, was cleared in October 2007 when the true culprit was arrested for an unrelated crime. The two cases damage the credibility of the Japanese Police.

To Japanese citizens and police, however, the arrest itself already creates the presumption of guilt which needs only to be verified via a confession. The interrogation reports prepared by police and prosecutors and submitted to the trial courts often constitute the central evidence considered when weighing the guilt or innocence of the suspect.

## Criticism

Japan's criminal justice system is dubbed "hostage justice" (hitojichi-shiho) by critics, due to extended detention (up to 23 days) and forced questioning of detainees without a lawyer and no right to remain silent. In order to meet the high confession rate, it can cause false confessions and wrongful convictions. The detention is not only used to ensure that suspects appear in court. It violates the [Constitution of Japan](https://en.wikipedia.org/wiki/Constitution_of_Japan) due to a lack of physical freedom, the right to remain silent, and the right to a fair trial. Critics say prolonged detention and interrogations to force confessions violates the prohibition of torture. Thus international [human rights](https://en.wikipedia.org/wiki/Human_rights) are violated because there is no presumption of innocence, [psychological torture](https://en.wikipedia.org/wiki/Psychological_torture) is not prevented, and there are cases without access to council during interrogations. The latest criminal justice reforms in the 2000s did not improve these flaws. [Sometimes the interrogations are not in](https://en.wikipedia.org/wiki/Criminal_justice_system_of_Japan%22%20%5Cl%20%22cite_note-hrw-hostage-justice-20) [English](https://en.wikipedia.org/wiki/English_language), so foreign detainees cannot understand it.