

Ms. Kanae Doi
Human Rights Watch
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Dear Ms. Doi,

I write concerning my husband, Carlos Ghosn, who has been callously and needlessly detained by the authorities in Japan since November 19, 2018. For the reasons outlined below, I urge Human Rights Watch to shine a light on the harsh treatment of my husband and the human rights-related inequities inflicted upon him by the Japanese criminal justice system.

Background and Carlos Ghosn

My husband is well known as a person of unimpeachable honor, honesty, and integrity. He is the Chairman and CEO of Renault, the Chairman and CEO of the Renault-Nissan-Mitsubishi Motors Alliance, and, until recently, he served as the Chairman of both Nissan and Mitsubishi Motors. My husband is widely credited with rescuing Nissan from the brink of bankruptcy in 1999 and restoring Nissan to profitability.

On Monday, November 19, 2018, my husband was suddenly and shockingly deprived of his liberty, and he has now been imprisoned in a Tokyo detention cell for 39 days. On that first day, shortly after he landed at Haneda Airport in the Nissan corporate jet, Japanese prosecutors boarded the plane. Tipped in advance by the prosecutors, the media snapped photos from the tarmac. Hours later, he was placed under arrest and summarily locked away at the detention center, where he remains isolated to this day. Every day, he is subjected to repeated interrogations by the prosecutors for hours at a time, with no opportunity to have his counsel present, no right to see or even speak with his family, and only a limited opportunity to see his own lawyers.

Under Japan's "hostage justice" system,¹ prolonged detention to extract confessions is one of the prosecutors' primary investigative tactics. Individuals who are suspected of committing a crime may be held for an initial three days by the authorities. During this period, suspects are typically questioned before they have had any opportunity to consult with counsel.² Once those three days are about to expire, prosecutors routinely seek a detention order requiring that the suspect be held for an additional ten days. And once *those* ten days are about to expire, prosecutors routinely

¹ Yuri Kageyama, *Ghosn's Arrest Brings Attention to Japan's 'Hostage Justice,'* Associated Press (Dec. 23, 2018), available at <https://abcnews.go.com/International/wireStory/ghosns-detention-puts-japan-justice-system-microscope-59980949>.

² See U.S. Embassy & Consulates in Japan, *Arrest of a U.S. Citizen* (last visited Dec. 25, 2018), available at <https://jp.usembassy.gov/u-s-citizen-services/arrest-of-a-u-s-citizen/>.

request a further extension of the detention period, which can continue for another ten days. In 2017, of the approximately 65,000 detention requests sought by prosecutors, only 221, or less than one half of one percent, were denied.³ This means that suspects in Japan can be held for up to 23 days before they are formally charged with any crime or afforded any meaningful opportunity to petition for bail. This lengthy pre-charge detention period puts Japan at the extreme end of the spectrum of developed nations: the vast majority of OECD member countries permit pre-indictment police detention for no longer than eight days.⁴ In fact, in many countries, even accused terrorists are afforded an opportunity to seek bail far sooner than suspects detained in Japan.⁵ More distressing still is the fact that Japanese authorities have the power to continuously re-arrest suspects for new crimes whenever the 23-day detention period is about to expire. In this way, a suspect's detention period in Japan is "potentially indefinite."⁶

In addition to lengthy and repeated detention periods, the Japanese criminal justice system is distinctive in that it fails to guarantee many safeguards for the accused deemed essential elsewhere in the world. In Japan, suspects are routinely and repeatedly interrogated by prosecutors outside the presence of their lawyers; have no possibility for bail until after they have been indicted; have limited access to counsel; and are forced to sit and listen to interrogations even when they choose to exercise their right to remain silent.⁷ For these reasons, the Japanese system has been compared unfavorably to China's, which includes many of the same harsh features.⁸

³ See Asahi Shinbun, (時時刻刻) 保釈へ道、特捜衝撃 地裁、事件「一体」と判断か ゴーン前会長 2度逮捕に疑義 2018年12月21日 朝日新聞 朝刊 (Dec. 21, 2018). This statistic is not an outlier—both detention orders and extensions are “routinely sought and received” by prosecutors. State Dep’t, *2017 Country Report on Human Rights Practices: Japan* (Apr. 20, 2018), available at <https://www.state.gov/j/drl/rls/hrrpt/2017/eap/277085.htm>. Indeed, in 2006, judges approved approximately 136,110 of the 136,690 requests for detention orders they received. Nat’l Police Agency, *Police Detention Administration in Japan*, at 2 (Oct. 29, 2008), available at https://www.npa.go.jp/english/ryuchi/Detention_house-Eng_080416.pdf. They also granted 74,110 of the 74,180 requests for detention extension they received. *Id.*

⁴ Silvia Croydon, *The Politics of Police Detention in Japan: Consensus of Convenience* 4 (2016).

⁵ See Liberty Human Rights, *Extended Pre-Charge Detention* (last visited Dec. 25, 2018), available at <https://www.libertyhumanrights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention> (explaining that “[u]nder recent anti-terror laws [in the U.K.], you could be locked up and repeatedly questioned by police for up to 14 days without being charged” and protesting this detention period as contrary to “our basic democratic principles of justice, fairness and liberty”); Human Rights Watch, *“Foreign Terrorist Fighter” Laws*, at 23 (Dec. 2016), available at https://www.hrw.org/sites/default/files/news_attachments/ftf_essay_03feb2017_final.pdf (“France since 2016 has allowed pre-charge police detention—*garde à vue*—of terrorism suspects for up to six days upon authorization from a special judge.”).

⁶ Croydon, *supra* n. 4, at 4.

⁷ See, e.g., *id.* at 6.

⁸ See Hong Lu & Terance D. Miethe, *Confessions and Criminal Case Disposition in China*, 37 Law & Soc’y Rev. 549, 553 (2003) (noting that the Chinese and Japanese criminal justice systems are both characterized by long periods of detention and a “lack of procedural safeguards for criminal suspects and defendants”); see also Daniel H. Foote, *The Benevolent Paternalism of Japanese Criminal Justice*, 80 Cal. L. Rev. 317, 329 n. 74 (1993) (arguing that “[s]imilar attitudes [about the importance of confessions] characterize both Japanese and Chinese criminal justice today”). Another commentator has declared that the tactics my husband has been subjected to “are all too typical of authoritarian regimes such as Iran,

My husband's treatment is a case study in the realities of this draconian system. On December 10, 2018, a full 21 days after he was first arrested and taken into custody, he was charged—for the first time—by way of indictment with under-representing his compensation between 2010 and 2014, in violation of Japan's Financial Instruments and Exchange Law ("FIEL"). On the same day, Japanese prosecutors arrested my husband again on the very same allegations with respect to a later time period, 2015–2017. By artificially splitting the alleged FIEL charge in this way, the prosecutors commenced a new period of detention during which they continued to interrogate him with the aim of breaking him and coercing a confession.

The harsh physical conditions in which my husband is held further the prosecutors' aims. Confined to a 75-square-foot unheated cell in the heart of winter, my husband is denied his daily medication, permitted to bathe only two or three times per week, and given only 30 minutes to exercise each day.⁹ His meals consist mainly of rice and barley.¹⁰ A dim light illuminates his cell all night, making his sleep more difficult.¹¹ He lost almost seven kilograms of weight in two weeks as a result of these conditions. He is denied contact with almost all other human beings, including our family, and he is not permitted photographs of his loved ones in his cell. He is only permitted to see his attorneys and diplomatic officers—but even then, his access to them is strictly circumscribed.¹² In stark contrast, the prosecutors have nearly free rein to interrogate him whenever they please, often late in the evenings and even on holidays and Sundays when the detention center is closed to his attorneys. For hours each day, the prosecutors interrogate him, browbeat him, lecture him, and berate him, outside the presence of his attorneys, in an effort to extract a confession. They show him documents written in a language he does not speak, and they insist that he sign them—without showing them to his counsel—based solely on the oral translation they provide. And outside the detention center, the prosecutors selectively leak details of their case to the media in a concerted effort to stoke public anger against him.

On December 20, 2018, my husband thought he saw the light at the end of the tunnel. On that day, recognizing the gross unfairness of the prosecutors' tactics in dividing the FIEL allegation into two artificial time periods, the Tokyo District Court and the Tokyo High Court both denied the prosecutors' request to prolong my husband's

Cuba, China, Russia and Turkey." Alan Dershowitz, *Abusive Treatment of Auto Executive Threatens the Japanese Legal System*, The Hill (Dec. 4, 2018), available at <https://thehill.com/opinion/international/419595-abusive-treatment-of-auto-executive-threatens-the-japanese-legal-system>.

⁹ Chieko Tsuneoka et al., *Nissan's Ghosn to Be Detained for a Further 10 Days*, Wall Street Journal (Nov. 21, 2018), available at <https://www.wsj.com/articles/nissans-carlos-ghosn-to-be-detained-for-10-more-days-1542799899>.

¹⁰ *Id.*

¹¹ See Human Rights Watch, *Prison Conditions in Japan*, at xiv (1995), available at <https://www.hrw.org/sites/default/files/reports/JAPAN953.pdf>.

¹² And when he does meet with his attorneys, he must try to reconstruct the prosecutors' theory solely by recounting the questions they have asked him and by consulting the latest media reports, since he was given only the "essential facts" of the suspected conduct justifying his detention. Japanese Supreme Court, *Outline of Criminal Justice in Japan*, at 13 (2016), available at http://www.courts.go.jp/english/vcms_1f/Outline_of_Criminal_Justice_in_Japan_2016.pdf.

detention any further. But even this ruling did not deter the prosecutors from engaging in further efforts to prolong his detention and obtain a confession. The very next day, just as his attorneys were prepared to appear in court to seek bail, the prosecutors arrested my husband for a *third* time, on the basis of ten-year-old allegations that the prosecutors previously had concluded did not warrant criminal prosecution.

Thirty-nine days have passed since my husband's initial arrest, and, with the holidays upon us, his detention shows no sign of ending. I am confident that the prosecutors' theories of criminal liability are wholly without merit. In fact, it is widely reported that Nissan set out to destroy him largely because his strategic vision for Nissan and the Alliance angered a faction of hardliners. But the veracity of the prosecutors' theories is ultimately beside the point: no human being should be indefinitely detained under conditions so harsh that their only plausible purpose is to coerce a confession. Literally a prisoner of Japan's criminal justice system, my husband faces the prospect of continuous and repeated re-arrest and detention under these conditions at the whim of the prosecutors, with limited oversight by the courts.

A Pattern of Human Rights Abuses

My husband's situation is far from unique. Just last year, Hiroji Yamashiro, a prominent antimilitary protester, was detained for a full five months before he was released on bail, despite the fact that he was suspected of only minor offenses. As with my husband, prosecutors were able to keep Mr. Yamashiro detained for so long by "continu[ing] to lay new charges against [him] while requesting extensions to his detention."¹³ Human rights groups swiftly took notice, calling on Japanese officials to "[i]mmediately release [Mr.] Yamashiro unless they prove that the presumption of release pending trial should not apply."¹⁴ He ultimately received a suspended sentence without any jail time.¹⁵ Other publicized cases include those of Sun-Dyu, a musician who was detained for ten months in 2012 on suspicion of stealing 10,000 JPY (the equivalent of around 90 USD) from a store,¹⁶ and Atsuko Muraki, a senior bureaucrat who was detained for four months in 2009 on suspicion of violating postal service laws.¹⁷ Both were eventually proven innocent only after withstanding their lengthy detentions.

The widespread nature of these practices has troubling systemic effects. It is well-known that Japan has an unusually high criminal conviction rate of 99%.¹⁸ But the source of this conviction rate is less well-known. Prosecutors typically achieve convictions by securing confessions—in 2011, 91.7% of those who stood trial had previously confessed.¹⁹ Detentions play an important role in this system. They stretch on for months, weakening the will of the accused and heightening the chance that prosecutors can coerce a confession. The Kobe Shinbun reports that, of the 44,761 people who were detained in Japan in 2016 prior to trial, 2,764 were detained for a period of more than six months to a year, while 669 were detained for more than one year.²⁰ This heavy reliance on detention and confession produces a startlingly high risk of error: according to one defense lawyer, as many as 10% of defendants convicted in Japan are wrongly imprisoned.²¹ Indeed, Japan has recently seen numerous high-profile acquittals

¹³ See Amnesty Int'l, *Prominent Peace Activist Detained Without Bail*, at 2 (Jan. 26, 2017), available at <https://www.amnesty.org/download/Documents/ASA225522017ENGLISH.pdf>.

¹⁴ *Id.* at 1.

¹⁵ See Japan Times, *High Court Upholds Suspended Sentence for Okinawa Activist Hiroji Yamashiro for Offenses During Anti-U.S. Base Protests* (Dec. 13, 2018), available at <https://www.japantimes.co.jp/news/2018/12/13/national/crime-legal/high-court-finds-prominent-anti-u-s-military-base-activist-guilty/#.XB1v8fKjcs>.

¹⁶ Tsuyoshi Shimoji, *Musician Takes on Police, Prosecutors During Gigs*, Asahi (Apr. 9, 2018), available at <http://www.asahi.com/ajw/articles/AJ201804090012.html>.

¹⁷ See Lily Kuo, *Japan's Most Powerful Bureaucrat Read 150 Books While She Was in Jail*, Quartz (Oct. 24, 2013), available at <https://qz.com/139047/japans-most-powerful-female-bureaucrat-read-150-books-while-she-was-in-jail/>; Tomoko Otake, *Atsuko Muraki: Fighter for Justice*, Japan Times (May 1, 2011), available at <https://www.japantimes.co.jp/life/2011/05/01/people/atsuko-muraki/#.XB28BPkzaU>.

¹⁸ See Ministry of Justice, *Number of Persons Finally Judged by Type of Judgment*, available at <http://hakusyo1.moj.go.jp/en/61/image/image/h002003001001h.jpg>.

¹⁹ See Ministry of Justice, *Criminal Justice Statistics* (Jan. 14, 2013), available at <https://www.hou-bun.com/01main/ISBN978-4-589-03522-6/statistics.pdf>.

²⁰ See Kobe Shinbun, *Kamekei Is Not Restricted to the 10-Month Detention Period?* (May 28, 2018), available at <https://www.kobe-np.co.jp/news/sougou/201805/0011300104.shtml>.

²¹ The Economist, *Extractor, Few Fans* (Dec. 3, 2015), available at <https://www.economist.com/asia/2015/12/03/extractor-few-fans>; see also Human Rights Now, *Periodic*

and exonerations of defendants convicted of serious crimes on the basis of confessions that subsequently turned out to be false.²²

The system also encourages other kinds of prosecutorial abuses. In June 2009, Atsuko Muraki was arrested by the Osaka Public Prosecutors' Office for certifying an organization that falsely claimed to help disabled residents, so that it could claim lower postage rates. Although she consistently maintained her innocence, Ms. Muraki was nonetheless indicted a month after her arrest for instructing a junior ministry employee to create a certificate for this organization. The prosecutors' case against Ms. Muraki apparently hinged on a confession extracted from this junior ministry employee in which he had implicated Ms. Muraki. At trial, this employee retracted his confession, and admitted that he had issued the official accreditation solely on his own, and that Ms. Muraki had no involvement at all. It was also revealed that prosecutors had invented secret conversations and meetings between this employee and Ms. Muraki, when none ever occurred, in order to bring charges against her. Prosecutors even went so far as to tamper with evidence, altering a disk to make certain data fit their version of events. Ultimately, in September 2010, Ms. Muraki was acquitted, and charges were subsequently brought against the lead prosecutor, who admitted to altering evidence; he was sentenced to 18 months' imprisonment.²³

Stakeholder Report – 2017, at 13 (Mar. 2017), available at <http://hrn.or.jp/eng/wp-content/uploads/2017/04/Universal-Periodic-Review-March-2017.pdf> (“Because of these structural problems of Japanese criminal justice, Japan has experienced significant numbers of wrongful convictions, including the *Ashikaga*, *Fukawa* and *Govinda* cases.”); Mariko Oi, *Japan Crime: Why Do Innocent People Confess?*, BBC (Jan. 2, 2013), available at <https://www.bbc.com/news/magazine-20810572>.

²² See generally Kazuko Ito, *Wrongful Convictions and Recent Criminal Justice Reform in Japan*, 80 U. Cinn. L. Rev. 1245, 1270 (2012) (outlining cases).

²³ See generally Lily Kuo, *Japan's Most Powerful Bureaucrat Read 150 Books While She Was in Jail*, Quartz (Oct. 24, 2013), available at <https://qz.com/139047/japans-most-powerful-female-bureaucrat-read-150-books-while-she-was-in-jail/>; Tomoko Otake, *Atsuko Muraki: Fighter for Justice*, Japan Times (May 1, 2011), available at <https://www.japantimes.co.jp/life/2011/05/01/people/atsuko-muraki/#.XB28BPkzaU>.

Criticism of the Japanese Criminal Justice System by the Human Rights Community

Unsurprisingly, in light of this shameful track record, Japan's criminal justice system has come under widespread criticism from the human rights community. Much of the criticism has come from the U.N. itself.

For instance, Japan ratified the International Covenant on Civil and Political Rights ("ICCPR") in 1979, and the ICCPR squarely dictates that "[n]o one shall be subject to arbitrary . . . detention."²⁴ A detention is arbitrary if it "include[s] elements of inappropriateness, injustice, lack of predictability and due process of law"; it may also be arbitrary if it is unreasonable, unnecessary, or disproportionate in a particular situation.²⁵

In light of this and other requirements contained within the ICCPR,²⁶ it is wholly unsurprising that when the U.N. Human Rights Committee most recently comprehensively reviewed Japan's compliance with the treaty, it issued sharp criticism. It noted the "absence of an entitlement to bail or a right to State-appointed counsel prior to [] indictment."²⁷ And it urged Japan to reform its criminal justice system such that "alternatives to detention, such as bail, are duly considered during pre-indictment detention," that "defen[s]e counsel is [guaranteed to be] present during interrogations," and that there be "strict time limits for the duration and methods of interrogation."²⁸ When Japan persisted in utterly failing to take steps to address these serious problems, the Human Rights Committee expressed its frustration, noting outright that "no action has been taken" to correct the system.²⁹

The U.N. Committee Against Torture has also recently criticized Japan's detention system, calling on Japan to "[g]uarantee all fundamental legal safeguards for all suspects in pretrial detention, including the right of confidential access to a lawyer throughout the interrogation process, and to legal aid from the moment of arrest."³⁰ Indeed, the Committee Against Torture has expressed "serious[] concern[]" about the confessions Japanese prosecutors secure after engaging in "long periods of interrogations without breaks" and "without a lawyer present."³¹ The drumbeat of U.N. criticism has been relentless for decades.³²

²⁴ International Covenant on Civil and Political Rights, art. 9(1), available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁵ U.N. Human Rights Committee, *ICCPR: General Comment No. 35*, ¶ 12, CCPR/C/GC/35 (Dec. 16, 2014).

²⁶ The ICCPR dictates that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody," ICCPR, art. 9(3), that defendants charged with an offense shall be presumed innocent, ICCPR, art. 14(2), that defendants have adequate ability to communicate with counsel, ICCPR, art. 14(3)(b), and that defendants are tried without undue delay, ICCPR, art. 14(3)(c).

²⁷ U.N. Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 18, CCPR/C/JPN/CO/6 (2014).

²⁸ U.N. Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 18, CCPR/C/JPN/CO/6 (2014).

²⁹ Sarah Cleveland, *Follow-up to Concluding Observations*, at 2 (Apr. 19, 2016).

Nor has the criminal justice system escaped the notice of human rights NGOs. Amnesty International has persistently “raised concerns about the lack of rules or regulations regarding interrogations during th[e] [pretrial detention] period, including duration, restricted access of lawyers and the absence of any recordings.”³³ It has called upon Japan to implement reforms that include, among other things, “ensuring detainees have unhindered access to legal counsel, including during interrogations.”³⁴ Human Rights Now has argued that because of the broad power that prosecutors wield under the Japanese system, “[j]udicial control is a mere formality.”³⁵ It has decried “[t]he risk of police abuse and coercive self-incrimination” produced by the Japanese system, stressing the lack of availability of pretrial bail and the ubiquity of interrogations outside the presence of lawyers.³⁶ And Human Rights Watch itself has joined in this chorus in the past, noting that the length of detention and the unavailability of lawyers “increase[es] the prospect of coercive means being used to extract confessions.”³⁷

This criticism has led to some marginal reform—for instance, a new Japanese law now requires that some interrogations be recorded. But this law applies only to cases involving a narrow subset of crimes and even then, it is subject to broad exceptions.³⁸ That means that even post-reform, interrogations are recorded in only about 3% of Japan’s criminal cases.³⁹ Indeed, broadly speaking, almost all of the deeply problematic features that characterize the Japanese criminal justice system remain in place to this day.

³⁰ U.N. Committee against Torture, *Concluding Observations on the Second Periodic Report of Japan*, ¶ 10, CAT/C/JPN/CO/2 (2013).

³¹ *Id.* at ¶ 11.

³² See Sarah Cleveland, *Follow-up to Concluding Observations*, at 2 (Apr. 19, 2016); U.N. Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 18, CCPR/C/JPN/CO/6 (2014); U.N. Committee against Torture, *Concluding Observations on the Second Periodic Report of Japan*, ¶ 10, CAT/C/JPN/CO/2 (2013); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee*, ¶¶ 18, 19, CCPR/C/JPN/CO/5 (2008); U.N. Committee against Torture, *Conclusions and Recommendations of the Committee against Torture*, ¶ 15, CAT/C/JPN/CO/1 (2007); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee*, ¶ 22, CCPR/C/79/Add.102 (1998); U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee*, CCPR/C/79/Add.28, ¶ 13 (1993).

³³ See, e.g., Amnesty Int’l, *Prominent Peace Activist Detained Without Bail*, at 2 (Jan. 26, 2017), available at <https://www.amnesty.org/download/Documents/ASA2255522017ENGLISH.pdf>.

³⁴ Amnesty Int’l, *Japan: End abusive detention system after murder conviction quashed* (Nov. 7, 2012), available at <https://www.amnesty.org/en/latest/news/2012/11/japan-end-abusive-detention-system-after-murder-conviction-quashed/>.

³⁵ See Human Rights Now, *Universal Periodic Stakeholder Report – 2017*, at 12 (Mar. 2017), available at <http://hrn.or.jp/eng/wp-content/uploads/2017/04/Universal-Periodic-Review-March-2017.pdf>

³⁶ See *id.* at 12–13.

³⁷ See Human Rights Watch, *2017 Country Summary – Japan*, at 1 (Jan. 2017), available at <https://www.hrw.org/world-report/2017/country-chapters/japan>.

³⁸ See *id.* The new law applies only to cases: involving crimes punishable by death or imprisonment for an indefinite period; involving crimes punishable by imprisonment for a year or more and in which a victim has died because of an intentional criminal act; and investigations by prosecutors without the involvement of the police. See Library of Congress, *Japan: 2016 Criminal Justice System Reform* (Nov. 2016), available at <https://www.loc.gov/law/help/criminal-justice-system-reform/japan.php>.

³⁹ See *id.*

These features continue to work injustices on those unlucky enough to find themselves caught in the grip of the Japanese criminal system.

Conclusion

No one should be forced to endure what my husband faces every day, particularly in a developed nation like Japan, the third largest economy in the world. Yet this cruel and inhumane treatment of the criminally accused is all too common. I know that it is not the responsibility of Human Rights Watch to defend my husband in court—he has lawyers who will do that. But I urge Human Rights Watch to highlight his case, alongside a disturbingly high number of others, including those described above, to press the Japanese government to reform its draconian system of pretrial detention and interrogation.

Sincerely,

Carole Ghasn

cc: Mr. Brad Adams, Human Rights Watch
Mr. Ken Roth, Human Rights Watch