Capital Punishment in Japan: Unpacking Key Actors at the Governmental Level

Obara Mika

1. Introduction

According to media reports, there appears to be broad public support for capital punishment in Japan.[1] Since 1956, the Prime Minister's Office has conducted a public opinion poll on capital punishment irregularly; and every five years since 1994, surveying 3,000 men and women aged 20 or older nationwide. The result in 2009 revealed that public support reached 85.6 percent, the highest percentage ever compared to 81.4 percent in 2004; 79.3 percent in 1999; and 73.8 percent in 1994.[2] Whilst these results appear to demonstrate strong public support for capital punishment, an examination of the questions posed leaves room for doubt. In seeking public opinion regarding capital punishment, the poll required participants to choose between three choices: 1) "it is unavoidable *in certain circumstances*," 2) "it should be abolished *in all circumstances*," and 3) "I do not know." The results in 2009 were 85.6 percent, 5.7 percent and 8.6 percent, respectively. As Satō Mai critically explains, the first two answers appear to have been framed strategically in order to produce results that would justify government policy.[3] Whilst it may seem that the retention of capital punishment is in accordance with popular opinion, a second look at the issue may yield alternate views. Why does Japan, an advanced industrial democracy, retain the death penalty? This paper seeks to investigate institutional constraints to global opposition to capital punishment by unpacking the real key actors who are responsible for making decisions. It is often considered that "Japan" has collectively chosen to retain capital punishment despite the urgings of opponents to comply with international norms against the death penalty. However, campaigns against capital punishment cannot be effective without understanding the complex dynamics of how responsibility is distributed within governmental agencies. This paper will identify key players in three relevant governmental agencies: the Ministry of Justice, the Public Prosecutor's Office, and detention centers as the affiliated facilities of the Ministry of Justice. It will seek to clarify the role played by each actor by considering the following six questions: (1) which division of what governmental agency is in charge of capital punishment; (2) who generates confessions from offenders in order that result in sentences of capital punishment; (3) who runs the day-to-day service of death row inmates; (4) who prepares official documents to execute death row inmates legally; (5) who authorizes the execution; and (6) who executes the death row inmates? The paper challenges the perception that the Japanese government retains capital punishment out of respect to public sentiment; instead, it contends that the

system has been supported and run by bureaucrats in several governmental agencies, irrespective of public opinion and even in disregard to the thinking of party politicians.

2. Three Japanese Governmental Agencies and the Issue of Capital Punishment

At first sight, the Prime Minister seems to represent Japanese policy and exert a fair amount of power on the issue of capital punishment. The Prime Minister appoints the Minister of Justice (*hōmu daijin*) who is in charge of authorizing executions; moreover, it is the Prime Minister's Office that periodically conducts opinion polls on human rights and capital punishment system. However, in reality, the Prime Minister often rubber stamps candidates for the position of Minister of Justice proposed by bureaucrats in the Ministry of Justice; in other words, who is chosen to serve as the Minister of Justice does not necessarily reflect the thinking of the Prime Minister. In addition, the Prime Minister does not get personally involved in framing questions for opinion polls; this too is a function performed by bureaucrats in charge of the issue. Similarly, whilst the Ministry of Foreign Affairs (MOFA) appears to represent Japan's policy in bilateral and multilateral settings, it does not make decisions relating to capital punishment independently. Although MOFA is responsible for the day-to-day running of Japanese foreign relations and functions as Japan's window on the world, it simply reproduces decisions formulated by ministry bureaucrats who collectively are in charge of Japanese government policy.[4)] Power is thus distributed amongst key actors in the Japanese government, and decision-making with regard to capital punishment, likewise, involves the action of particular actors in particular agencies.

2.1. The Ministry of Justice

Capital punishment in Japan has not been treated as a human rights issue. Instead, it is handled within the Criminal Affairs Bureau of the Ministry of Justice. There are two government agencies concerned with human rights protection in Japan: the Human Rights Bureau in the Ministry of Justice and the Human Rights and Humanitarian Affairs Division in MOFA. I approached both of these bodies to see if they would agree to an interview. In January 2011, the Human Rights Bureau denied my request, stating that *they are not in charge of capital punishment.* I was urged to contact the Criminal Affairs Bureau. In the meantime, two senior ministers in the MOFA division agreed to be interviewed in June 2011. However, they also denied any responsibility for dealing with the issue of capital punishment, now or in the future. Both groups maintained that capital punishment is not a human rights concern but an issue of legal punishment under the aegis of the Criminal Affairs Bureau in the Ministry of Justice.

Article 475 of the Code of Criminal Procedure stipulates that capital punishment shall be executed under an order from the Minister of Justice within six months of the final verdict. Article 476 also provides that execution shall be carried out within five days upon authorization. However, as with Prime Ministers, Ministers of Justice are not independent decision-makers. The following discussion attempts to locate where decision making actually takes place. I will first divide past Ministers of Jus-

tice into three types according to their attitude toward capital punishment. Secondly, I will briefly summarize the domestic debate on the legality and propriety that some Ministers of Justice do not authorize execution based on their personal beliefs. I conclude, however, that an examination of the thought and behavior of Ministers of Justice does not tell us much about the actual decision-making system regarding capital punishment in Japan.

Ministers of Justice: Different Views on Capital Punishment

There are roughly three types of Ministers of Justice; according to Petra Schmidt, there are the doves, the hawks, and the in-betweens.[5] In other words, (1) those who are opposed to the death penalty and do not authorize executions based on their personal convictions or religious beliefs; (2) those who are in favor of the death penalty and authorize the executions; and (3) those who are opposed to the death penalty but authorize the execution of one or two inmates annually in order not to realize a *de facto* moratorium period. No execution, for example, was carried out between 1989 and 1993; and between 2005 and 2006, the direct reason being that the Ministers of Justice during these terms did not authorize executions. To be more precise, not all of the Ministers of Justice during these *de facto* moratorium from 1989 to 1993 can be characterized as doves; Satō Megumu, who served between December 1990 and November 1991, disclosed after his resignation that he did not authorize executions because of his personal religious beliefs. Other Ministers of Justice did not have a chance to authorize an execution since they all resigned within a short period.

Examples of those categorized as hawks include Gotōda Masaharu, Mikazuki Akira, and Hatoyama Yukio. Given that Article 475 of the Code of Criminal Procedure specifies that Ministers of Justice have the responsibility to authorize executions, bureaucrats in the Ministry of Justice complain that non-authorization by Ministers of Justice can create "unfairness" amongst death row inmates and their families, and amongst the bereaved families of the victims, especially when one pro-death penalty Minister takes over from one who is opposed to the death penalty.[6] Gotōda Masaharu, who resumed the authorization of executions in March 1993 for the first time in three years and four months, showed a consistent pro-death penalty attitude during his term of service (December 1992 to August 1993). Gotōda insisted that once a judge sentences a convicted criminal to capital punishment, the Minister of Justice should authorize the execution as specified in the law.[7] He also stressed that Ministers of Justice should accept this responsibility in order to maintain legal order in Japan; those unhappy with this responsibility should resign immediately.[8] This approach was followed by his successor, Mikazuki Akira (August 1993 to April 1994), who authorized executions for four death row inmates believing in the deterrent effect of capital punishment. Later, Hatoyama Kunio (August 2007 to September 2008) ordered an execution the 13 detainees in less than a year. This was the largest number of executions since Gotōda resumed them in March 1993. Following this, the *Asahi Shinbun*, a major Japanese newspaper, condemned his behavior by calling him *Shinigami*, or the Grim Reaper.[9] As the number of executions began to invite foreign criticism, especially from human rights groups such as Amnesty International, Hatoyama stressed that capital punishment is a strictly domestic

issue. He defended it not only on utilitarian grounds, saying that it was necessary to achieve social justice, but on cultural grounds as well, declaring that capital punishment is an indigenous system *deeply rooted in Japan's own history and culture.* As such, third parties should have no say.[10)]

Finally, Chiba Keiko is an example of an "in-between" Minister of Justice. Chiba has a long history as an outspoken anti-death penalty advocate and member of the Parliamentary League for the Abolition of the Death Penalty. She was appointed as the Minister of Justice in 2009 under the administration of Hatoyama Yukio (the brother of Hayoyama Kunio) and was reappointed in 2010 under Kan Naoto. Although she resigned from the Parliamentary League when she was given the appointment, for nearly one year she managed to avoid giving her authorization for the execution of convicted criminals. Members of several NGOs opposing the death penalty looked forward to celebrating one year free of executions.[11)] However, on 28 July 2010, two death row inmates were executed without prior notice, much to the chagrin of anti-death penalty activists. Newspaper and television coverage shed light on positive aspects of the event. Chiba became the very first Minister of Justice to actually witness a hanging, and in press conferences stressed the need for a fundamental debate on capital punishment:

> It is not that I changed my mind […] I attended the executions as I believe it is my duty to see them through. […] Witnessing [them] with my own eyes made me think deeply about the death penalty, and I once again strongly felt that there is a need for a fundamental discussion.[12)]

She showed her enthusiasm to set up a study group on the issue within the Ministry of Justice and to allow the media access to the execution sites in order to spur domestic debate.[13)] Following this event, the execution venue began to allow media access. Based on testimony from prosecutors who witnessed the hangings, details of how death row inmates are brought to the venue and exactly how they are executed were disclosed officially on television for the first time, though most of these details had been available in extant literature compiled by NGOs. Nonetheless, anti-death penalty NGOs were disappointed with her political decision. They saw this event as nothing but a performance by the Ministry of Justice to show that a *de facto* moratorium will not be realized even under a Minister who opposes the death penalty.[14)] They complained that Chiba's achievements (setting up a study group, allowing media access to the execution chamber, and disclosing execution details) could have been achieved without authorizing even one execution. This event highlighted the sad fact that Ministers are unable to make independent decision.

Rights and Responsibility of the Ministers of Justice

Article 475 of the Code of Criminal Procedure has been interpreted in various ways by different scholars. Mizutani Norio, professor of law at Osaka University, argues that the provisions of Article 475 do not automatically bind Ministers of Justice to carry out executions. He notes, for example, that Article 32 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that:

> (1) Upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind. (2) Measures such as counseling or lectures which may contribute to helping the inmate sentenced to death to maintain peace of mind shall be taken by obtaining cooperation from nongovernmental volunteers.[15)]

Mizutani, therefore, argues that Ministers of Justice do not have to authorize executions until the death row inmate's peace of mind is secured.[16)] Secondly, he contends that it is reasonable that Ministers of Justice do not authorize executions whilst debates on capital punishment are taking place both inside and outside of the country. Internationally, there is a broad and growing consensus against the death penalty; domestically, Japan re-introduced a lay judge system (*saiban-in seido*) on 21 May 2009. Under this system, citizens chosen randomly from the electoral register determine both guilt (or innocence) and the sentence to be imposed. This new system has raised public consciousness on capital punishment.[17)] Similarly, in interviews with a professor of law and a researcher on the Japanese constitution conducted in Tokyo in May 2011, both scholars defended the legality of decisions by Ministers of Justice not to comply with Article 475. According to Article 99 of the Constitution of Japan, "The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution." Moreover, Article 13 provides that "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs".[18)] Therefore, according to the constitutional scholars, it is not necessarily illegal for Ministers of Justice to refrain from authorizing executions, even though it may seem to be against the Code of Criminal Procedure: it is rather manitory for Ministers of Justice to be extraordinarily careful with decisions that relate to matters of life or death, as stipulated in Article 13 of the Constitution. It is also their responsibility to encourage debate in the Diet or in the public in order to amend the law if necessary.[19)]

Thus, examining solely what role Ministers of Justice play may not be helpful in an analysis of how important decisions are made regarding the issue of capital punishment. Whilst Ministers of Justice rarely stay in office for more than one year on average, employed-for-life bureaucrats (most of them former prosecutors with a substantial personal network within the ministry) are the true key players.[20)] As David T. Johnson, Professor of Sociology at the University of Hawaii, argues: "It is the prosecutor more than any other actor who controls the course of capital punishment in Japan, for it is the prosecutor who controls both the inputs into the system—which cases to charge capital—and the outputs—which cases to present to the Minister of Justice for the signing that authorizes hanging."[21)] The next section seeks to clarify the role of prosecutors in this issue from two perspectives: how prosecutors generate confessions from offenders that may lead to a sentence of capital punishment; and how they prepare the legal documents that order the execution of death row inmates.

2.2. Public Prosecutor's Office

Interrogations to Generate Confessions

The exceptional efficiency of the Japanese criminal justice system and its high conviction rates have been studied by various scholars.[22] It is generally agreed that confessions lie at the heart of Japanese criminal justice. This is because "prosecutors (and police detectives) are evaluated in terms of their investigative efficiency, which is measured chiefly by their success or failure in securing confessions", and they do their best to make offenders confess using all available measures.[23] As a result:

> Investigators are highly intrusive and sometime coercive. Truth is fabricated, corrupted, and concealed. Mistakes are made. Bias exists. […] Most fundamentally, the system is so hostile to outside scrutiny that it remains impossible to see or say what many of the problems are.[24]

Johnson has compiled an empirical study detailed how Japan's two thousand prosecutors exercise their formidable powers.[25] His work is helpful in understanding how prosecutors and police detectives have sometimes contributed to the execution of innocent people. Johnson calls Japan a "paradise for prosecutors" and explains how prosecutors exert influential power in generating confession.[26] He notes:

> In Japan confessions are the king of evidence, and prosecutors are given wide legal latitude to compose them in their own words and to use them as evidence at trial […] [T]he law gives investigators many tools to *extract* confessions: time, the single most effective instrument in their arsenal; a convenient place (police detention cells); control over meetings between suspects and defense counsel; and so on."[27]

Police detention cells (*daiyō kangoku*) are the site where prosecutors are able to obtain confessions from suspects at a rate of over 90 percent.[28] Suspects are detained in *daiyō kangoku* for up to 23 days for interrogation. According to Amnesty International, "there are no rules or regulations regarding the length of interrogations carried out during this period."[29] In 1980s, four major retrials revealed that false charges that resulted from forced confession by prosecutors: the Menda Case, the Saitagawa Case, the Shimada Case, and the Matsuyama Case.[30] There are other unsolved cases, some going back decades. Okunishi Masaru, 86, for example, has been on death row since 1961 for poisoning five women. He may well have been the victim of forced confession resulting from long interrogation sessions. As of 2012, detained for 51 years, he is the longest-serving inmate in a Japanese prison.[31] A former boxer, Hakamada Iwao, has also been on death row for 44 years as of 2012. He is currently 76 years old and the second longest-serving inmate in Japan since he was sentenced to death in 1968 for murder of a family of four in 1966.[32]

Of course, guarantees to respect the human rights of criminals exist in Japan. The Japanese police take pains to demonstrate their non-violent character in the public. In sharp contrast to some countries where criminals are shot in self-defense when necessary, the Japanese police are strikingly non-violent. The Asama-Sansō

(*Asama* lodge) incident of February 1972 demonstrates this non-violent approach. In this incident, five student radicals of the United Red Army broke into a mountain lodge and took the lodge keeper's wife as hostage. The police were patient and surrounded the lodge for ten days before managing to break the psychological resolve of the terrorists.[33] In the process, two policemen and one television cameraman were killed, and 23 policemen were injured. The police nonetheless stuck to the rule not to use pistols in order to avoid bloodshed, even though 1,500 policemen were deployed with ten armored cars, four water cannon trucks, and a wrecking ball crane.[34] Although this is an example from nearly 40 years ago, it is still common that members of the hijacker's family—the mother in particular—are called in by the police in an attempt to convince the hijacker to surrender.[35] Nonetheless, in murder cases where the criminals are unknown, the attention of the police and prosecutors seems to center on finding suspects and generating confessions as quickly as possible.

As one recent study concludes: "If public prosecutors recommend the death sentence in court, which they do increasingly frequently [...], it has recently become more certain that this will be the sentence of the court."[36] Prosecutors are not required to tape or video-record interrogations, unlike the practice in countries such as the United Kingdom, Canada, Australia, and many states of the United States. In the United Kingdom, for example, it became mandatory to video-record in 1986, in Alaska in 1985, and Minnesota in 1994.[37] The most recent case that highlighted the necessity for a visual record of the interrogation is the Fukawa Case.[38] The Fukawa Case is a murder-robbery incident that took place in Ibaraki Prefecture on August 30, 1967. Sakurai Shōji and Sugiyama Takao, 20 and 21 at the time of the crime, respectively, were suspected in the murder of a 62-year-old carpenter. After a series of long interrogation session, they confessed to the crime, even though their fingerprints or hair were not found at the murder scene.[39] They were sentenced to life imprisonment on July 3, 1978. Although released on parole in November 1996, they repeatedly submitted petitions for retrial. Their petition was accepted in September 2005 and in June 2011 they were found innocent, some 44 years after the initial guilty verdict. Tape recordings of their "confessions" were found to have been edited in 13 places, and a new DNA test confirmed their innocence.[40] According to a Jiji Press report, interrogators do not necessarily take a full note of what offenders say *in order to respect their wills*: some offenders demand to be interrogated only in private with a single investigator so that matters revealed will remain in the interrogation room.[41] One interrogator who was interviewed by Jiji Press explained that the real motive is usually something private or embarrassing, which they do not want to be known to members of their families or to the general public after their release from the prison. In other words, if the whole interrogation were to be videotaped, they may not tell the investigators the real motive of the crime they had committed.[42] This contradicts the results of research on Japanese criminal practice: interrogations are not videotaped since what takes place in the *daiyō kangoku* is often torture designed to generate confessions. As Johnson argues, "the system is so hostile to outside scrutiny that it remains impossible to see or say what many of the problems are."[43]

Eda Satsuki, who served as the Minister of Justice from January to September 2011, demanded that, in light of the Fukawa Case, tape and video-recording of interrogations should be mandatory. However, no immediate change has taken place. Despite statements issued by the Parliamentary League to Realize the Visualization of Interrogations within the Democratic Party of Japan and resolutions passed in the House of Councilors, no progress appears to have been made.

2.3. Detention Centers

Prison Guards and Chaplains

Next, I will examine the key players in detention centers as the affiliated facilities of the Ministry of Justice, mainly referring to the work of Kikuta Kōichi[44], professor of criminology; and Mori Tatsuya[45], a journalist. I will clarify that prosecutors exert tremendous power in Japanese criminal justice, and have a near monopoly on important posts in the Ministry of Justice.

First of all, prosecutors are also responsible for the preparation of documents that notify the Minister of Justice on who is to be executed next and when. Article 472 of the Code of Criminal Procedure provides that execution is carried out in the initiative of the head of the Public Prosecutor's Office. It may seem inappropriate for prosecutors to be in charge of this task, especially given the fact that it is prison guards in the Correction Bureau that deal with the death row inmates on a daily basis and are intimately aware of their health and mental condition. Moreover, the positions of the Director-General of the Criminal Affairs Bureau and the Correction Bureau are regularly filled by former prosecutors. In many cases, the latter post is given to someone with no practical experience in correction.[46] Since the Director-General of the Correction Bureau is a prime candidate, within a few years, for promotion to the Chief Public Prosecutor, it is important to ensure that offenders cause no trouble during their term. By contrast, the highest position given to those with practical experience in correction is the head of the Regional Correction Headquarters.[47] Since they will be transferred to another prison after several years, naturally they place emphasis on avoidance of trouble or accidents during their term. They attempt to discourage offenders from seeking redress or initiating a lawsuit. Instead, they make potential trouble-makers work harder and do not allow them to disclose information about prison life. Indeed, their prime objective is to seek to keep death row inmates in good health and good mental condition *so execution will be carried out smoothly*.[48] The Correction Bureau thus does not have an environment that welcomes new ideas or opinions from prison guards to improve the current situation. It is considered best to follow what has been the rule for decades.

Lastly, the responsibility of chaplains needs to be taken into account as they maintain contact with the inmates even after they are sentenced to death. The origin of the chaplain system can be traced back to the *Nara* and *Heian* periods (710–1185) when monks, especially those associated with *Higashi Honganji* (Temple of the *Jodo Shinshū* Sect in Kyoto), attempted to provide religious instruction to criminals on the eve of their execution.[49] A similar system can be found in the late *Edo* period prisons, but the present system has its origins in prison reform introduced in the *Meiji* period.[50] Currently, the Ministry of Justice is in charge of this system al-

though a journalist, Satō Tomoyuki, contends that the chaplain system is in contradiction to Article 20 of the Japanese Constitution.[51] The Ministry's secretive policy is also apparent here, as chaplains are not allowed to disclose any information about the content of their communication with their inmates or express their own opinions on capital punishment system in Japan.[52] Although the chaplain who served Kimura Shūji, a death row inmate, emerged as a vocal anti-death penalty advocate, most prison chaplains have followed the Ministry's policy of secrecy, fearing that offering of a spiritual care service to their current inmates would be disrupted by breaking the rule.[53]

Approximately 70 percent of chaplains are Buddhists, the remainder being *Shinto* and Christian. Their purpose is to help inmates generate a feeling of remorse and prepare them to be executed in a peaceful state of mind. However, Menda Sakae, a former death row inmate, does not approve of giving religious instruction to death row inmates. He is especially disturbed by the emphasis that Buddhist chaplains place on the teaching of causality.[54] He contends that if inmates are encouraged to believe that they were already doomed by their previous life, they may resign themselves to the inevitable and refrain from fighting against what they know to be false charges.[55] The initial purpose of the monks in *Higashi Honganji* was to help the inmates generate feelings of remorse and help return to the society after rehabilitation. However, their current purpose appears to be making inmates accept the fact that they are on death row with no chance of rehabilitation. In this regard, the chaplain system seems curiously designed to make inmates accept their fate without resistance instead of encouraging atonement and rehabilitation. As such, the chaplains, directly or indirectly, comply with the desire of prosecutors to ensure that executions take place in a smooth, efficient and uneventful manner.

3. Conclusion

This paper has examined how official decisions are made regarding capital punishment in Japan. My argument is that resistance to growing global opposition to the death penalty stems from its institutional context. Although many reports in Japanese and foreign media claim strong public support for the system of capital punishment, I argue that capital punishment in Japan revolves around a closed system of bureaucratic decision making involving the Ministry of Justice and the Public Prosecutor's Office. Without understanding the complex interplay of particular actors in particular agencies, it is challenging for activists who oppose the death penalty to urge the Japanese government to comply with international norms. First of all, the Japanese government has so far refused to deal with capital punishment as a human rights issue. Furthermore, since the capital punishment system has been the province of a narrow elite in several governmental agencies, broad appeal to the "Japanese government" has proven ineffective. Whilst it may be critical for Japan's international standing, as one of the two remaining industrialized democracies in the world today (the other being the United States) to retain the death penalty, it is also necessary for opponents of capital punishment to acknowledge the tightly-knit institutional context that has been so far hindering Japan from following this global trend.

Notes

1) Asahi Shinbun, "Editorial: Death Penalty Debate," July 30, 2010. Available at http://www.asahi.com/english/TKY201007300440.html [last accessed on March 18, 2012].
2) Prime Minister's Office, "Opinion Poll on Basic Legal System," 1999 and 2004. Available at http://www8.cao.go.jp/survey/h11/houseido/index.html; and http://www8.cao.go.jp/survey/h16/h16-houseido/index.html [last accessed on March 18, 2012]; and Roger G. Hood, *The Death Penalty: Beyond Abolition*, Council of Europe, 2004, 227.
3) Satō Mai, "Public Opinion and the Death Penalty in Japan," *Occasional Papers Series*, vol. 4, Centre for Capital Punishment Studies, 2008. Available at http://www.westminster.ac.uk/__data/assets/pdf_file/0004/43429/v.4_4.pdf [last accessed on March 18, 2012].
4) Glenn D. Hook et al., *Japan's International Relations: Politics, Economics and Security*, (Routledge, 2001), 45; and interviews, conducted in Tokyo in May 2011.
5) Petra Schmidt, *Capital Punishment in Japan*, (Brill, 2001), 63–73.
6) Yomiuri Shinbun, "*'Shikei' donaru, Haishi ronja, Chiba hōshō shūnin de*," September 21, 2009.
7) Gotōda Masaharu, 126th Legal Committee of the House of Representatives, February 23, 1993.
8) Ibid., 3.
9) Asahi Shinbun, "Japan Minister Livid at 'Grim Reaper' Jibe over Executions," June 20, 2008, Available at http://afp.google.com/article/ALeqM5jrdWLAtvGumDzDLuAW5HkXgAn8nQ [last accessed on March 18, 2012].
10) Quoted in Tsujimoto Kiyomi, "*Shikei seido ni tsuite no Hatoyama hōmu daijin to Fukuda sōri daijin no ninshiki ni kansuru shitsumon shuisho*," May 27, 2009. Available at http://www.shugiin.go.jp/itdb_shitsumon_pdf_s.nsf/html/shitsumon/pdfS/a169436.pdf/$File/a169436.pdf [last accessed on March 18, 2012].
11) Interview with NGO staff, conducted in Tokyo in May 2011.
12) Christian Science Monitor, "Japan Announces Death Penalty Review after Hanging Two Men," July 29 2010. Available at http://www.csmonitor.com/World/Asia-Pacific/2010/0729/Japan-announces-death-penalty-review-after-hanging-two-men [last accessed on March 18, 2012].
13) Asahi Shinbun, "*Shikei shikkō ni tachiai Chiba hōshō: 'Konpon kara no giron ga hitsuyō'*," July 28, 2010.
14) Center for Prisoners' Rights, "*Chiba Keiko hōmu daijin ni yoru shikei shikkō ni kōgi suru*," July 28, 2010; and interviews with NGO staff, conducted in Tokyo in May 2011.
15) "Act on Penal Detention Facilities and Treatment of Inmates and Detainees." Available at http://www.japaneselawtranslation.go.jp/law/detail_main?id=142&vm=2&re= [last accessed on March 18, 2012].
16) Mizutani Norio, "*Saiban no shikkō*" in Gotō Akira and Shiratori Yūji (eds.), *Shin Kommentar: Keiji soshō hō*, (Tokyo: Nihon Hyōron Sha, 2010), 1092.
17) David T. Johnson, "Capital Punishment without Capital Trials in Japan's Lay Judge System," *The Asia-Pacific Journal: Japan Focus.* Available at http://www.japanfocus.org/-David_T_-Johnson/3461 [last accessed on March 18, 2012].
18) "The Constitution of Japan." Available at http://www.solon.org/Constitutions/Japan/English/english-Constitution.html [last accessed on March 18, 2012].
19) Interviews, conducted in Tokyo in May 2011.
20) David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, (Oxford University Press, 2002).
21) David T. Johnson, "Japanese Punishment in Comparative Perspective," *Japanese Journal of Sociological Criminology*, 33, 2008, 46–66.
22) Chalmers Johnson, *Conspiracy at Matsukawa*, (University of California Press, 1972); William Clifford, *Crime Control in Japan*, (Lexington Books, 1976); Aoyagi Fumio, *Nihonjin no hanzai ishiki*, (Tokyo: Chūō Kōronsha, 1986); Daniel Foote, "Benevolent Paternalism of Japanese Criminal Justice," *The California Law Review*, 80, 1992, 317–390; John Owen Haley, "Criminal Justice in Japan," *JSTOR*, 1992; and Satyanshu Mukherjee, "What is So Good about the Low Crime Rate in Japan," *Australian Rationaist*, 37, 1994, 7–19.
23) David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, (Oxford University Press, 2002), 243–4.

24) Ibid., 279.
25) Ibid., vii and 4.
26) Ibid., 21.
27) Ibid., 39.
28) Ibid., 15, 243.
29) Amnesty International, "Japan: Retrial Highlights Need for Judicial Reform," October 21, 2009. Available at http://www.amnesty.or.jp/modules/news/article.php?storyid=711&sel_lang=english [last accessed on March 18, 2012].
30) (1) The Menda incident occurred on 30 December in 1948 and Menda Sakae was detained for 34 years and seven months; (2) the Saitagawa incident occurred on 28 February in 1950 and Taniguchi Shigeyoshi was detained for 33 years and 11 months; (3) the Shimada incident occurred on 10 March in 1954 and Akahori Masao was detained for 34 years and eight months; and (4) the Matsuyama incident occurred on 18 October in 1955 and Saitō Yukio was detained for 28 years and seven months; Petra Schmidt, *Capital Punishment in Japan*, (BRILL, 2002), 141–8.
31) Amnesty International, "'Will This Day be My Last?' The Death Penalty in Japan," 2011, Available at http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/appeals_japan_dp_okunishiMasaru [last accessed on March 18, 2012].
32) Amnesty International UK, "Hakamada Iwao—Japan," November 1, 2011, Available at http://www.amnesty.org.uk/content.asp?CategoryID=12168 [last accessed on March 18, 2012]; Tetsumi Yamamoto, *Hakamada Jiken: Enzai, Gōtō Satsujin Hoka Jiken*, Shinpusha Bunko, 2004.
33) Peter J. Katzenstein, *Cultural Norms and National Secutiry: Police and Military in Postwar Japan*, (Cornell University Press, 1996), 88.
34) Ibid.
35) Kawai Mikio, *Shūshinkei no shikaku*, (Tokyo: Yōsensha, 2009), 93.
36) Hama Kōichi i and Tom Ellis, "*Genbatsuka*: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan?" *Japanese Journal of Sociological Criminology*, 33, 2008, 67–92.
37) David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, 273.
38) Mainichi Shinbun, "*Fukawa jiken: Saishin muzai, Mukikakutei kara 33 nen, Kensatsu shuchō shirizokeru*," May 24, 2011.
39) Mainichi Shinbun, "High Court Upholds Lower Court Decision to Retry Two Men Convicted of 1967 Murder," July 14, 2008.
40) Mainichi Shinbun, "*Fukawa jiken: Saishin muzai, Mukikakutei kara 33 nen, Kensatsu shuchō shirizokeru*."
41) Jiji Press, "*Jiji.com Torishirabe kashika no yukue*," May 1, 2010. Available at http://www.jiji.com/jc/v?p=new-special-investigation0001 [last accessed on March 18, 2012].
42) Ibid.
43) David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, 279.
44) Kikuta Kōichi, *Nihon no Keimusho*, (Tokyo: Iwanami Shoten, 2002).
45) Mori Tatsuya, *Shikei: Hito wa hito wo koroseru, demo hito wa hito wo sukuitai tomo omou*, (Tokyo: Asahi Shuppan Sha, 2008).
46) Kikuta Kōichi, *Nihon no Keimusho*, 22.
47) Ibid.
48) Ibid., 23; Mori Tatsuya, *Shikei: Hito wa hito wo koroseru, demo hito wa hito wo sukuitai tomo omou*, 216.
49) Sato Tomoyuki, *Shikei to shūkyō*, (Tokyo: Gendai Shokan, 2002), 42.
50) Ibid.; Daniel Botsman, *Punishment and Power in the Making of Modern Japan*, (Princeton University Press, 2007).
51) Article 20 stipulates that "Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. 2) No person shall be compelled to take part in any religious acts, celebration, rite or practice. 3) The State and its organs shall refrain from religious education or any other religious activity"; "The Constitution of Japan" Available at http://www.solon.org/Constitutions/Japan/English/english-Constitution.html [last accessed on March 18, 2012].

52) Mori Tatsuya, *Shikei: Hito wa hito wo koroseru, demo hito wa hito wo sukuitai tomo omou*, 139.
53) Ibid., 137–9.
54) Menda Sakae, *Menda Sakae gokuchū nōto: Watashi no miokutta shikeishū tachi*, (Tokyo: Inpakuto Shuppan, 2004), 139.
55) Ibid.