

# Prison Law Reform in Japan: How the Bureaucracy was Held to Account Over the Nagoya Prison Scandal

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**Abstract:** Japan's prison system is renowned for its safety and order. There has not been a prison riot there in decades, and figures about escapes from and assaults at its penal facilities are far lower than in other developed nations. Such features have not gone unnoticed; foreign policy makers increasingly look to Japan for lessons in how to improve their own prisons. Whilst various aspects of the Japanese prison system have been investigated by legal experts, government agencies and human rights organizations, however, a gap remains with respect to how Japanese prison policies are formulated. This article provides a study of the decision-making process, focusing on the political events triggered by a sequence of inmate injuries and fatalities in Nagoya Prison following the turn of the century, which culminated in the 2005/6 reform of the 1908 Prison Law. Whilst this study reveals the scope of the discretion that the Ministry of Justice enjoys over prison management, it also shows the capability of the legislature to hold the former to account when called to do so, and the potential for civil society to impact policy-making in Japan.<sup>1</sup>

**Key Words:** Japan, prisons, Nagoya Prison, Ministry of Justice, Correction Bureau, Japan Federation of Bar Associations, Prison Law, Standard Minimum Rules for the Treatment of Prisoners

*Prisons, mental hospitals, and other institutions are a thermometer that measures the sickness of the larger society. The treatment society affords its outcasts reveals the way in which its members view one another – and themselves.*

*Joy Hayms and Tom Murton, Accomplices to the Crime: Arkansas Prison Scandal, 1969*

'Japanese prisons are generally safe places with none of the violence or gang activity that the popular cinema associates with prison life in the [United States of America (USA)]', writes the American government on its Tōkyō Embassy website. Former American Senator Jim Webb, having visited Fuchū Prison in 1984 and talked to inmates there, holds the Japanese prison system in similarly high regard. His impression was that '[A]mericans familiar with the horrors of Attica and New Mexico and the routine tales of brutality and homosexual rape would find the orderly corridors of a Japanese prison mind-boggling'<sup>2</sup>, and he has since keenly advocated that the US try to learn what it can about prisons from Japan.

This picture of safety in Japan's prisons is borne out by statistics. Indeed, there has not been a single riot since 1969, which is remarkable given that prison rioting is a common occurrence in many other countries, both developing and developed. Moreover, in each of the years from 1998 to 2009, there were no more than four assaults on prison staff, and no more than 25 assaults on inmates reported by the Ministry of Justice (MOJ) across the entire network of Japanese prisons. Fires and escape attempts are also rare (see *Table 1*). Although these statistics are difficult to compare directly, as each country records incidents in a slightly different way, by contrast, the United Kingdom (UK), which has a prison population of a similar size (approximately 60,000-70,000 inmates), recorded that a 'serious assault' occurred for

every 1.57 inmates in 2004-5<sup>3</sup>, which corresponds to over 40,000 such incidents. The Japanese figures are orders of magnitude less than their equivalents in other developed nations, and seem staggeringly low for any population of this size. It is further noteworthy that, despite the high suicide rate in Japan generally, the number of suicides occurring in Japanese prisons (see *Table 1* again) is also comparatively low by international standards.

*Table 1.*  
Incidents  
in  
Japanese  
Prisons

|      | ASSAULT ON<br>STAFF | ASSAULT ON<br>INMATES | FIRE | ESCAPE | SUICIDE |
|------|---------------------|-----------------------|------|--------|---------|
| 2005 | 2                   | 15                    | 0    | 1      | 15      |
| 2006 | 4                   | 25                    | 1    | 0      | 18      |
| 2007 | 4                   | 12                    | 0    | 1      | 21      |
| 2008 | 0                   | 7                     | 1    | 0      | 25      |
| 2009 | 0                   | 7                     | 0    | 0      | 15      |

*Source: MOJ pamphlet, Penal Institutions in Japan, 2011*

Maintaining such a high degree of safety and order is something about which the MOJ is extremely proud<sup>4</sup>. And why not? Surely a well-ordered prison benefits everyone in society. For a start, with the guards on top of discipline, the general public can rest easy in the knowledge that a low escape rate will follow. Moreover, it is no doubt in the interest of the inmates themselves to be afforded a sense of security in their surroundings.



**The former MOJ building (now a museum); the current MOJ headquarters lie just behind**

Nonetheless, disregarding the contentious philosophical question as to whether prisoners have rights at all (MacIntyre 1981; Hunt 2008), international instruments to which Japan is a party hold that they do, and that the humanity of a prisoner commands rights other than the right to security. Indeed, apart from the Universal Declaration of Human Rights that Japan aligned itself with when it joined the United Nations (UN) in 1956, it also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1999, and in 2015 was part of the unanimous adoption of the revised Standard Minimum Rules for the Treatment of Prisoners known as the 'Nelson Mandela Rules'. The latter instrument in particular demands that states seek to protect all manner of prisoners' rights, and are intended 'to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions'<sup>5</sup>.

What is not so clear in this legal framework created by the UN is the interdependence between the different rights it espouses, and when rights can justifiably be restricted. This is not an easily solved problem, as natural trade-offs between different rights make a 'correct' theoretical answer impossible. For example, if it were to be decided that prisoners are allowed to bathe unsupervised on the grounds of their right to privacy, their right to security would be compromised, as the risk of inmate-on-inmate violence in the bathing facilities would increase. Additionally, the relevant UN statutes recognize that there is a balance that has to be struck between the limitation of certain prisoners' rights, most obviously to liberty, and the just requirements for public order and welfare of the society.

With these fundamental issues at stake it is natural to ask how rights other than to safety and security are implemented in Japan, and also how the policies in which choices on rights

are distilled were arrived at. Concerning the former question, much can be found in the literature produced by the Japan Federation of Bar Associations (JFBA) and human rights NGOs (such as Amnesty International and Human Rights Watch)<sup>6</sup>, with the particular focus being on how aspects of the Japanese system diverge from the international regime. Furthermore, in the academic literature there is plenty of description of the system's rules, provisions, and procedures, as well as formal technical analysis of how these interact with each other and with international human rights instruments<sup>7</sup>. However, these works neglect to examine who it is that is pulling the strings in the political processes that yield the underlying legislation. How are choices relating to prisoners made and legitimized in Japan, and with what constraints? Which actors are the driving forces behind the existing policies that have resulted in such a high degree of order in Japanese prisons? And, on the other hand, which (if any) actors are excluded from the decision-making process?

The present paper fills this gap. It places a spotlight on the political events and debates triggered by a sequence of inmate injuries and fatalities in Nagoya Prison in 2001, which culminated a few years later in the first ever major amendment of what was at that point a nearly century-old Prison Law. To reconstruct these developments, the timeframe of which is summarized in the Appendix, the paper draws on interviews with key decision-makers (including the Justice Minister of the time Moriyama Mayumi), parliamentary and other official deliberations' minutes, media reports, amongst other sources. Naturally, the rare and dramatic episode so described provides a unique window into the world of Japanese prison policy-making, and enables us to explore which actors are responsible for shaping the prison policy of Japan, and what their motivations and limitations are. Beyond the particular question of who governs Japanese prisons, the analysis pursued provides an

insight into the much broader and long-running debate on who governs Japan.



**Abashiri Prison in Hokkaido, built during the Meiji period, and operational when Japan's first Prison Law was introduced in 1908**

To foreshadow my conclusions, the study demonstrates that, for a long time, prison management was left almost exclusively to MOJ, which tightly controlled information emerging from such establishments. Nonetheless, when the Nagoya Prison scandal highlighted wide-spread problems that had been plaguing the system, the legislature showed its capability to hold the bureaucracy to account, and bring about change in a prompt fashion. Whilst normally largely restricted by MOJ, the hard-working civil society groups with an interest in the treatment of prisoners were ready to take advantage of this moment to ensure that at least some of its requests made it into the revised legislation.

### Alarm Bells: The Outset of the Crisis



**Replica of the leather restraining devices used in Japanese prisons, created by the Centre for Prisoners' Rights**

In November 2002, six Nagoya Prison guards were arrested on suspicion of inmate maltreatment in two independent cases, one of which resulting in fatality. Both cases involved the use of a particular type of leather restraining device (*kawa tejō*), consisting of handcuffs attached to a belt, and protection cells (*hogo-bō*)<sup>8</sup>, in which the inmates had been placed. From the point at which it became clear in public that the Public Prosecutors Office was making investigations into these cases, misgivings were raised in parliament that inmate mistreatment might be more extensive than the two cases in which it had just been alleged. However, MOJ was keen to reassure the public, even after the arrests had been made, that the two cases under investigation were out of the ordinary.

The first incident to surface from Nagoya Prison concerned the 34-year old inmate Yamashita Hideki, who had allegedly been restrained by his guards with the leather device to an extent that caused him to bleed internally before being put in a protection cell. This treatment had been inflicted to him on 25 September 2002 and the allegation went that it represented a punishment for his refusal to withdraw an earlier complaint he had made to the Justice Minister. Yamashita had indeed filed a grievance about his guards to the incumbent

MOJ's head, Moriyama Mayumi – a right granted to inmates under the so-called *jōgan* system of the Prison Law of 1908 (*Kangoku hō*). The precise way in which the news of this alleged abuse reached the outside world was through the Tōkyō Bar Association, which was scheduled to meet Yamashita the day after he bled to discuss the copy they received of his official complaint.

Having learned of this mistreatment, the local bar's misgivings were raised about another recent incident in the same prison facility in May that year in which an inmate had died in very similar circumstances – i.e. in a protection cell, with the leather device having been applied. Since this other prisoner was only 49 years of age, and so unlikely to have died spontaneously due to natural causes, the lawyers became suspicious about the possibility of foul play in his death.

On 4 October 2002, against the background of the bar investigating both these cases, MOJ called a press conference. In it, the Ministry's representatives, amongst whom was the warden of the Nagoya Prison, sought to explain about Yamashita's case that he had been violent and that the guards had been trying to subdue him. The reassurance was also issued that an investigation into the incident was underway, and that the Ministry was fully cooperating with the Nagoya Prosecution<sup>9</sup>. As for the May case, the Ministry only commented on it after fielding questions from reporters. Whilst refraining from disclosing any names with regard to this case, they did confirm that an inmate had indeed died on the particular day and place. They added that the relevant information, including the cause of death – which had been determined by the autopsy to be 'acute heart failure (*kyūsei shinfuzen*)' – had been conveyed to the family of the deceased, with no issues having been raised by them.





An aerial view of Nagoya Prison

Despite MOJ's efforts to assuage suspicions about what had transpired in Nagoya, questions continued to be asked. On 31 October 2002, at the first autumn session of the House of Councillors' Judicial Affairs Committee, the events at Nagoya Prison were discussed in public again and further revelations were made. Under cross-examination by Fukushima Mizuho of the Japan Socialist Party (JSP), the Head of the Correction Bureau, Nakai Kenji, acknowledged that the death in the Nagoya protection cell in the May case had been shortly preceded by another such, in December 2001, and that the number of similar deaths in Japanese prisons over the previous three years totalled five. Fukushima had obtained this information from the prisons themselves, but she felt frustrated that her investigation was allowed to go only as far back as 1999. Insisting that the Correction Bureau show more cooperation, she challenged Nakai to produce data for earlier years. However, the chief of the Bureau replied that three years was as far back as Correction Bureau records go, and that besides the fact that such data was kept to the minimum for practical reasons, access to it was restricted out of courtesy to the privacy of the families of the deceased.

In the meantime, the Nagoya District Public Prosecutors Office was making progress with its investigation. By November the evidence they collected about the September case led them to arrest five guards, including Chief

Warden Watanabe Takashi<sup>10</sup>. With regard to the May case as well, their suspicions were piqued when they discovered that the prison authorities had withheld the fact from the deceased's family that he had been restrained with the leather device shortly before his death, and that the 'acute heart failure' had actually resulted from pressure on the stomach leading to a 'damaged diaphragm (*chōkan maku sonshō*)'. Indeed, the relatives only learnt the details of the autopsy later from the media<sup>11</sup>. Suspecting that improper use of physical restraints might have been the cause of the May fatality, the prosecution issued further arrest warrants to two of the guards already being held in custody, as well as a fresh arrest warrant to a third.

With MOJ coming under greater scrutiny over these arrests, questions began to be raised as to whether the Justice Minister herself bore any culpability for allowing multiple such incidents to occur under her leadership. Indeed, when the events at Nagoya Prison were debated for the first time in the Diet, on 31 October 2002, the allegation was levelled at Moriyama that she and her aide Nakai were trying to cover up the incidents<sup>12</sup>. In defence, Moriyama explained that Nakai had informed her of both the May and September incidents promptly after they had occurred, but that there was no reason for her to become concerned until the later case. And even then, she argued, it seemed unnecessary for her to implement measures of her own, other than holding a press conference, since she believed it had become the responsibility of the prosecution to determine the facts of the case (Moriyama, 2004, pp. 140-3). As for the December 2001 case, Moriyama again acknowledged awareness, but her argument went that because Nakai had briefed her that the injuries to the anus, of which the inmate had died, were self-inflicted, there was no way for her to see this case as anything other than one of a completely different category from the later two.



Ministry maintained that these incidents were isolated and not necessarily reflective of the prison system as a whole. Moriyama herself commented that all that the events of the preceding weeks had revealed was that an issue existed with a few individual guards at the Nagoya facility<sup>13</sup>. However, this position would soon be contradicted by non-governmental organisations (NGOs) which had stories to tell from even before media attention had turned to prison affairs of how authorities censored and even pro-actively discouraged inmates' complaints. Whilst by its nature these groups' claim that inmates' grievances often never even see the light of day was unverifiable, subsequent Diet discussions would establish that the majority of grievances that had reached the formally recognised channels had not been handled in accordance with the provisions of the Prison Law.



Justice Minister Moriyama, and Correction Bureau Director Nakai

Two of the civil society groups that came forward challenging the government were Amnesty International and the Japan Federation of Bar Associations (JFBA). The director of the former in particular, Teranaka Makoto, did not waste time to make clear that he disagreed with Moriyama, highlighting that the application of restraining devices and protection cells was far from exceptional to the Nagoya case and that in fact it could be seen at every prison<sup>14</sup>. What was more, he argued, these were not the only cruel punishments that were used by guards, with something called 'the trampoline', in which the inmate's head is covered with a jute bag before guards whom he cannot identify jump on his stomach, is also commonplace. To Teranaka's knowledge, there were a number of inmates who had independently experienced this treatment or been threatened with it by guards. As for the JFBA, it quickly aligned with the claim that abuse is more widespread than MOJ is willing to concede: the Association referred to the six cases in which they had won compensation from the government for undue suffering caused by the use of leather restraining devices

## Complaints about Complaints

The arrests of the guards over the May and September cases had shaken MOJ, but the

and protection cells<sup>15</sup>.

Indisputably, however, the wealth of information about inmate abuse that came out during this time was through the Centre for Prisoners' Rights (CPR) – an organisation established in 1995 for the specific purpose of investigating human rights violations in prisons and providing legal advice and help to inmates. Whilst the Centre had a long list of instances of reported abuse, it also made the point that the number of cases which remain unreported is most likely even bigger. To illustrate this, they referred to a case of a prisoner called Honda Kazutomi whose correspondence with them had been subjected to tight control. In what they called a typical case, the CPR described how this Nagoya Prison inmate had made a complaint regarding an act of abuse that he had witnessed in October 2000 through the Ministerial petition system. This complaint had been rejected on the grounds that he could provide no evidence of abuse, and, for his troubles, he had been subjected to a year in solitary confinement (Kaido, 2004, p. 70)<sup>16</sup>. After being returned to the ordinary prison population, Honda had asked staff of the prison for the address of the CPR, to which he intended to report what he had witnessed and his subsequent treatment, including being abused with a leather restraining device. Apparently, he was told that 'since the CPR is not a public office, [they were] not obliged to tell [him] the address' and Honda's envelope was torn up before his very eyes by the guards<sup>17</sup>. Eventually, Honda did manage to make contact with the CPR three times between October 2001 and December 2002, as a result of which charges were pressed against the guards he had named.



Kaido Yūichi, Director of the Centre for Prisoners' Rights

During the resulting probing into the handling of prisoners' complaints that took place in the Diet, it became clear that the mechanisms were indeed not operating as they were supposed to. In particular, upon finding that from the start of 2002 the use of leather restraining devices in Nagoya Prison had climbed, from 61 the previous year, to 158, only 10 of which were not combined with detention in protection cells<sup>18</sup>, Fukushima sought reassurance from MOJ that whenever such disciplinary measures were applied inmates still had recourse to appeal<sup>19</sup>. She was especially interested in hearing from Moriyama how she had reacted to the 30 appeals filed to her from Nagoya Prison since the beginning of that year – appeals that used the *jōgan* procedure, which existed for allowing inmates to make secret complaints directly to the Justice Minister<sup>20</sup>. Similarly, Yamahana Ikuo of the Democratic Party of Japan (DPJ) was outraged to find out that despite having been in office for a year and a half already, Moriyama had not seen a single of these complaints and was hardly even aware of the existence of this procedure<sup>21</sup>. Moriyama pleaded that she cannot possibly be expected to read thousands of prisoners' letters a year, and that it was perfectly reasonable for this work to be delegated to her staff at the Correction



Bureau, but the opposition charged that such handling of the *jōgan* appeals defeated their purpose. In their eyes, this newest revelation only served to highlight the need for a third party to administer applications for human rights relief in prisons<sup>22</sup>.

In addition to the criticisms of the mechanism for dealing with claims of human rights abuses made to the Justice Minister, the debates surrounding the Nagoya affair sparked concerns about the management of inmates' medical complaints. For a long time, the JFBA and the CPR had claimed that all was not well with the standard of medical care in prisons, having been approached on numerous occasions by prisoners who reported that their treatment had been inadequate. Moreover, the JFBA had successfully fought battles for compensation from the government in several lawsuits. A common theme in the stories reported to these NGOs was of guards ignoring requests for medical help beyond a point that a full recovery would be possible, often because of doubts about the prisoner's sincerity, the upshot being that the inmate in question had become chronically ill (Kikuta, 2002, pp. 68-73). The JFBA had even published a number of such instances in a compendium of human rights relief case studies, which included, for example, a description of an inmate at Asahikawa Prison being left with paralysis after his complaints of chest and lower back pain went unheeded for six months (JFBA, 2000).

This issue of medical care would be brought to the Diet by DPJ and SDP politicians. As a consequence of Fukushima's investigation into the deaths in protection cells, it became public knowledge that, among the five cases, the families of two of the dead had already won state compensation after it was established that belated medical care had led to death from such avoidable causes as heatstroke and frostbite<sup>23</sup>. For Fukushima, the circumstances of death were incomprehensible given that protection cells are supposedly meant to be

monitored 24 hours a day; how, she asked, could the supervising guards have failed to notice the suffering of the prisoners<sup>24</sup>? Abe Tomoko of the Social Democratic Party (SDP) similarly expressed shock at how such deaths could have occurred in the modern age, with all the medical expertise available. Demanding clarification of the December 2001 case, Abe maintained that for an ordinarily healthy adult to die after two days in isolation from peritonitis – a condition with a low mortality rate, either his symptoms had been left unnoticed by the guards for an extremely lengthy time or something more sinister had occurred<sup>25</sup>.



SDP's Fukushima Mizuho. Source: Asahi Shimbun

In the end, however, the concerns about the administration of medical care in prisons were brushed off by the Justice Minister with an explanation that, although there was room for improvement, an extensive framework for treating medical conditions and procedures to



be followed upon the reporting of an illness were already in place. Furthermore, although the representativeness of her choice of institution would be questioned by the opposition, Moriyama noted that on a recent visit to Ōsaka Medical Prison she had been favourably impressed with the attention to inmates by specialists where needed. As for the specific December 2001 case, she assured those interested that the truth would be revealed with the completion of the prosecution's investigation in the near future<sup>26</sup>.

### Guards under Scrutiny

The prosecution's misgivings about the December 2001 case of maltreatment in protection cells prompted it, in February 2003, to arrest yet more prison staff. When it became clear that MOJ staff had lied in the Diet and to the Justice Minister about their awareness of this case, the Nagoya scandal reached a whole new level, bringing the deliberations in Diet to an impasse.

Misgivings about the death of the inmate in question had been expressed the previous year by the SDP's Fukushima and Abe, but had, at that time, been explained away by the Correction Bureau as resulting from self-inflicted injuries. In particular, the Bureau's account of the fatality, included a description of how the prisoner, who had a history of self-harm, had smeared excrement on the walls of the protection cell in which he was detained after having removed it from his rectum with his hands<sup>27</sup>. From these observations, the conclusion was drawn that the prisoner had, in the course of his actions, mortally damaged himself<sup>28</sup>.

However, on studying the autopsy results in detail, the Nagoya Prosecution inferred that maltreatment was a real possibility and instigated the third set of guard arrests. The investigators were particularly interested in the clause in the autopsy that 'it could not necessarily be determined that the [tears in the

rectal passage 10cm from the rectum] were self-inflicted'<sup>29</sup>, and they decided to pursue the case further with an open mind for any criminality. Since the prison's report stated that an attempt had been made to clear the cell by prison staff using a fire hose, the prosecution thought it would be proper to explore the conjecture that such equipment being used inappropriately caused the death<sup>30</sup>. It was quickly realised that the key to establishing the plausibility of this inference was the strength of the pressure of the hose, and in February 2003, to measure the extent of damage that the Nagoya hose could have inflicted on the inmate, the investigators conducted an experiment in the car park of their offices<sup>31</sup>. Specifically, the trial, led by a medical specialist from Teikyō University, Emeritus Professor Ishiyama Ikuo, involved the rectum of an anaesthetised pig, weighing 60kg, being subjected to the spray of a fire-fighting hose set to what was believed to be the same pressure as that in Nagoya Prison, 0.6kg/m<sup>2</sup><sup>32</sup>. After 30 seconds, laceration occurred<sup>33</sup>. To strengthen the result, a second pig, weighing 50kg, underwent the same treatment, with the result being laceration after only 15 seconds<sup>34</sup>. Furthermore, autopsies were made on the two pigs, in which it was determined that the wounds closely resembled those that the prisoner's autopsy had described<sup>35</sup>. On the basis of this finding, the prosecution arrested in the same month (February 2003) first the Deputy Chief Warden Otomaru Mikio, with two other assistant guards considered accomplices being arrested later<sup>36</sup>.

Even after the arrests, MOJ maintained the position that it had not, until this time, had cause to be suspicious that a criminal act had taken place. With the prosecution finding evidence of wrongdoing in a case that had not been treated as a matter needing further attention by the Correction Bureau, MOJ was called to provide an explanation as to why it had not checked earlier whether, if not criminal, disciplinary action against the guards

involved was in order. In the press conference held by MOJ shortly after the arrests, officials took the line that this development had taken them by surprise, as they had found out about the use of the hose only when the guards had been arrested<sup>37</sup>. Similarly, the Correction Bureau Director, Nakai, had issued a two page report on the matter that day, to the effect that, since a report had previously been received from Nagoya Prison stating that it is thought the cause of death is self-infliction and there is no criminal element to this event, the findings of the Nagoya Prosecution's investigation were a shock to him<sup>38</sup>. These words would be reiterated by the Justice Minister, who also claimed that it was only at the point of the arrests that the involvement of a hose had been reported to her for the first time (Moriyama, 2004, p. 144).

MOJ would soon be forced to retract these statements after a media scoop revealed the contrary, but would not be able to shake off accusations of more serious failures. What was reported was that some of the Ministry's staff had been privy for some time to the information regarding the possibility of abuse with a fire-fighting hose<sup>39</sup>. Quickly reacting to this news story, Yamashita Susumu, the commander of the Special Investigation Team at the Correction Bureau charged with scrutinising the series of incidents at Nagoya, came forward with a public apology for MOJ having given a false account of the situation. He explained that his 'own ineptitude' and 'lack of consideration' had resulted in his omitting to inform his superiors, Nakai in particular, that the report from Nagoya Prison included information suggesting that the case might be more complicated than one of self-harm, and did not rule out the possibility of a criminal element<sup>40</sup>. Although Yamashita's apology might have excused MOJ's false statements in the immediate aftermath of the arrests, this episode would call into question why senior MOJ officials had not taken more responsibility for the case earlier, seemingly remaining

strictly hands-off in their approach to the situation. Many in the public would even level the allegation that, rather than this being a simple case of poor communication, there had been a concerted attempt by the authorities to hush up the case.

Upon requesting explanation about what had been revealed, the opposition was astonished to discover the communication of information within MOJ dysfunctional. A week after the arrests, Nakai was summoned to the Diet to account for how in the original press conference senior MOJ officials had not been fully informed by their subordinates about the information available within the Correction Bureau regarding the December 2001 case. He explained that, since the prison staff have the task of assembling evidence of crime in prisons, as the police does outside, they have the duty to treat cases with utmost care, limiting the number of people who know about them to the absolute minimum and treating them as top secret so as not to prejudice the subsequent trial. With further prompting, he added that he did not consider it controversial that the Correction Bureau had not passed on the information it had to the Justice Minister, and was even heard stating that '[sensitive information] should definitely not have been reported to the [the top]'<sup>41</sup>. Despite it having been suggested that she cannot be relied on with information, Moriyama agreed with Nakai that she does not need to be privy to everything that happens in prisons<sup>42</sup>, igniting the opposition's anger even more.

After a short recess in which the speakers were able to collect their thoughts, Nakai was encouraged to retract his earlier statements, which he duly did, and the attention then turned to Moriyama in order to determine precisely when she had discovered the details of the case. At this point, Moriyama admitted that she had received a report from the Criminal Affairs Bureau in January that the prosecution had raised the possibility of

criminality, but was adamant that it was not until the arrests that she became aware of the involvement of the hose<sup>43</sup>. For members of the opposition such as Yamahana Ikuo of the DPJ, this response only served to highlight the discrepancy between the attitudes towards reporting to the Justice Minister of the various divisions of MOJ. Specifically, he made sure to note the stark contrast between the Criminal Affairs Bureau's action of informing the Justice Minister immediately on receiving word of a possibly criminal act and the Correction Bureau's position of withholding such information precisely because such a possibility existed. By not dealing with such matters herself, Yamahana suggested, Moriyama had created a 'paradise for bureaucrats'<sup>44</sup>.

The outcry over the management of information did not end there, as the opposition sought to implicate Moriyama for neglecting her duties. Abe, in particular, recalled the dialogue Moriyama had engaged in about the December 2001 case several months previously with herself and Fukushima. At that time, the Justice Minister had met the queries about the dubious nature of this fatality with the declaration that the facts surrounding the event were under investigation by the Nagoya Prosecution, the Correction Bureau and MOJ's Human Rights Bureau, and that her intention had been to report back to the Diet as soon as a complete picture of what had happened became available<sup>45</sup>. More than the fact that Moriyama's promised report had never materialised, what really enraged the opposition, however, was that she had evidently failed to demand a full account of the case from her aides even at the stage, in late January, when she had been informed of the possibility of a criminal act being committed<sup>46</sup>. Nor, it was noted, was there any trace of the investigation Moriyama had referred to in the Diet by the Human Rights Bureau, an office supposedly existing for the purpose of considering this kind of case. Heavily chastised for her lack of assertion in calling for reports, rather than waiting for

them, the Justice Minister defended herself with the argument that, not wanting to influence any subsequent trial, she had thought the best course of action was to leave the case until the prosecution discovered the truth, and only then impose disciplinary measures, if found necessary<sup>47</sup>.

An almost identical criticism would be made a month later, when the remark in the autopsy report sent from Nagoya Prison to the Correction Bureau indicating that the cause of death was not clear-cut, as well as the accompanying investigator's comment that 'this might become a complicated case', were made public<sup>48</sup>. In reaction to these revelations, Moriyama was driven to concede that she had trusted Nakai's reports, which had been 'based on the autopsy', rather than investigating the facts herself, even after the earlier scandals had emerged (Kaido, 2004, p. 72; Moriyama, 2004, p. 142). Although opposition politicians would accuse the Justice Minister of lying about her knowledge of the case in order to cover it up, retrospectively Moriyama would write that:

The feedback from Nagoya Prison and the Correction Bureau regarding this series of incidents was certainly insufficient and incorrect, and there are points for self-examination, but not for a single moment did MOJ, with [herself] included, intend to hide these cases by shrouding them in darkness. [They] simply thought that the most appropriate way of reacting to them was to refer them for a fair handling to the prosecution (Moriyama, 2004, pp. 144-5, author's translation).

Having thus uncovered the failures of communication within MOJ, the four major opposition parties of the time - the DPJ, the

SDP, the Liberal Party and the JCP – managed to successfully threaten the ruling LDP-coalition that unless Moriyama is intensively examined and then forced to resign, they would sabotage the pivotal impending deliberations of the budget<sup>49</sup>. Grudgingly, the LDP yielded to further debating the prison issue.

### More Complaints about Complaints

During the next week, as promised, more parliamentary hours were devoted to discussing the management of prisons, with yet more becoming unveiled about the functioning, or lack thereof, of the Ministerial petition mechanism.

Following the opposition's threat to stall parliamentary proceedings over what was now a prison scandal, the deliberations of the issue dominated the Diet, even taking place within the high-profile Budget Committee for the whole of March. Much to the delight of all those on the other side of the House of Representatives, the Budget Committee sessions commenced with Moriyama issuing a series of apologies covering topics including the incidents resulting in the arrests, her failure to report adequately the facts at the earlier press conference and in Diet sessions, the budget debate being suspended, Nakai's 'inappropriate' comments, her insufficient leadership and her moral irresponsibility<sup>50</sup>. This was succeeded by an intensive probing of the minutiae of the December 2001 death and subsequent events at the Ministry.

However, the heat would not really rise until the focus turned once again to the Ministerial petition system, when it was determined that Moriyama had still not read any prisoner complaints, despite seemingly having personally stamped responses. On request, reiterating the point that she had made the previous year, Moriyama explained that the flow of prisoners' grievances were, as they had been since the 1970s, processed routinely at the level of the bureaucracy and screened a

number of times. Finally, 'only the most important' were handed to the Justice Minister<sup>51</sup>. Controversially, Moriyama's statements further revealed that this had meant her not having seen any letters whatsoever, even after the censoring procedure was criticised in the Diet. This induced cries from the opposition that Moriyama lacked a sense of urgency about the whole affair and that the current complaints mechanism was completely dysfunctional<sup>52</sup>. Taking this point further, Yamahana of the DPJ brought forward as evidence the rejection letter that Honda, the former inmate who had contacted CPR about his alleged abuse at the hands of the Nagoya Prison guards, had received in response to the petition he had sent to the Justice Minister. Given that this letter clearly bore Moriyama's personal seal, which would lead any person to reasonably believe that the Justice Minister had been party to the decision, when she confessed that she had not, Yamahana seemed incredulous that Moriyama felt her position was still tenable.

Although the use of the Justice Minister's seal by her subordinates would be explained away by Nakai as 'standard practice', this did not conclude the discussion of the issue, as opposition sought to ascertain precisely who was responsible for opening prisoners' grievances. Seeking to test the legal basis for the authority of the Justice Minister regarding Ministerial petitions being passed to the bureaucrats, Yamahana and Kijima Hideo of the Japanese Communist Party (JCP) cited the 1908 Rules for the Implementation of the Prison Law (*Kangoku hō sikkō kisoku*), which stated that complaints should be 'passed without delay from the Prison Director to the Justice Minister,... and on no occasion can prison staff open the petition'<sup>53</sup>. In response, for the second time in seven days, Nakai brought disorder to the Diet with his broad interpretation of the same statute, claiming that, since the clause only stated that 'on no occasion can prison staff open the petition', Correction Bureau staff



could do so legitimately. Even if his interpretation of the Rules was accurate and it was the case that MOJ staff were allowed to open the Ministerial petitions, Nakai's argument failed to convince the opposition that anyone but the Justice Minister had any legal grounds to act upon them. Indeed, by doing so, the opposition claimed that the Correction Bureau was usurping the authority of the Minister and breaking the Prison Law as it stood. Anyway, two weeks later, Nakai's argument involving the distinction between the handling of prisoners' complaints by prison officials or Correction Bureau personnel would be somewhat undermined when he was pressed to reveal that the first stage of processing Ministerial petitions took place within a part of the Bureau called the 'Correctional Audit Section (*Kyōsei kansa shitsu*)', which was staffed by those on secondment from prisons<sup>54</sup>.

### When It Rains, It Pours: Death Registers Unearthed

In March 2003 Japan's prison system moved further into disrepute, with yet another outrage. This time the Ministry of Justice would be proved to have obstructed knowledge about the records of deaths in penal institutions in the Diet. This revelation was significant because it appeared to vindicate the opposition's claim that the deaths at the Nagoya facility were just scratching the surface.

In the same session that Moriyama and Nakai were grilled over the Ministerial petition system, the two were asked whether precedents existed of inmates being tortured and killed by prison guards, and in response, for a third time, they denied feasible means of investigating deaths in prisons prior to the three years of records that the MOJ admitted to keeping. The first such denial had been made in October 2002 when, after already having obtained information for the three previous years, Fukushima had requested that details

about the deaths involving protection cells and leather restraining devices from the last 10 years be released<sup>55</sup>. In response to her plea, made through the Board of Directors of the House of Councillor's Judicial Affairs Committee, it had been stated by the Correction Bureau that records of deaths were kept for only three years at a time, and to check for deaths further back than this, an intolerable amount of work would be required<sup>56</sup>. Specifically, this was only possible, it was claimed, by examining individually each of the several hundred thousand prisoner identification books. On the grounds that this was a time when overcrowding of prisons was already placing an insurmountable burden on prison staff, the Correction Bureau refused to undertake this task. Similarly, when members of the Judicial Affairs Committee had requested on a December 2002 visit to Nagoya Prison records of deaths for more than three years from this institution, the Correction Bureau Director had declared in front of the prison officials there that such documentation did not exist<sup>57</sup>. Thus, including Moriyama and Nakai's latest statements, up to February 2002 three declarations of this kind had been made.

In early March, Hosaka Nobuto of JSP managed to establish through his own investigation that individual prisons did, in fact, keep records that permitted the causes of inmate fatalities to be easily identified for a much longer period – a decade at least – in an institutional 'Death Register (*Shibō-chō*)'. Although Hosaka limited his study to four prisons, including Nagoya, the information he collected and presented to the Board of Directors of the Judicial Affairs Committee of the House of Representatives chronicled that, over the previous 10 years, approximately 100 unnatural deaths of prisoners had been recorded<sup>58</sup>.

As it transpired, the Death Registers compiled at each facility formed yet another part of the prison administration system that had evaded Moriyama, and their discovery would give

Nakai some more explaining to do. Of course, the issue was brought to the Diet, with Nakai being forced to explain in both Houses his failure to produce the information about Death Registers at any one of the opportunities he had already had to do so<sup>59</sup>. Facing calls for his resignation over the matter, the Correction Bureau Director was compelled to apologise to the Diet once again, this time for not having kept Moriyama informed and repeatedly giving false answers<sup>60</sup>. The justification that he gave for his earlier position was that, even though the books contained the 'cause' of each death, they would not necessarily allow one to ascertain whether the death in question had occurred in a protection cell, which was what the Judicial Affairs Committee's Board of Directors had originally asked for<sup>61</sup>.

Unfortunately for those hoping that the records of prisoner deaths released by MOJ would provide a clear indication as to the number of fatalities in which abuse by guards could have been a factor, the poor quality of the data meant that this was not the case. On finding out about the Death Registers, members of the Judicial Affairs Committee from the ruling and opposition parties had demanded MOJ collate the data from each of their prisons for the previous 10 years, so that the true extent of the situation could be gauged<sup>62</sup>. In answer to the Diet's request, in March 2003 MOJ produced details of 1,592 inmates who had died in prison between 1993 and 2002, but would quickly encounter severe criticism on the management of the Death Registers. Apart from the unprofessional archiving, which meant that the files were often in complete disorder, it was questioned in the Diet why in so many cases entries had been left blank or concealed using thick black ink<sup>63</sup>. It was also immediately apparent that descriptions of the circumstances of death were far too sparse to be conclusive in many cases. Many deaths, it was noted, had simply been explained away with such comments as 'acute heart failure'<sup>64</sup> or the even vaguer 'stopping of the heart (*shinzō teishi*)',

rather than a description of the cause of these problems. Moreover, often no explanation was given as to the medical procedures followed in attempts to revive the inmates and no autopsies had been conducted in cases in which it was unclear whether criminality had been involved.

Despite some anxiety amongst politicians over the scale of the problem, MOJ's resulting assessment suggested that only a tiny fraction of the fatalities recorded in the Death Registers over the last 10 years could be deemed suspicious. After being asked to arrange the inquiry into prison deaths, Nakai was quick to point out that, due to the broad definition of an 'unnatural death', the initial figure of 238 unnatural deaths that had been widely quoted was likely to vastly overestimate the number of fatalities involving a criminal element<sup>65</sup>. Even so, both the House of Representatives and House of Councillors saw fit to conduct their own enquiries in addition to that of MOJ. As part of these investigations, a number of expert witnesses would be called to the Diet to discuss the revelations, some of which would only heighten the politicians' fears. For example, a specialist in cardiology claimed that 'if medical errors similar to those recorded by MOJ in the majority of the unnatural death cases had occurred in [his] hospital, the doctors involved would be likely to face lawsuits and the hospital a large compensation bill'<sup>66</sup>. Although the House of Councillors' Judicial Affairs Committee was more reserved in its assessment, even without taking into account their discovery of a conspicuous loss of records at Fuchū Prison, it judged 65 deaths to require further investigation<sup>67</sup>. Following up on the politicians' efforts, the Ministry would present their own conclusions in June, reporting that, of the nearly 1,600 deaths, only 15 cases were possibly suspicious and in only 18 cases was poor medical treatment implicated<sup>68</sup>. Moreover, MOJ asserted, in none of the cases outside of the Nagoya Prison incidents already being pursued could it be established that abuse by prison guards had been involved, even though

in five of them inmates had been placed in restraining devices shortly before their deaths<sup>69</sup>.

Unsurprisingly, the threshold of observing NGOs for what constituted a 'suspicious death' was lower than that of MOJ, and these expressed their scepticism about the way in which the Ministry had arrived at its figures. CPR, in particular, reported back on as many as 29 cases in which the cause of death was unclear but it was known that the inmate had been placed in a protection cell shortly before death. It would also count over 70 cases in which insufficient or inappropriate medical care was implicated, including, for example, deaths immediately following pacifying injections and cases in which prisoners had died from apparently curable diseases or overheating in their cells (Kaido, 2004, p. 74). Too many times, Kaido of CPR and JFBA would argue, 'the Ministry [had] unconditionally accepted far-fetched explanations from prison officials'<sup>70</sup>.

Although a universally accepted answer to the question of how many dubious deaths in prisons had occurred in the previous 10 years could not be reached, what did become clear from the information available was that medical care in prisons was far from adequate. Specifically, the opposition used the recently unveiled documents to challenge MOJ as to why medical care for prisoners seemed to diverge so much from that of the general population<sup>71</sup>. As a result, it would be discerned that the shortage of doctors and medical staff in prisons was yet another systemic failure of the prison system. This problem, which would be admitted by Moriyama herself, was reportedly exacerbated by the rather unscrupulous practice of prison doctors not always performing their paid hours of work, with a government survey disclosing that as many as 84% of the 219 supposedly full-time prison doctors worked fewer than four days a week at their designated prison<sup>72</sup>.

With the analysis of the deaths at prisons swelling the inexorable flow of revelations regarding institutions of detention, many problems of the correctional administration that JFBA and other NGOs had hitherto been discussing without having access to corroborating data, were now very much in the public domain. This situation was much to the chagrin of officials at MOJ<sup>73</sup>.

## Off With Their Heads

In the aftermath of the Death Register exposé, which had shown again the bureaucracy as having wilfully hidden data and facts, MOJ staff were eventually handed sanctions for their part in the story, but Moriyama managed to survive, despite the continued pressure for her resignation.

The opposition had called since the previous autumn for Moriyama to be more like the unforgiving *Emma dai-ō*<sup>74</sup>, rather than the protective, compassionate *Jibo kan'on*<sup>75</sup>, when it came to her subordinates, and it seemed that the unveiling of the Death Registers represented the tipping point for this transformation to take place. In a preliminary MOJ assessment of the failures at Nagoya, Nakai and Moriyama held that many of the prison staff were insufficiently aware of human rights issues regarding prisoners<sup>76</sup>. The pair explained that it was this factor that had led to the escalation in the inappropriate use of leather restraining devices, with lower ranks of guards not following strictly their rules of application and higher ranking ones not monitoring their use closely enough<sup>77</sup>. Operating accordingly, MOJ had imposed a three-month long suspension on three senior prison officials at Nagoya, including the warden<sup>78</sup>. As for officials in the higher echelons, the opposition was shocked to find that Nakai and others at the central MOJ offices had only been reproached, the most palpable sanction imposed on anyone there being a 5% deduction from a month's salary<sup>79</sup>. Refusing to let the

issue rest, the opposition challenged Moriyama as to why she had only given Nakai a sermon (*o-sekkyō*) for all his serious failings<sup>80</sup>. Although she would never criticise Nakai in public, this did not mean he would escape unscathed; as a direct result of his role in the scandal, he was very soon shifted from his position as Correction Bureau Director to a post in the Cabinet Secretariat<sup>81</sup>. With respect to Moriyama, despite the repeated four-party (DPJ, SDP, Liberal Party and JCP) demand that she resign, the end of the scandal saw her still in her post. Responding in the Diet to the question of why he had not fired her, Prime Minister Jun'ichirō Koizumi expressed what had already become Moriyama's sentiment as well – in other words, that '... the responsibility of the Justice Minister is to self-examine herself in light of the points made [by the opposition] with a view to correcting them...' <sup>82</sup> (see also Moriyama, 2004, pp. 146-7). Although it was said with his tongue set firmly in his cheek, Kawamura of the DPJ also conceded that, through her repeated promises in the Diet that MOJ would overcome its sins in the future and her assertion that, despite being so deep in the mud, she could rise again, Moriyama had been provided with valuable lessons about the philosophy of rehabilitation that would be useful in the remainder of her term as Japan's chief correction administrator<sup>83</sup>.

## Reform at Last

Following the events at Nagoya, for the first time in the post-war period, prisons took centre stage in the public's attention, with the entire prison administration splashed across front pages and thrust to the top of the parliamentary agenda. Whilst Moriyama's position as Justice Minister was still in question, she would embark upon fullscale reform of penal administration. In addition to instigating several immediate practical changes to the system, she also initiated the process that would eventually lead to the revision of the Prison Law, which had long been anticipated.

Amongst the first steps that the Justice Minister undertook in her attempt to make a difference to the prisons of Japan was the removal of the leather restraining devices that had been at the centre of the scandal and the improvement of prison guard human rights education. Indeed, the MOJ had made an official announcement that the restraining devices in question were being withdrawn in the midst of Moriyama's Diet travails in March 2003 following an inquiry set up by her<sup>84</sup>, and three months later their replacement was confirmed with the unveiling of a new type of felt-lined manacle without a belt that would be introduced in October 2003<sup>85</sup>. The restraining devices had been a principal concern of prisoners' rights advocates for a number of years<sup>86</sup>, and the move by MOJ was broadly welcomed by the devices' critics<sup>87</sup>. Moreover, the MOJ promptly introduced prison guard training courses focusing on compliance with the UN instruments in practice<sup>88</sup>. To these, criminologists specialising in international human rights trends were invited to periodically present lectures to prison staff<sup>89</sup>.





### The replacement restraining devices (blue)

On a personal level, by devoting vast amounts of time to the petitions formally sent to the Justice Minister, Moriyama made sure that her commitment to prisoners' care could never be questioned again. Following the events at Nagoya, she was very much aware of the existence of the channel through which prisoners could appeal directly for human rights relief. Until the end of her tenure in September 2003, with assistance from her Vice Minister, she would scrupulously read each of the several thousand grievances written, ordering where necessary that MOJ's Human Rights Bureau takes the appropriate steps<sup>90</sup>. Moriyama entered into this duty extremely conscientiously, perhaps even more than was expected, later admitting that some of the information that she had read was not necessarily her immediate concern, noting that 'prisoners have plenty of free time and sometimes write quite a lot without realising that a very busy person will have to read it'<sup>91</sup>. Indeed, amongst the letters she read was material ranging from the 'dull and dreary' to the more fantastical, with one prisoner's complaint premised on claiming to be the third descendant of the Sun Goddess – Amaterasu. Moriyama received much sympathy from her MOJ colleagues for these efforts on the grounds that 'there is no country in the world where the Justice Minister would read all these letters'<sup>92</sup>, and it is almost certain that future Justice Ministers would not follow closely her example<sup>93</sup>.

As for the regulatory prison regime, the Justice Minister devised an advisory organ – the Correctional Administration Reform Council (*Gyōkei kaikaku kaigi*, hereafter the 'Council') – to deliberate the overhaul of the system<sup>94</sup>, and it would be their suggestions that would lead in 2005/6 to the revision of the outdated Prison Law. The Council consisted of 14 diverse members, one of whom was a harsh critic of

prison practices<sup>95</sup>, which earned the respect of the JFBA and other advocates<sup>96</sup>. Convening as early as March 2003, the group held regular meetings for nine months, canvassing opinions of guards, wardens, inmates, etc. A number of the members also undertook trips to Germany, France and the United Kingdom in order to familiarise themselves with the administration of facilities there, whilst Moriyama herself travelled to an American prison (Moriyama, 2004, p. 152).

In their recommendations, issued at the end of 2003, the Council provided a number of suggestions for improving the lives of prisoners and making the administration of prisons more transparent, and also stressed that the speedy wholesale revision of the Prison Law was indispensable for the realisation of the penal reform. Although it did not approve NGOs request to make prisoner medical care independent of MOJ and place it with the Ministry of Health, Labour and Welfare (*Kōsei rōdō-shō*, hereafter MHLW)<sup>97</sup>, the Council's recommendations were broadly welcomed. One particular suggestion which met with approval was the creation of neutral, third-party monitoring bodies for prisons – Boards of Visitors for Inspection of Penal Institutions (*Keiji shisetsu shisatsu iinkai*, henceforth the 'Boards'). These bodies were to inspect premises, so as to ensure that systematic failures in prisoners' rights protection do not occur. They would consist of at least one lawyer and one doctor besides other individuals, and would be charged not only with investigating conditions in facilities, but also interviewing inmates, and expressing opinions to the prison authorities and MOJ. Another change that the lawyers saw potential improvement in, depending, of course, on its implementation, was the introduction of a new 'preferential classification system (*yūgū kubun seido*)', under which the behaviour of prisoners would be regularly assessed, with 'work, guidance for reform, and guidance in school courses', as well as rewards or penalties in terms of living

conditions assigned accordingly<sup>98</sup>. These more explicit rules concerning prisoner treatment reduced the discretion of individual prison staff. For instance, the newly introduced 'privilege measures' described within the law included a provision stating that the number of visitations allowed per month must be explicitly specified within a MOJ ordinance<sup>99</sup>.



**Class for prisoners providing guidance in reform. Source: MOJ**

After close consultation with the JFBA, in the spring of 2005, MOJ submitted to the Diet a draft bill that aimed at revising the section of the Prison Law pertaining to prisons and convicted inmates. The Ministry had attempted to achieve such a revision on three occasions in the 1980s and the 1990s. However, there were significant disagreements between the National Police Agency and the JFBA over the treatment of criminal suspects, which the Prison Law also covered. With sections of the opposition (including the Japanese Communist Party, the Japanese Socialist Party, the Democratic Socialist Party, and Kōmeitō) aligned with the JFBA and objecting to the proposals, all these attempts had been stalled (for a more detailed account on this see: Croydon 2016). With the Nagoya Prison scandal having highlighted the urgency for prison regime reform, a consensus

finally emerged between the three interested parties to put the contentious issue of criminal suspects aside for the time being thereby giving MOJ the space necessary to achieve its planned Prison Law revisions.

The lawyers saw a number of flaws in the details of the MOJ bill. Nonetheless, the general sentiment amongst them was one of satisfaction. One of the Association's press releases, for example, praised how 'recommendations by [the Council] on reform of punishment practices were well reflected in the bill'<sup>100</sup>. In the absence of major objections on the JFBA's part the draft legislation had a smooth run in the Diet, becoming promulgated on 18 May 2005. In this way, the Prison Law, which had provided the framework for the management of prisons up until the Nagoya Prison scandal, was revised in its entirety for the first time in nearly a century.

## Discussion

What then can we learn from the Nagoya Prison scandal about how prison policies are arrived at in Japan? Clearly, the most prominent actors in the story were the bureaucracy – MOJ in particular, the legislature and the civil society. In what follows, analysis is provided of the role these actors played up to and during the crisis, so as to determine where they feature in the management of prisons and the governance of Japan more generally.

### *MOJ: Broad, unchecked discretion*

The disclosures in the Diet and elsewhere during the Nagoya Prison saga demonstrated that there was a high degree of discretion within MOJ when it came to the management of prisons. This was both at the level of the central bureaucracy and at the level of prison guards. The autonomy of individual staff could be seen as part of the wider culture of 'bureaucratic informalism' within Japan, and whilst the reforms did include some measures to reel this in, critics continue to express

concerns on this front.

To elaborate on the freedom enjoyed by the central prison management, this was based on the control of information, and an institutional belief that it was appropriate for MOJ officials themselves to make decisions on prisons without wider consultation. Indeed, individual bureaucrats retained extensive leeway to determine whether potentially sensitive information should be handed to their superiors or not. This broad discretion was perhaps most clearly illustrated in the divergent approaches to informing the Justice Minister about possibly criminal events taken by the Directors of the Criminal Affairs and Correction Bureaux. Moreover, Nakai's endorsing of the Special Investigation Team Commander's initial position of not passing on details of the December case was illustrative of how, within the Correction Bureau at least, freedom of action was a matter of course. That this was the case more widely was made clear by the practice of those staff opening Ministerial petitions not raising concerns with the Justice Minister, and dealing with complaints directly. Such a course of action had become so institutionalised that it might well have been considered irregular to do anything but this.

Individual prisons and guards, too, were given free rein in determining how best to deal with unexpected situations. For a start, there was no obligation for prison staff to provide full accounts of fatalities. Whilst there is a possibility that the resulting poor record keeping of deaths was nothing more than bad administration, with the meagre official report given to the victim's family in the May case, the Nagoya Prison episode did nothing to dispute the alternative suggestion that it was a convenient means for the authorities to evade publicity in cases of maltreatment. The Nagoya guards' testimonies demonstrate further that, at the very point of execution of prison policies, there was a significant degree of autonomy. In particular, with their complaints that they had

received no warning of wrongdoing, they implicitly supported Moriyama and Nakai's Diet remarks that senior prison officials did not closely supervise their staff.

The autonomy MOJ enjoyed, however, was impacted by the Prison Law reform, which introduced greater checks on its staff. Perhaps the most significant change brought about by the new legislation was the introduction of the Boards; given that much of MOJ's authority on prisons came from the control of information emerging from such establishments, the introduction of third-party monitoring bodies to which MOJ has a legal responsibility to supply access to prisons and associated data clearly represents a significant change in Japanese prison management. Indeed, with the Boards in place, it seems difficult to imagine that a large number of poorly explained deaths could be brushed under the carpet in the way that those listed in the Death Registers had been. Moreover, as a means of providing inmates with an improved mechanism for seeking human rights relief, the Prison Law amendment included a new complaints procedure involving a 'suggestion box (*teian-bako*)' set up at each prison for inmates to express opinions and complaints, the key to which is only held by the Boards. With this new procedure in place, it will be difficult for MOJ to retain a complete lock-down on information from the inside of prisons.



A suggestion box for prisoners' complaints. Source: MOJ

However, whilst the Boards and the new complaints procedure have gained a degree of approval from NGOs and the UN, the power of single officials continues to be cited as a concern. Indeed, the immediate response of the JFBA in its report to the UN on the new prison legislation was generally positive<sup>101</sup>. NGOs, too, commented on the many positive aspects of the reform<sup>102</sup>. On the other hand, in the years following the revisions, critics raised the concern that practice is in some ways lagging behind the legislation. The JFBA, for example, noted how in some cases prison authorities have withheld medical records from the Boards<sup>103</sup>. And, together with NGOs, the lawyers' organisation still complains that a large scope of action for individual prisons and wardens with regard to determining disciplinary measures, including solitary confinement, and access to medical treatment has remained. For death row inmates in particular, there is an issue of how certain articles, which permit prison authorities to deny visits when the latter views this as having the potential for disrupting the 'peace of mind' of such an inmate, are applied, with prisoners' rights advocates claiming the statutes are used beyond their original intent for disciplinary purposes<sup>104</sup>.

With respect to the existing literature on the Japanese bureaucracy, the above observations on MOJ's prison management reflects the 'bureaucratic informalism' that has been seen to be prevalent in various aspects of policy implementation in Japan. Concretely, it has been argued that within state-society interactions, informal measures are seen by the state as being at least as attractive as laws or other more formal mechanisms of control. In particular, in terms of policy implementation it has been suggested that the Japanese bureaucracy favours extra-legal and informal modes of regulation, which it sees as more

flexible and effective, as a substitute for a more rigid legal framework in its administrative strategies (Ginsburg, 2003), and this is achieved through 'careful statutory drafting,... [which] give[s] bureaucrats a wide discretion to define their mission under a statute and the ability to carry it out through an administrative process' (Upham, 1987, p. 22). Such a preference has been especially well-documented in the case of business regulation, but also in other areas of social control: informal 'administrative guidance' in the form of ordinances, ministerial rules and administrative notices has been linked to Japan's economic miracle (Johnson, 1982); informal out-of-court settlement has been identified as a tool for managing social conflict in the cases of environmental pollution, *Buraku* liberation<sup>105</sup>, gender discrimination, and industrial policy (Upham, 1987); and moreover, the informalism inherent in broad and loosely-defined laws drafted by bureaucrats allow them to delegate much power to those responsible for policy execution (including police officers and prosecutors), which is seen as an effective means of maintaining social order (Haley, 1991). Whilst more recent studies have indicated that informalism is on the decline, the degree to which this is occurring is contested. For example, whilst Foote has described 'a turning point' in the administration of civil and criminal justice in Japan since the turn of the century (Foote 2008), others, such as Luke Nottage, argues that the process is more gradual (Nottage 2008). The description of the situation prior to the Prison Law reform of the present study certainly seems to corroborate the earlier theories of bureaucratic informalism, and moreover, the subsequent evolution of the policy seems to support a more continuous process of shifting away from this, rather than a watershed moment.

*Legislature: Not always interested, but not without power to instigate change*

Of course, the Japanese bureaucracy does not



exist in isolation, and it is natural to ask how it was that MOJ was able to keep the tight grip on prison management it had for so long. In answering such a question one is naturally led to consider the role of their political masters in the events. Unsurprisingly, and hardly unique to Japan, the norm was that the ruling LDP politicians did not have a particular interest in prioritising prison policies. However, one of the most striking features of this whole story is that, when pushed to do so by opposition parties keen to highlight poor political oversight, the legislature showed it was perfectly capable of holding the bureaucracy to account, and the LDP of effecting swift legislative change.

To expand on the first of these points, from the narrative presented, there is nothing to suggest that Japanese ruling politicians had any particular electoral incentive to become involved with updating prison policies. Indeed, prior to the Nagoya episode, even though the LDP had previously sponsored three bills proposed by MOJ in the 1980s and 1990s, there had never been a serious Diet debate on the issue, and each of these was allowed to slip off the agenda before reaching a vote. Although the party had a majority at the time, and so could have pushed the bills through if it had so desired, it is clear that it did not see any merit in sacrificing political points to opposition parties that disputed aspects of the bills concerning police detention in order to do so. As already noted, it is something of a universal issue that, particularly conservative, legislators do not see the modernisation of a prison system as a big vote winner, especially when this might require a serious financial commitment. Even in the reform process itself, such a lack of desire to divert resources to prisons can be seen in certain aspects of the new legislation.

Notably the medical care situation in prisons has remained essentially as it was before, with MOJ rather than MHLW continuing to be responsible for this, a state of affairs that has

been severely criticised by the UN and other prisoners' rights advocates. In a recent World Health Organisation report, for example, it is stated that 'many prison and public health reformers argue that a close relationship [between prison-administered health services and public health] is not enough and that prison health should be part of the general health services of the country rather than a specialist service under the government ministry responsible for the prisons'<sup>106</sup>. This is the case in many other developed countries: Norway introduced such a policy in the 1980s, France did in 1994, and in England and Wales prison healthcare was moved under the National Health Service in 2002.

In the aftermath of the Nagoya scandal, however, prisons did for a time become the focus of Diet attention. During this time, politicians from both sides of the house showed the role they can play in determining policy outcomes and bringing the bureaucracy into line. To start with the opposition parties, the DPJ and SDP in particular were quick to see the chance the events at Nagoya Prison gave for holding the government to account over its 'prison problem'. It was politicians from these parties that were the driving force in highlighting the new developments as they occurred, and grilling both the Justice Minister and MOJ officials upon these. With the accompanying public outcry over the abuses by the Nagoya guards and other issues raised by the opposition, the LDP, in turn, was unable to ignore this challenge, and forced to set aside Diet-time that it would rather have used for other purposes. Ultimately it was this involvement of the LDP that led to the end of the stagnation of the Prison Law reform process. Moreover, in appeasing the growing unrest within the Diet, the Justice Minister showed herself capable of imposing her authority on the MOJ with a rare instigation of disciplinary procedures against its staff. Thus, despite the management of the prison system having been left to MOJ for the decades before

the Nagoya scandal, the long leash that they had been given by their political overlords was shown not to be limitless.

Thus the present case study offers a clear example of a legislature both responding to external inputs, and also realising its dominance in the political decision-making process. Although these are not new observations in Japanese politics, they are nonetheless noteworthy given the ongoing debates regarding the question of who governs Japan, in which the bureaucracy was long seen as being the predominant force.

### *Civil Society: Grabbing its chance*

Whilst the bureaucrats and politicians were no doubt the central players, it cannot be said that civil society did not also play an important role in the prison reform process. This was highly limited by the lack of availability of information on prisons, yet when the Nagoya scandal erupted, groups such as the JFBA and the CPR seized the opportunity to push for change.

To begin with the challenges they faced, it could be said that a direct structural impediment to civil society groups was posed prior to and throughout the Nagoya affair by the difficulty in obtaining information from MOJ about Japanese prison practices. As described by several NGOs, previously, their principle means of collecting data had been from current and former inmates. Aside from the barriers to communicating with the former, verification of such anecdotal evidence was usually not possible, since investigation of facilities was highly limited. Even the resource-rich JFBA was restricted to following the same approach of collecting information from individual inmate accounts. Moreover, these were sometimes censored, and it was only with the Death Register exposé that a large-scale statistical summary of fatal abuses or medical negligence, in particular, was possible. Given that numerous MOJ prison directives issued since 1908 were not open to the public, it was

therefore virtually impossible for activists to assess the state of prisoners' rights protection in Japan, let alone formulate a clear campaign message with which to lobby politicians. The situation with regard to obtaining relevant information on prisons hardly eased after the events at Nagoya started to make the public domain, with even the Judicial Affairs Committee being unable to command available data, as MOJ repeatedly denied its existence until this was no longer possible. Reinforcing this sense of secrecy surrounding prisons was the disappearance of the videotape of the December case, and the discrepancies between the guards' and MOJ's accounts. Did the blood-stained trousers exist or not?

Having established that hindrances were indeed present for civil society, the role of such groups in maintaining momentum in the Diet, and setting standards for prisons, should not be overlooked. For a start, together with the JFBA, NGOs such as the CPR, provided crucial information to the opposition politicians on cases of abuse that they were aware of. Without this painstakingly gathered material, the ammunition of the latter in attacking the ruling elite would have been significantly reduced, and perhaps the issue would not have exploded into the public domain in the way that it did. Although it might not have hugely influenced the content of the new legislation, this attention from the wider populace was significant, because, as Lawson notes, it did lead to reform actually occurring at this juncture, rather than drifting off the agenda as it had done when it had been considered previously (Lawson 2015). Moreover, when it came to the revision process itself, the JFBA was involved in the discussions upon which the new legislation would be based. That this input was not just for display was subsequently confirmed by the reaction of the JFBA to the outcome of this process, with the lawyers claiming to have played an important role in ensuring the inclusion in the revised law's provisions for the creation of third-party bodies

for facilities' inspection.

## Last Word

The in-depth account of prison policy-making in Japan presented here should serve to provide a useful point of reference for such processes elsewhere. This is particularly the case in the West, and especially in the United States, where problems relating to security and order that arise from prison overcrowding have led to the Japanese model of prison administration being viewed as a cure-all panacea. Whilst the study establishes that many of the successes of Japan in this area are the result of a system that gives individual guards a high degree of discretion as to how the institution in which they are working functions, the Nagoya episode demonstrated that precisely this kind of discretion can be taken too far, and can even be systematically abused.

Of course, this is not the first time that prisoners have been victims of overly powerful individuals. In the US, for instance, the 1960s Arkansas Prison scandal – events fictionalized in the Oscar-nominated Robert Redford film *Brubaker* – saw, within just one penal institution, the unearthing of hundreds of skeletons, seemingly of inmates who had met their end at the hands of the prisoner 'trusties' charged with the responsibility of their management.

On the other hand, it must be recognized that guards need to be granted and trusted with the means to do their job of looking after and protecting the inmates. Indeed, following the 1990 Strangeways Prison Riot in Manchester, UK, in which prisoners took control of the institution housing them for 25 days in protest at the poor conditions in which they were being held, a public inquiry included within its conclusions the recommendation that there should be an '[i]ncreased delegation of responsibility to Governors of establishments'. Similarly, in a recent proposal to bring 'greater diversity, fresh ideas and new leadership' to the

challenges of recidivism, drug-taking, self-harm, suicide and violence towards guards facing the UK prison system, Prime Minister David Cameron pledged to 'remove the bureaucratic micromanagement that disempowers [prison staff]', and give prison governors 'unprecedented operational and financial autonomy, and [trust] to get on and run their jail in the way they see fit'<sup>107</sup>. Ultimately, although one can strive to improve both security and the treatment of inmates, the inherent rights trade-offs make the management of prisons a complicated business. This is not to say, however, that more could not have been done to prevent the widespread abuses witnessed in Japanese prisons; although these were eventually noticed and responded to by the legislature following a tenacious campaign by prisoners' rights activists and their allies in the Japanese opposition parties, the lack of political intervention earlier in the day was certainly an exacerbating factor. In conclusion, only regular reevaluation of practices and adequate resourcing can help reduce the potential for yet more tragedies occurring in prisons in the future.

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## APPENDIX: CALENDAR OF EVENTS

### Failed Early Prison Law Reform Attempts

|      |          |                                                                                                                     |
|------|----------|---------------------------------------------------------------------------------------------------------------------|
| 1977 | March    | MOJ announces intent to submit Prison Law amendment bill in 1978                                                    |
| 1982 | April    | Draft legislation for Prison Law reform submitted to 96 <sup>th</sup> Diet Session                                  |
| 1983 | November | Proposed legislation dropped at end of 100 <sup>th</sup> Diet Session                                               |
| 1987 | April    | Draft legislation for Prison Law reform submitted for a second time, 108 <sup>th</sup> Diet Session                 |
| 1990 | January  | Proposed legislation dropped with the dissolution of the House of Representatives at 117 <sup>th</sup> Diet Session |
| 1991 | April    | Draft legislation for Prison Law reform submitted for a third time, 120 <sup>th</sup> Diet Session                  |
| 1993 | July     | Proposed legislation dropped at the end of 126 <sup>th</sup> Diet Session                                           |

### The Nagoya Saga

|      |           |                                                                                                 |
|------|-----------|-------------------------------------------------------------------------------------------------|
| 2001 | December  | Death of inmate in protection cell                                                              |
| 2002 | May       | Death of inmate in protection cell                                                              |
|      | September | Abuse of inmate in protection cell                                                              |
|      | October   | MOJ press conference, questions asked about May death<br>Fukushima notes December death in Diet |
|      | November  | Five guards arrested for September case<br>Three guards arrested for May case                   |

- 2003 February Prosecution's pig experiment  
One guard arrested for December case  
Diet halted after opposition ultimatum  
March Death Registers uncovered by Hosaka Nobuto  
Two more guards arrested for December case

## Prison Law Reform Process

- 2003 March Correctional Administration Reform Council formed  
December Correctional Administration Reform Council releases proposal  
2004 June Talks begin between major stakeholders: MOJ, National Police Agency (NPA), and JFBA  
December MOJ, NPA, JFBA agree to postpone reform of remand system  
2005 March Bill Concerning Criminal Facilities and the Treatment of Sentenced Inmates submitted by MOJ to 162<sup>nd</sup> Diet Session  
May Law Concerning Criminal Facilities and the Treatment of Sentenced Inmates enacted  
March Bill partially Amending the Law Concerning Criminal Facilities and the Treatment of Sentenced Inmates submitted by MOJ and NPA to 164<sup>th</sup> Diet Session  
May 2005 legislation goes into effect  
Second bill, renaming the law to Law Concerning Criminal Detention Facilities and the Treatment of All Criminal Detainees, enacted  
2007 May 2006 legislation goes into effect

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## Notes

- <sup>1</sup> All Japanese names appear with family name first, as per the Japanese convention.
- <sup>2</sup> 'What Can We Learn from Japanese Prisons', January 15, 1984, *Parade Magazine*.
- <sup>3</sup> See [here](#).
- <sup>4</sup> Asian and Pacific Conference of Correctional Administrators, 2003.
- <sup>5</sup> Preliminary Observations, 1. [Full text available](#).
- <sup>6</sup> As illustrative examples, see: [Japan Federation of Bar Associations Report on Response on the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (25 February 2013) Japan Federation of Bar Associations; [Japan: Abusive Punishments in Japanese Prisons](#) (1998) Amnesty International; and [Prison Conditions in Japan](#) (1995) Human Rights Watch. These were retrieved on 7 January 2016.
- <sup>7</sup> See for example the articles in journals such as *Jurist*, *Hōritsu Jihō* and *Keisei*.
- <sup>8</sup> Protection cells are special rooms used to isolate prisoners who make attempts on their own lives or become violent. These rooms are different from normal cells in that there is no furniture in them, the walls are made of wood, so that, even if the prisoner bangs his head against it, he does not fatally injure himself, and the small, high windows are reinforced in order to not be easily broken.
- <sup>9</sup> For details of the press conference, which was held on 4 October 2002, see: [here](#) and [here](#). Last retrieved on 3 December 2014.
- <sup>10</sup> For the names and further details of the guards arrested, as well as their subsequent fate, see *Table 2*.
- <sup>11</sup> *Yomiuri Shimbun*, 30 November 2002, p. 37.
- <sup>12</sup> Judicial Affairs Committee, House of Councillors, 31 October 2002.
- <sup>13</sup> [Guardian \(online edition\)](#), 15 November 2002. Retrieved on 13 January 2016.
- <sup>14</sup> *Ibid.*; *Japan Times*, 17 November 2002, p. 12.
- <sup>15</sup> Fukushima, Judicial Affairs Committee, House of Councillors, 19 November 2002.
- <sup>16</sup> See also [Japan Times](#), 5 April 2003. Retrieved on 12 January 2016.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> Judicial Affairs Committee, House of Councillors, 31 October and 12 November 2002.
- <sup>19</sup> Judicial Affairs Committee, House of Councillors, 12 November 2002.
- <sup>20</sup> *Ibid.*
- <sup>21</sup> Judicial Affairs Committee – Judicial Affairs Committee, House of Representatives, 27

November 2002.

<sup>22</sup> For example, Fukushima, Judicial Affairs Committee, House of Councillors, 12 November 2002.

<sup>23</sup> Judicial Affairs Committee, House of Councillors, 7 November 2002.

<sup>24</sup> *Ibid.*

<sup>25</sup> Judicial Affairs Committee – Health Welfare and Labour Committee Joint Session, House of Representatives, 29 November 2002.

<sup>26</sup> *Ibid.*

<sup>27</sup> For example, Nakai, Judicial Affairs Committee, House of Representatives, 18 March 2003, and Fukushima, Budget Committee, House of Councillors, 6 March 2003.

<sup>28</sup> *Ibid.*

<sup>29</sup> Hiwatari Toshiaki, Director, Criminal Affairs Bureau, Budget Committee, House of Representatives, 21 February 2003.

<sup>30</sup> *Ibid.* Also, *Yomiuri Shimbun*, 2 November 2005, p. 36, and 5 November 2005, p. 28.

<sup>31</sup> *Yomiuri Shimbun*, 2 November 2005, p. 36, and 5 November 2005, p. 28.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> [Kyōdō Tsushin](#), 13 February 2003. Retrieved on 28 May 2009.

<sup>38</sup> Yamahana's questioning of Nakai, Budget Committee, House of Representatives, 18 February 2003.

<sup>39</sup> [Kyōdō Tsushin](#), 13 February 2003. Retrieved on 28 May 2009.

<sup>40</sup> *Ibid.*

<sup>41</sup> Judicial Affairs Committee, House of Representatives, 18 February 2003.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* Also Moriyama 2004.

<sup>48</sup> The inconclusive parts of the autopsy and the prosecutor's comments were read by Nakai upon prompting by Inoue Satoshi, at the Budget Committee, House of Councillors, 17 March 2003.

<sup>49</sup> *Nihon Keizai*, 20 February 2003, p. 2. Note that holding only 233 of the 480 possible seats meant that the LDP did not have a majority at the time, and so were forced to govern in coalition, whereas the main opposition party – the DPJ – was making political inroads (and would go on to increase its share of seats from 127 to 177 in the House of Representatives election later that year).

<sup>50</sup> Budget Committee House of Representatives, 21 February 2003.

<sup>51</sup> *Ibid.*

<sup>52</sup> Haraguchi Kazuhiro, DPJ, Budget Committee, House of Representatives, 21 February 2003.

<sup>53</sup> Article 4, paragraphs 2 & 3.

- <sup>54</sup> Budget Committee, House of Representatives, 3 March 2003.
- <sup>55</sup> For example, Judicial Affairs Committee, House of Councillors, 31 October. See also Fukushima, Judicial Affairs Committee, House of Councillors, 19 November, and 5 December 2002.
- <sup>56</sup> Fukushima, Judicial Affairs Committee, House of Councillors, 20 March 2003, and Inoue Satoshi, JCP, Budget Committee, House of Councillors, 17 March 2003.
- <sup>57</sup> Inoue Satoshi, JCP, Budget Committee, House of Councillors, 17 March 2003, Fukushima, Judicial Affairs Committee, House of Councillors, 20 March 2003.
- <sup>58</sup> Interview with Hosaka and perusal of Death Register copies, 23 August 2007. See also Chiba Keiko, Judicial Affairs Committee, House of Councillors, 20 March 2003.
- <sup>59</sup> Inoue Satoshi, JCP, Budget Committee, House of Representatives, 17 March 2003, and Ichikawa Ichirō, LDP, Judicial Affairs Committee, House of Councillors, 20 March 2003. See also Fukushima addressing Moriyama, Budget Committee, House of Councillors, 18 March 2003.
- <sup>60</sup> Budget Committee, House of Councillors, 17 March 2003.
- <sup>61</sup> Judicial Affairs Committee, House of Councillors, 20 March 2003.
- <sup>62</sup> See, for example, Budget Committee, House of Councillors, 17 March 2003.
- <sup>63</sup> Chiba Keiko, DPJ, Judicial Affairs Committee, House of Councillors, 20 March 2003.
- <sup>64</sup> In a later Diet hearing, an expert witness observed that the figure of 21% of the unnatural deaths in prisons during the 10-year assessment period being attributed to 'acute heart failure' was 'inconceivable'. Dr. Shimizu Yōichi, Judicial Affairs Committee, House of Representatives, 21 May 2003.
- <sup>65</sup> Judicial Affairs Committee, House of Councillors, 20 March 2003.
- <sup>66</sup> Expert witness Dr. Shimizu Yōichi, Shinkatsushika Hospital, Tōkyō, at the Judicial Affairs Committee, House of Representatives, 21 May 2003.
- <sup>67</sup> Fukushima, Judicial Affairs Committee, House of Councillors, 20 May 2003. Also, *Japan Times* (online edition), 18 April 2003.
- <sup>68</sup> *Japan Times*, 9 July 2003, p. 3.
- <sup>69</sup> Interview with JFBA's Kaido Yūichi and Tagusari Maiko, 18 July 2007. Also, *Japan Times*, 14 June 2003, p. 1.
- <sup>70</sup> *Japan Times*, 9 July 2003, p. 3.
- <sup>71</sup> Questioning by Asahi Toshihiro, DPJ, Budget Committee, House of Councillors, 18 March 2003.
- <sup>72</sup> *Japan Times*, 7 September 2003, p. 2.
- <sup>73</sup> At an interview on 31 August 2007, MOJ's Ōguchi Yasuo and Ikeda Satoko described the Nagoya affair as one whereby observers, such as the JFBA, had managed, through the opposition, to 'win (*kachitoru*)' a great amount of information from MOJ.
- <sup>74</sup> Buddhist God of Death, who is known to take out the tongues of those who lie.
- <sup>75</sup> Buddhist Affectionate Mother Goddess. Eda Satsuki, DPJ, Judicial Affairs Committee, House of Councillors, 19 November 2002.
- <sup>76</sup> Budget Committee, House of Representatives, 21 February 2003.
- <sup>77</sup> *Ibid.*
- <sup>78</sup> Nakai, Budget Committee, House of Councillors, 17 March 2003.
- <sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Judicial Affairs Committee, House of Councillors, 26 March 2003.

<sup>82</sup> Budget Committee, House of Representatives, 3 March 2003.

<sup>83</sup> Judicial Affairs Committee, House of Representatives, 25 March 2003.

<sup>84</sup> Judicial Affairs Committee, House of Councillors, 20 March 2003.

<sup>85</sup> *Japan Times*, 18 June 2003, p. 2.

<sup>86</sup> See, for example, *Concluding observations of the Human Rights Committee: Japan*. UN document CAT/C/79/Add.102, 19 November 1998, paragraph 27.

<sup>87</sup> Interview with Amnesty International's Teranaka Makoto, 28 August 2007. See also the *JFBA Report on the Japanese Government's Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 January 2007, p. 10, and *The Alternative Report on the Japanese Government's Report of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT Network, March 2007, p. 4.

<sup>88</sup> The First Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN document CAT/C/JPN/1, 20 December 2005, p. 36, 46.

<sup>89</sup> Interview with prisoners' rights activist Kuwayama Aya, 3 December 2007.

<sup>90</sup> Judicial Affairs Committee, House of Councillors, 20 March 2003.

<sup>91</sup> Interview with Moriyama, 17 December 2007.

<sup>92</sup> Interview with MOJ's Ōguchi Yasuo and Ikeda Satoko, 31 August 2007.

<sup>93</sup> Interview with Moriyama, 17 December 2007.

<sup>94</sup> Judicial Affairs Committee, House of Councillors, 20 and 27 March 2003.

<sup>95</sup> This was academic and lawyer Kikuta Kōichi, a central figure in the CPR, who was taken aback by the establishment's invitation due to having recently published a book that openly criticised the prison system (Interview with Kikuta Kōichi, 29 October 2007). In his book, Kikuta was concerned that prisoners' rights were being violated by the excessive application of punishments, such as protection cell detention and solitary confinement, as well as restrictions on individual autonomy, such as the dictating of hair styles, sitting and sleeping positions in cells, the order of writing in one's notebook, bathing and exercise occasions (Kikuta 2002). He argued that criminologists should not be satisfied to let MOJ act as the standard setter, and be more critical of the obvious problems of the system.

<sup>96</sup> Interview with Amnesty International's Teranaka Makoto, 28 August 2007. Moriyama would later take pride in this outcome as one of the major accomplishments in her unusually long, but not always enjoyable, term of two years as a Justice Minister (Moriyama 2004: 151). Also, interview with Moriyama, 17 December 2007.

<sup>97</sup> Interview with prisoners' rights activist Kuwayama Aya, 3 December 2007.

<sup>98</sup> *Second periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/JPN/Q/2) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)*, 18 July 2011. p.38. See also Kaïdo Yūichi, CPR Newsletter, No. 45, 1 June 2006, pp. 2-4.

<sup>99</sup> Article 89 of the Law Concerning Criminal Detention Facilities and the Treatment of All Criminal Detainees.

<sup>100</sup> *Prison Law Revised First in Century [sic.]*, 1 June 2005. Retrieved on 13 December 2015.



<sup>101</sup> [Japan Federation of Bar Associations Report on the Japanese Government's Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), Japan Federation of Bar Associations, 18 January 2007. Retrieved on 10 January 2016.

<sup>102</sup> [The Alternative Report on the Fifth Periodic Reports \(sic.\) of the Japanese Government under Article 40 of the International covenant on civil and political rights](#), Center for Prisoners' Rights, Japan, 9 September 2008. Retrieved on 10 January 2016.

<sup>103</sup> [Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), Japan Federation of Bar Associations, 25 February 2013, p.65. Retrieved on 10 January 2016.

<sup>104</sup> The articles in question state: 'Upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind' (Article 32); and 'In cases where a person other than [a relative or a person important for the death row inmate's reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business] requests to visit an inmate sentenced to death, if it is deemed that there is a circumstance where the visit is necessary for the maintenance of good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution, then the warden of the penal institution may permit the inmate sentenced to death to receive the visit' (Article 120). As for the rights advocates' critique of them, see [Hanging by a Thread: Mental Health and the Death Penalty in Japan](#), Amnesty International, 2009. Retrieved on 10 January 2016.

<sup>105</sup> *Burakumin* are descendants of outcast communities of the Japanese feudal era that consisted of executioners, butchers, tanners, and workers in slaughterhouses – occupations that were considered impure or tarnished by death. Historically the *Burakumin* have been victims of institutional discrimination.

<sup>106</sup> *Health in prisons: A WHO guide to the essentials in prison health*, World Health Organization, 2007.

<sup>107</sup> *Prison reform: Prime Minister's speech*, Policy Exchange, Westminster, London, 8 February 2016.