



# The Asia-Pacific Journal: Japan Focus

in-depth critical analysis of the forces shaping the Asia-Pacific...and the world.

## Unmasking Capital Punishment: A Wave of Executions, *The Yomiuri* and Japan's Death Penalty

David McNeill and the *Yomiuri* Shimbun

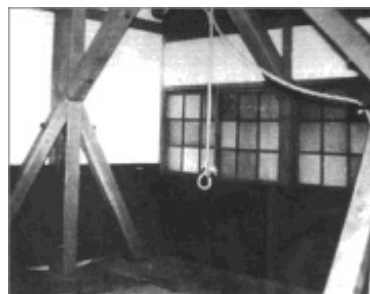
### Introduction

One morning this September, Mantani Yoshiyuki, Yamamoto Mineteru and Hirano Isamu were told by prison wardens they would shortly be dead. As is common under Japan's death penalty system, the three men, all in their sixties, were given about an hour to get their affairs in order before being blindfolded and hanged. Their deaths brought the total number of people executed in Japan this year to 13 and ended any hope by anti-death penalty advocates that new justice minister Yasuoka Okiharu might slow the pace of executions. Two more executions on October 28 brought the number this year to 15, the largest number in 33 years according to the [Japan Death Penalty Information Center](#).



November 6, 2008 Tokyo protest against the death penalty

Yasuoka's predecessor, Hatoyama Kunio, ordered a record number of executions during his year or so in office, widely seen as a "correction" to the reign of Sugiura Seiken, a devout Buddhist lawyer who refused to sign any death warrants. Yasuoka too has clearly signaled a break with what he calls "philosophical" disagreements with the death penalty, saying the justice minister should obey the law, not religious dictates. "I just followed legitimate legal procedure," he told *The Asahi* newspaper, a clear snub to Sugiura, his conscience-stricken predecessor.

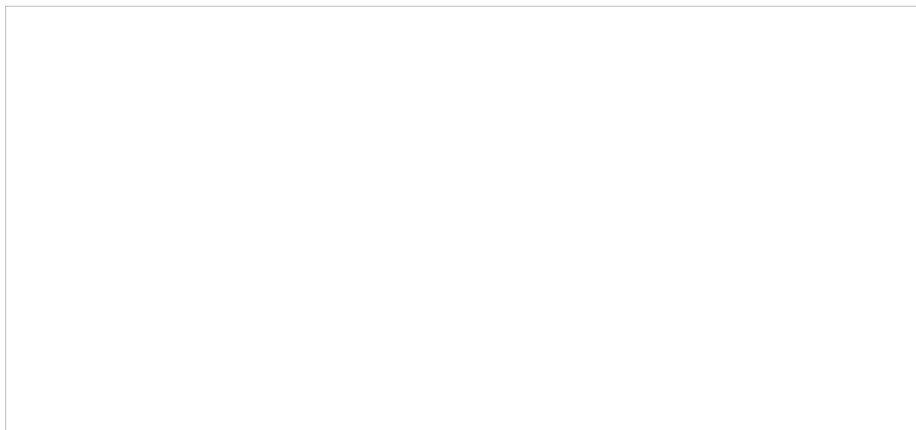


The death chamber

Sugiura's term coincided with a rise in the number of people on death row to over 100, a consequence say some of an increase in violent crime (and tougher sentencing), and his own unofficial moratorium. Hatoyama (who *The Asahi* famously dubbed "the grim reaper") and now Yasuoka appear determined to restore equilibrium and quickly reduce that headline-grabbing number. Until early last year, an inmate waited on average for eight years before being executed; Hirano was on death row for just 23 months.

Justice Ministry officials say that executions are popular with the public, and they appear to be right. Opinion polls show little support for abolition. A 2005 government poll found over 80 percent of Japanese people "in favor" of executions (in "unavoidable circumstances") a rise of over 23 percent since 1975. But

Japan appears to be swimming against the tide of abolition in many developed countries, and some of its death-row practices, including withholding the date of execution, have been singled out for special criticism by international human rights organizations.



### **Worldwide death penalty practices**

The conservative Yomiuri newspaper here explores Japan's system of capital punishment in a series of articles that begin with the June execution of Miyazaki Tsutomu, a notorious serial killer who murdered four young girls in a particularly brutal fashion. Broadly supportive of the death penalty, the articles prioritize the views of Justice Ministry officials and give short shrift to a damning UN 2007 report on the death penalty. But they are notable for their dispassionate, detailed insights into a system that largely escapes scrutiny in the Japanese press. They reveal, for instance, how executions take place, grounds for clemency, internal debates about the humaneness of hanging and the thinking of government officials.

There are some surprises: Ironically, the legal minds overseeing Miyazaki's case considered his appeals for clemency further grounds for execution, because they suggested that he was of sound mind. The articles say that until the 1970s, inmates were told their execution date in advance but that this practice was abolished "after some inmates committed suicide" before they could be hanged. It is also revealed that Hatoyama met justice ministers from the Group of Eight nations in Tokyo in June before returning to his office and signing off on three executions.

What explains the timing of these articles in Japan's largest newspaper? Limited jury trials, introduced amid some unease at the Justice Ministry and among conservatives such as Hatoyama, will from next May give citizens a say in criminal cases that could result in executions. Long the prerogative of a professional, closed legal system, decisions over life and death will slip partly into the hands of ordinary people. Although some are already predicting a short life for these juries, their impact is already being felt, forcing the press into the debate about the state's ultimate sanction and throwing some much needed light into a dark corner of Japan's prisons. DMN

### **UNMASKING CAPITAL PUNISHMENT: Wheels of justice turn dispassionately**

#### **Yomiuri Shimbun**

On June 13, then Justice Minister Hatoyama Kunio, 60, attended a meeting of justice and internal affairs ministers from the Group of Eight nations at a hotel in Ebisu, Tokyo. He returned to his ministry in the Kasumigaseki district in the evening.

While he sat at his desk in his office on the 19th floor of the ministry building, a senior official of the Justice Ministry's criminal affairs bureau handed him three death warrants.

One was for the execution of Miyazaki Tsutomu, then 45, who killed four young girls.

Before signing and putting his seal on the documents, Hatoyama said: "I see. Let's go ahead with these executions."

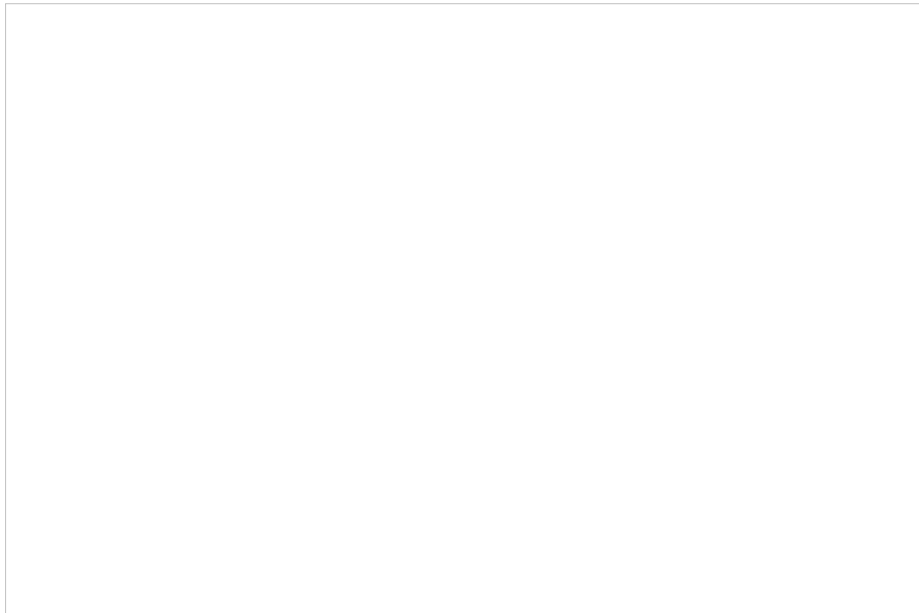


**Hatoyama Kunio**

Earlier that month, just before the indiscriminate June 8 street killings in Tokyo's Akihabara district, Hatoyama had received explanations about the three death row convicts, including their names and scheduled date of execution. He had read the convicts' entire trial records.

"By reading the documents, I was able to fully understand the atrociousness of their crimes, which hardened my view of them. I believed that because they did such horrible things, they should be executed," Hatoyama told The Yomiuri Shimbun in an interview after he left the post.

On the morning of June 17, four days after Hatoyama signed the documents, breakfast was served at 7:25 a.m. as usual to Miyazaki and other inmates on the eighth floor of Building A of the Tokyo Detention House in Tokyo's Kosuge district.



**Tokyo Detention House (Photo: Ed Jacob)**

Niimi Tomomitsu, 44, a former leading member of the Aum Supreme Truth cult whose cell was diagonally across from Miyazaki's, noticed soon after breakfast that Miyazaki had been taken to the execution chamber. Niimi has appealed his death sentence to the Supreme Court.

In a letter to Mori Tatsuya, a 52-year-old writer and pen pal, Niimi explained how he realized what had happened. "It was because officials...suddenly began packing Miyazaki's belongings into boxes and placing the boxes on a dolly," he wrote.

A former senior official of the detention center said that on the day of execution, prison officers other than the usual ones who oversee inmates open the cell door and order the convict to come out.

Therefore, most death row convicts realize only at that moment that he or she is going to be executed, the former official said.

On the way to the execution site, a death row convict is told in a waiting room by a division chief in charge of detainees of his or her impending execution.

Japanese confectionaries, fruits and hot tea are served to the convict. The convict can ask for a prison chaplain for religious comfort. In Miyazaki's case, he did not ask for a chaplain until the very end.

The Tokyo Detention House's execution room is divided in half by blue curtains. On an altar near the front wall, a Buddhist statue and a cross are placed. In the rear, a three-centimeter-thick rope is hung, and there is a square footboard with 110-centimeter sides on the floor, which opens with the press of a button.

According to sources, Miyazaki was blindfolded with a white cloth and his execution was implemented calmly.



### The Miyazaki case

At 11 a.m. on the day Hatoyama announced the trio's executions, Tagusari Maiko, who had worked as an attorney for Miyazaki since his high court trial, looked up at the ceiling in a hotel in Taiwan where she was staying on a business trip.

She pondered, "Was it my misjudgment not to demand a retrial?"

#### Death row execution sequence

Prior to the trio's June executions, Hatoyama ordered executions of three other death-row inmates on Feb. 1, less than two months after another three had been executed in December under his first execution order. This made it obvious that the ministry's stance had shifted to one more actively favoring capital punishment.

Hearing about the February executions, Tagusari thought there was not much time left until the 45-year-old Miyazaki would face execution. "We should rush to file a petition for a retrial," the lawyer thought.

At that point, there were 104 death-row convicts who had yet to be executed.

Death warrants are carried out in the order of the finalized court rulings. However, the cases of prisoners who have applied for a retrial or amnesty normally take a backseat in the sequence.

For Miyazaki, the death sentence was finalized in February 2006, and his death warrant was presumed to be in the middle of the list of those death-row convicts. But there was no telling about the timing as the list included those who had applied for a retrial.

In order to cast doubt on Miyazaki's criminal competency at the time of his crimes, in April, Tagusari acquired Miyazaki's psychoactive drug administration record at the detention center, while requesting a psychiatric examiner to check the record.

When Hatoyama signed his third round of death warrants for four more death-row convicts on April 10, the lawyer believed Miyazaki's turn to be executed probably would come in August, as she deemed the pace of executions to be one round every two months. She thought she "would be able to stop the execution if we'd have applied by then for a retrial by handing the court the report on Miyazaki's mental competency evaluation, which was to be compiled in July."

Tagusari was not the only one feeling pressured by the ministry's new stance, as proved by the trend since February of a number of death-row convicts filing petitions with courts for a retrial or amnesty.

However, an official of the Justice Ministry says most of the applications for a retrial or amnesty were filed by the condemned just for the sake of postponing their executions. "Many of them failed to present new evidence or merely cited exactly the same reasons to apply for a retrial as those already dismissed by the courts," the official said.

A lawyer based in the Kansai region with considerable experience in defending death-row convicts told The Yomiuri Shimbun that he had filed ad hoc applications for a fresh trial for death-row inmates.

"I was asked for advice by several inmates, who panicked after learning that the pace of executions had become faster," the lawyer said. "So I had them apply for amnesty just as a provisional measure until we could gather new evidence."

The increase in the number of applications for retrial or amnesty allowed the applicants to be temporarily removed from the execution list, while moving Miyazaki's execution order upward.

One day in March, a senior official of the Justice Ministry reportedly whispered to Hatoyama, "If you remain justice minister for the time being, Miyazaki will rise on the list of candidates [for the executions]."

### **Playing the system**

The Criminal Procedure Code requires suspension of the execution of death-row convicts who are mentally impaired and do not understand the meaning of their criminal punishment.

In Miyazaki's case, however, he had sent letters to some lawyers, including Yasuda Yoshihiro--known for his leading role in the campaigns to abolish the death penalty in Japan. Miyazaki reportedly asked them in the letters, "Please be a defense lawyer for my retrial!"

The Justice Ministry considered Miyazaki's actions--that he personally requested the lawyers to be involved in a retrial for him--as evidence that he understood the meaning of death row and wanted to suspend his execution.

"It made us more convinced that there were no [moral] problems executing him," a ministry official told The Yomiuri Shimbun.

Meanwhile, Tagusari tried to find new evidence for a possible retrial for Miyazaki to fulfill her responsibilities as his defense lawyer. In May, she sent the ministry a document stating she was preparing a retrial petition, but the move did not work.

Another justice ministry official said, "Maybe it's time for us to review the current system, under which executions actually can be suspended if a retrial petition is filed just for the sake of formality."

### **Postscript to Miyazaki's execution**

Two days after Miyazaki's execution, Shinoda Hiroyuki, editor in chief of the monthly journal Tsukuru, received a phone call from Miyazaki's mother.

According to Shinoda, 57, who had exchanged letters with Miyazaki in prison over a period of years, the mother said she had seen Miyazaki's body and asked the detention center to take care of her son's mortuary needs. She also said to Shinoda, "I want to put an end [to all of this]."

Meanwhile, Sato Norimichi, a former deputy inspector of the Saitama prefectural police who had been in charge of Miyazaki's criminal interrogation, toured the crime scenes by car on the day following Miyazaki's execution.

Visiting the sites, including those in Kawagoe and Hanno cities in Saitama Prefecture, and in then Itsukaichi (now part of Akiruno), in western Tokyo, the 67-year-old retired investigator prayed for the four young girls who Miyazaki murdered mercilessly.

### **Death by hanging's 130-yr history**

"Would you please take off my blindfold, as I wish to have a look once more at the face of my chaplain [whom I revere]," said Katsuta Kiyotaka, then 52, to a prison officer when entering the execution room at the Nagoya Detention House on Nov. 30, 2000.

In response, the prison officer took the blindfold off Katsuta to enable him to be face to face with his chaplain, a Buddhist priest.

While the priest recited Hannya Shingyo [the Wisdom Sutras], Katsuta, who had changed his surname to Fujiwara after being convicted, gave out one by one the names of all the people he had killed.

He said, "I'm sincerely sorry," according to detention house sources.

He subsequently was blindfolded again on the scaffold and his ankles were bound.

A few seconds after a thick rope was wrapped around his neck, the trapdoor beneath his feet opened with a loud sound, according to sources.



During the period from 1972 to 1977, Katsuta strangled five women in their 20s and 30s after sneaking into their homes to rob them of money and other valuables.

In addition, he shot three others to death before 1984 while committing robberies using a handgun that he had seized from a police officer, sending a shock wave through society.

In a 1994 decision, the Supreme Court upheld the high court's imposition of the death penalty on Katsuta, saying his offenses were "premeditated and extremely heinous, ruthlessly brutal, leaving no room at all for discerning that he respected the lives of human beings."

Minutes before the execution by hanging, Katsuta wrote a will.

"Looking back on the series of crimes I committed, I feel it cannot be helped that I have been informed of my hanging so suddenly, as I now can say I have managed to lead myself to a spiritual state of resignation," Katsuta wrote.

A member of one of the bereaved families of Katsuta's murder victims was cited as saying the report of his hanging "has made us feel we at long last have become able to close a chapter in our anguish, although we still feel never able to forgive the perpetrator."

### **Law-stipulated punishment**

The Penal Code stipulates the death penalty must be "executed by hanging."

The condemned is made to stand on a trapdoor at the center of the execution room, and then a rope is placed around his neck.

Three prison officers in a separate room simultaneously push execution buttons, one of which opens the trapdoor. Another officer is in charge of keeping the rope from swinging due to the downward impact of the prisoner on the gallows.

The condemned person's neck snaps due to the fall, the sources said.

The prisoner's breathing stops immediately, but the heart continues beating for some time.

According to a medical doctor who has witnessed several executions, the heart stops beating an average of 15 minutes after hanging. "The condemned person is rendered unconscious the moment of hanging, and there can presumably be no time for feeling any pain," the doctor said.

The trapdoor is about four meters above the floor beneath the gallows. After the hanging, a doctor listens to the prisoner's heartbeat with a stethoscope, using a stepladder to reach the height of the chest of the hanged.

When the doctor declares the prisoner's heart has stopped, the execution process officially concludes.

The body of the hanged is then towed off before being dressed in white.

Although the body has bruises around the neck, it is free from any other injuries or bleeding, the doctor noted.

The current form of trapdoor-style hanging dates back to 1873, the sixth year of the Meiji era, when a government ordinance to that effect was put into force.

In the era's early years shortly after the Meiji Restoration, other forms of execution existed such as beheading, but the form of execution was limited to hanging with the revision to the now defunct Penal Code in 1882, or the 15th year of Meiji.

A French legal adviser to the Meiji government, Gustave-Emile Boissonade, who helped with the law revision, characterized hanging as "humane" compared to other forms of capital punishment.



## **Gustave-Emile Boissonade**

Compared with such execution methods as beheading, Boissonade said, the head and other parts of the body of a person subject to hanging could be prevented from being severed, and his or her relatives claiming the body would have a lesser degree of sorrow.

In 1955, the Supreme Court said in a ruling referring to the death penalty by hanging, "In comparison to other forms of the death penalty employed by other countries, such as beheading, firing squad, electrocution and execution by gas, hanging cannot be considered cruel from a humanitarian point of view."

That top court decision has since been regarded as the legal foundation for maintaining the death-by-hanging system.

### **Hanging truly 'humane'?**

"Honestly speaking, I have a feeling that a more humane, reposeful way of execution than hanging may be desirable," said Hatoyama Kunio at a session of the House of Representatives Judicial Affairs Committee in October 2007, when he was justice minister.

In the United States, where the use of electric chairs and gas chambers were prevalent for years, lethal injection has become widespread since the 1980s as a more humane way of administering the death penalty with minimum pain.

Currently, 35 of the 36 U.S. states that maintain the death penalty have adopted the lethal injection method.

Japan's Justice Ministry, for its part, has never reconsidered its current approach.

An expert in the death penalty system, Saito Yoshiyuki, professor emeritus of Chiba University, said, "The government should be well aware of its responsibility to think always about what form of death punishment should be considered best in terms of minimizing the pain of the condemned."

The government should set up a panel, including outside experts, to study whether hanging can truly be considered the best method of execution, he said.

### **Prisoners await executions in isolation**

A cell at the Tokyo Detention House. The cells at the detention center were renovated between 1997 and 2000.

Each solitary confinement cell at the Osaka Detention House has a camera on the ceiling aimed at deterring prisoners from committing suicide.

In summer 2004, Takuma Mamoru, a death-row inmate who was housed in one of the cells, began complaining about the camera's presence more loudly than he ever had before.

Takuma, who stabbed to death eight students at Ikeda Primary School in Osaka Prefecture in June 2001, was sentenced to death at the Osaka District Court in August 2003.

Because he withdrew an appeal filed by his defense team in the following month, his death sentence was finalized.

Takuma was put into a special cell equipped with the monitoring camera after attempting to kill himself.

The room had poor ventilation and no air conditioning. Takuma complained about the poor environment to Hasegawa Hirokazu, a Tokai Gakuin University professor and psychologist who interviewed him, saying that the floor in his room was soaked with sweat.

According to Hasegawa, Takuma said: "The psychological pain of waiting for an execution isn't part of my punishment. It's unreasonable."

The Criminal Procedure Code stipulates that death-row inmates be executed within six months of their sentence being finalized. In practice, however, it usually takes at least two to three years before executions are carried out.

In a letter addressed to Todani Shigeki, Takuma's chief attorney, Takuma wrote that he intended to file a lawsuit against the justice minister if he was not executed within six months of his sentence's finalization.

Takuma was finally executed on Sept. 14, 2004, about one year after his sentence was finalized.

### Inmates get special treatment

Death-row inmates are confined to cells about the size of four tatami mats. The floor has three tatami mats, and there is a toilet and a washstand behind a screen at the back of the room.

Death-row prisoners wake up at 7 a.m. and go to bed at 9 p.m. each day. Unlike convicts serving a prison term, they are not required to engage in labor.

Their cells are lined up and alternately contain inmates with finalized sentences and inmates whose sentences are not finalized so death-row inmates are not in cells next to each other.

"One day, I heard the theme song of 'Otoko wa Tsurai yo' ('It's Tough Being A Man,' a popular film series depicting a traveling street vendor) coming from a nearby cell. When I told a warden that I'd also like to watch the film, he told me that it wouldn't ever be possible," said a 35-year-old inmate who spent about 10 months in a cell at the Tokyo Detention House beginning in December 2002.



### Billboard showing the hero of Otoko wa Tsurai yo.

After his release, the prisoner learned that a death-row inmate was watching the movie.

For psychological stability, death-row inmates are allowed to rent a video player and watch videos in their cells a couple of times a month. They also are allowed to play shogi chess and go. Death-row inmates also are allowed to write on a piece of paper their favorite sweets and fruits chosen from a list of products specified by the detention center. They can then ask wardens to buy them at the prisoner's expense.

Because of this policy, death-row inmates at the Tokyo Detention House can eat specialty foods such as canned crab, dorayaki bean-jam, pancakes and peaches.

Takuma loved sweets and reportedly ate daifukumochi, or soft rice cakes filled with sweet bean jam, almost every day, either buying them at his own expense or receiving them as gifts from visitors.

According to Todani, Takuma said, "A warden told me that I'd receive better treatment once my death sentence had been finalized."

Todani also said that Takuma told him that this was one of the reasons he decided to withdraw his appeal.

### Death-row inmates can't mingle

Death-row inmates used to be allowed to play baseball or practice writing tanka poems and calligraphy as a group.

However, detention centers stopped putting death-row inmates in groups to avoid potential trouble.

Detention center officials said they pay meticulous attention to when they should move death-row inmates to avoid them passing one another.

The Japan Federation of Bar Associations, which conducted a survey on 79 death-row inmates across the country in January 2006, said their survey results highlighted the psychological difficulty of the extremely isolated environment death-row prisoners live in.

"[Death-row inmates] exercise and bathe on their own...They're left alone in a small room," the federation said.

The survey also exposed the fact that many inmates are completely isolated from the outside world. When asked about the frequency of visitors, about one fourth of the respondents said that they had absolutely no guests.

After a law regulating prisons, detention centers and the treatment of prisoners in such facilities was put into force in June 2007, death-row inmates were allowed to meet not just relatives and attorneys but also acquaintances and supporters.



Based on his long experience dealing with death-row inmates, a former detention center senior official pointed to the difficulty of taking care of inmates' mental health.

"Unlike ordinary inmates, death-row inmates are simply awaiting execution," he said. "It's extremely difficult to help stabilize the mental condition of death-row inmates and make them face up to crimes they have committed because they tend to be psychologically vulnerable in some way."

### **Uncertainty marks inmates' days on death row**

"Whenever I heard the footsteps of detention center officers approaching, I'd clench my teeth and listen so that I'd know which cell they were stopping at. It felt like I was tied up and couldn't move until I knew it wasn't me they were coming for," said Menda Sakae, a former death-row inmate who spoke recently with The Yomiuri Shimbun.

Menda, 82, spent more than 30 years in prison for a robbery-murder before becoming the first death-row inmate in Japan to be acquitted at a retrial.

Menda was arrested in 1949 as a suspect in a 1948 robbery-murder in Kumamoto Prefecture. His death sentence was finalized in 1952 by the Supreme Court, after which he says he spent more than 30 years with the prospect of death looming over him.

Under the current system, death-row convicts are informed of their executions in the morning, about one hour before they are due to be taken from their cell to be executed.

On the day, inmates are allowed to write farewell notes or smoke a cigarette, but are not allowed to cause extended delays as the whole execution process is timed to the minute.

Death warrants can be carried out on any weekday except national holidays and the New Year period under a law regulating the management of criminal facilities and the treatment of inmates.

Writer Kaga Otohiko met death-row inmates while working as a medical officer at Tokyo Detention House in Kosuge, Adachi Ward, Tokyo.

"I remember on the morning of an execution, the inmate's cells would be silent," said Kaga, 79. "It wasn't a normal silence. There was a strained atmosphere, with all the other inmates listening to what was going on."

One doctor who worked at a detention house said he heard a staff member at a detention center say, "We call inmates who complain all the time out from their cells on some errand in the morning, so they think it's their turn to be executed and they'll keep quiet."

Unlike the current system, under which the practice of same-day notification is an unwritten rule, inmates used to be informed of their execution a few days beforehand, at the detention house directors' discretion, until the 1970s.

An article that appeared in the April 13, 1956, edition of the Yomiuri distributed in the Osaka area, reported on how an inmate at Osaka Detention House had spent his last three days after the center's director told him that his petition for amnesty had been rejected.

The report--titled "Shikeishu 'Shikko-mae Goju-san Jikan' no Koe" (A Death-row Convict Gives Voice to His Last 53 Hours)--presented the recorded thoughts of the 38-year-old prisoner, other inmates on death row and the detention house staff. The views were taped secretly by the detention house.

The article included details of a farewell party held at the facility, and a meeting with his sister:

"Day 1: Other death-row inmates hold a farewell tea party. They sing 'Auld Lang Syne' ("Hotaru no Hikari" in Japanese) at the suggestion of the center director."

"Day 2: He asks his elder sister [who came to the detention house to meet him] to open the windows and call his name out at home with his mother around the scheduled time of his execution. They cry together, embracing each other tightly."

Prosecutor-turned-lawyer Hirata Tomomi, 82, remembers an executed man whose interrogation he was in charge of and whom he had been in touch with by mail and through visits.

One day in June 1975, Hirata visited the man in prison at the Osaka Detention House. The inmate, who was scheduled to be executed the following day, requested the visit.

Accompanied by a detention house officer, Hirata and the man ate sushi, the man's favorite food, and they chatted about different issues, including their memories of the interrogations.

At the end of the two-hour meeting, the man said to Hirata with a smile, "Now I'm going to go talk with other inmates."

In the mid-1970s, the practice of letting death-row convicts know their execution date in advance was abolished after some inmates committed suicide after being informed they would be executed a few days later.

Since then, detention houses across the nation have only notified inmates on the morning of the execution day.

### **U.N. asks for changes**

In May last year, the U.N. Committee against Torture issued a recommendation to the government to improve on its practice of informing inmates of their execution so close to it taking place, saying the committee "regrets the psychological strain imposed upon inmates by the constant uncertainty as to the date of execution as prisoners."

However, the government responded, "If death-row inmates were informed of their execution earlier than the day of the execution, it could mentally unsettle them and inflict serious mental pain."

In U.S. states that still use capital punishment, death-row inmates are generally informed several days or even weeks before their execution, giving them time to say goodbye to their families and friends.

Hirata, speaking about the man he had met a day before he was executed, told the Yomiuri: "The man became a Christian in prison. He appeared to be spending his last day in a meaningful way."

Hirata also commented on the current system. "I don't think there would be any harm in giving emotionally stable inmates more notice of their execution," he said. "The government should change the current practice so it can be judged on a case-by-case basis whether someone should be informed on the day or earlier about their execution."

*This is a slightly edited translation of a four part series on capital punishment that appeared in The Yomiuri Shimbun on October 9, 10, 11 and 12, 2008. Posted at Japan Focus on November 18, 2008.*

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