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## **Death Penalty Survivors Testimonies**



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# Death Penalty Survivors Testimonies

**Amnesty International Panel Discussion, 16 October 2007  
Economic and Social Council Chamber, United Nations**

## **Introduction**

On Tuesday 16 October 2007, Amnesty International hosted a panel discussion at the UN, at which three men who had been sentenced to death for crimes which they did not commit urged member states of the UN General Assembly to support a resolution for a global moratorium on executions, now being considered.

The three men survived their ordeal. Others, who also were innocent, have been executed. They can never be brought back to life: the death penalty is irrevocable.

Amnesty International does not only oppose the death penalty because it is irrevocable and because innocent men and women are bound to be executed in any country that maintains the death penalty, however highly developed its judicial system may be. As these personal accounts demonstrate, the claim that any legal system can prevent any miscarriage of justice is a fallacy. Nor does Amnesty International only oppose the death penalty because it is inherently arbitrary and discriminates against those who are poor, who belong to minorities or are marginalized. Amnesty International also opposes the death penalty because it violates the right to life and the right not to be tortured or subjected to cruel, inhuman or degrading punishment. Indeed, the resolutions on the death penalty which the General Assembly adopted without a vote in 1971 and 1977 specifically affirm everyone's right to life.

The General Assembly has already proclaimed its aim: to abolish the death penalty worldwide. It has also taken major steps to reduce the number of capital offences. Now that over two-thirds of UN Member States have abolished the death penalty in law or practice, the time is ripe for the General Assembly to take the next step: call for a global moratorium on executions. That will be a major step to bring the General Assembly's vision of a death penalty-free world closer to reality.

At the 16 October discussion, the three men from Japan, Uganda and the USA each related their personal experiences. Speaking in the ECOSOC chamber they highlighted how unfair trials, erroneous decisions and flaws in the judicial system led to them spending a combined total of 54 years on death row for crimes which they did not commit. All three have dedicated their life to work to give hope to condemned men and women remaining on death row.

**Sakae Menda**, (Japan) is the first Japanese prisoner sentenced to death to be freed from death row. Mr Menda was arrested with three others in 1949 for a double homicide he did not commit. He was tortured and had an unfair trial, but was condemned to death.

Determined to prove his innocence, Mr Menda sought a retrial six times in the course of his time on death row. In 1983, after 34 years in prison, Mr Menda was successfully granted a re-trial at which he was found not guilty. Now aged 81, he is a key figure in Japan in the movement to abolish the death penalty.

Here is Mr Sakae Menda's story:

"I had been sentenced to death because of a murder which I did not commit. From January 1949, I spent 34 years and 6 months, under the weight of a death sentence, in a prison without any freedom. I did plead innocent but it was very difficult at first because I did not have a lawyer. Eventually I was able to obtain a lawyer, and after six petitions for re-trial, the Fukuoka District High Court ruled on the reopening of the case in 1979, and on July 15<sup>th</sup> 1983 the court delivered the verdict of an acquittal and I was released.

"I am the first death row inmate to be found innocent upon retrial in Japan. Since my case, three death row inmates have been found innocent upon retrial and have been released. These three individuals, respectively, had spent around 30 years in confinement as death row inmates.

"In Japan, there are a good number of those on death row who claim to have been falsely convicted. However, apart from four of us, so far no one else have been found innocent upon retrial.

"I was accused of murdering and /or injuring a family of four in Hitoyoshi City in Kumamoto Prefecture. I had an alibi which was recognised in the retrial, however in the first trial, the investigators had false statements given by a witness, and my alibi was not taken into consideration. There was also physical evidence to prove my alibi, but this was also ignored.

"During my interrogation, investigators were divided into three teams, each taking it in turns to interrogate me. Through coercion, extortion, leading questions, and brutal force, they were determined to elicit a "confession".

"When I claimed my alibi, the prosecutor said to me, "Do not lie. The more you lie, the heavier the crime. Tell the truth, and do penance for your crime. You will go to hell so long as you choose to lie." He was not willing to believe anything I had to say. As I was denying the charges, the prosecutor should have at least investigated the facts.

"The prosecutor lent a hand to the investigators doing away with the witness, and I believe I am not going far by saying that he is guilty of a judicial crime. Furthermore, the lawyer only came to see me once before the trial. This lawyer was a Buddhist monk, and took out a beadroll out of his pocket at the time of interview, and promptly left after he finished his prayer.

"On March 23, 1950, Judge Haruo Kinoshita rendered the court's decision sentencing me to death, with a trace of a smile. The given ruling was very simple, and did not mention

any physical evidence or witness account that proved my alibi. During my imprisonment, I thought hard about the death penalty. During this time, I saw off 56 inmates off to their end with a handshake at the Fukuoka Detention Center, and these are only the ones that I remember.

“Most of them were to some degree unhappy with their trials. There were death row inmates whom had been falsely accused like myself. As I have shaken hands and listened to the last words of all these individuals, I have come to strongly believe in working and acting together with individuals who share an understanding in this cause; to abolish the death penalty so long as there is a danger of falsely convicting the innocent.

“I am now 81 years old. As I spent a long time in prison, I do not qualify for social security such as the pension system. There are those in society who still remain sceptical of my innocence. The abolition of the death penalty is my dire wish.”

**Mpagi Edward Edmary** from Uganda spent over 18 years on death row, accused of killing a man who was later found to be alive.

Mr. Mpagi’s family successfully campaigned for his release, providing evidence that the alleged victim was still alive. Sentenced to death for murder in 1982, the Attorney General proved that the man Mr Mpagi was accused of murdering was still alive in 1989. However it was not until 2000 when a nine member presidential committee released Mr Mpagi, deciding he was innocent.

Held for many years in the Luzira Upper Prison, Mr. Mpagi taught his fellow inmates to read and write. He became one of the longest serving inmates and a prison elder. Mr. Mpagi is now an advocate for the abolition of the death penalty and is a committed religious leader. A graduate from a Catholic Diocese he regularly tours prisons providing inspiration and hope to prisoners.

Here is his story:

“My name is Mpagi Edward Edmary. I want to thank Amnesty International for their support to me in enabling me to get the US visa and the facilitation to me to enable to appear before you today. I really appreciate your efforts. I am so happy to join you in this meeting aimed at the global moratorium on the death penalty.

“My story is for the brothers in Uganda that are still on death row.

“In 1981, I was arrested along with my cousin brother Mr. Fred Masembe (rest in peace). I served 20 years in jail for the alleged murder of a person who was later found to be alive.

“We only saw our lawyer twice before our hearing. As a result of bribes we were sentenced to death. At that time my English was not so good. I needed a translator. My brother did not know any English at all.

“I spent 18 years on death row and 2 years on remand. My cousin brother and I were both convicted in this case. By then in Uganda it was very hard to reverse the decision of the judge, so my family followed the case up, until they lost hope in securing our release. My brother and I could not believe that a legal system would convict innocent people.

“In Uganda, conditions for death row prisoners are cruel, degrading and inhumane. We were always denied medicines. There were lice flies and other vermin in the prison and this resulted in many illnesses and many prisoners died from these illnesses. In 1984 my brother developed malaria and stomach complications because of inadequate food and skin conditions.

“I pleaded with the prison authorities to give my brother medication and treatment. However they told me that we were brought to death row to face death, that it was a waste of tax payer’s money to treat him. My brother died in 1985. This really scared me. But life continued.

“Life is terrible on death row in Uganda, Africa. No one was ever given any notice that they would be executed. Each time we were taken by complete surprise. We lived in complete fear of any unusual activity from the wardens. During my stay in prison there were five rounds of executions. The last one was in 1999 in which the state executed 28 prisoners. But to make matters worse for the inmates, execution was carried out in the very nearby place, the crying of the inmates was closely heard and movements were seen. This made inmates life so complicated.

“I remember my best friend and room mate who was dragged out by prison wardens to be executed. He cried and resisted but he was overpowered after he was hit on the head by fierce wardens. Everybody was in fear at that time. It took us years to be relieved of that incident. But still I keep remembering his last words.

“The coffins for the prisoners to be executed were made in the prison. During the three days before executions, we could all hear the making of coffins. The black hoods and clothes for prisoners to be executed were made by other prisoners. We knew how many people were to be executed by counting the number of hoods being made.

“All this made us depressed and stressed. The people selected for execution were taken to the gallows, which were above our cells. They kept calling out to us and singing hymns to inform us of their fate. Many of them went to the gallows pleading their innocence. Others admitted their crimes and made peace with their enemies and the Lord. Others insisted that while they committed offences, their co-accused were innocent and wrongly convicted.

“For three days prior to execution we were obliged to stay in our cells. During this time we were forced to live, sleep and eat in the same conditions. No one had any appetite for food, sleep or conversation. There was normally dead silence and we thought about our own executions. Some prisoners then attempted suicide, even if they were not going to be executed then.

“Executions normally took place at night. When a prisoner reached the gallows, we would all listen. After a few moments, we would hear a loud sound like a sudden explosion,

as the trap doors of the gallows spring open and the prisoners are dropped to their death. We would then hear the corpses fall with a loud bang on the death table.

“After my release, my family had dispersed. My wife had died and I have since lost track of two of my children because of the 1985 guerilla war in Uganda. I don’t know whether they are still alive. I have four children left – two from my previous family and two from my current family. Unfortunately the two children from my first family had no support to go to school in my absence and so now they are illiterate, which hurts me so much.

“This is my story. Thank you for listening.

**Ray Krone** is from the US and was the third ‘exoneree’ to speak at Amnesty International’s panel discussion. Ray Krone was on death row in Arizona State Prison for two years (and eight years in prison) before he was freed after DNA tests proved his innocence in 2002.

Mr. Krone became the 100<sup>th</sup> death row inmate to be proven innocent in the United States of America since 1973. Mr. Krone was twice convicted for a murder he did not commit. A judge sentenced him to death after the first trial, where no DNA evidence was submitted, and to life at the retrial. The evidence against him was circumstantial. The Retired Judge who presided over the second trial said that he always had serious doubts about the government’s case and debated whether to set aside the verdict.

Here is his story:

“I feel sadness in having to relate this ordeal of my time in prison, sadness when I think of the suffering of my family and friends, sadness for the other inmates around the world who are sitting on death row, and sadness for the people who have not recognized what the death penalty has done to the world, to our humanity. I used to support the death penalty. I could never support it again, not after what I’ve been through.

“It all started in 1992 in Phoenix, Arizona when a local barmaid was found stabbed to death in the men’s bathroom. Nothing was taken and there was no break-in so the police initiated an investigation under the assumption that this had to be somebody who knew her. The police arrived at my house under the assumption that I was the boyfriend. I told them I wasn’t, I told them I didn’t do it and I didn’t know who had done it. The next day they took hair and blood samples, and a sample of the indentation of my teeth.

“My friends sent attorneys to see me in jail who told me their retainer fee would be around \$20,000, with another \$80,000-\$100,000 for a capital murder case. I made \$30,000 a year and had bought a house 7 years earlier for \$50,000. I was given a court appointed attorney who the judge granted \$5,000 to defend me. I got what they paid for; I saw him about three times. He wanted me to take a plea bargain which I wouldn’t do.

“Just six months after the murder I found myself sitting in a court of law, facing the death penalty. It was a very short trial, three and a half days. It seemed that the most important evidence they found at the crime scene were bite marks on the victim’s body. They

brought in an expert who testified that the bite marks matched my teeth, that they were made at the time of death, and that made me the murderer. The jury was out for just three and a half hours. They found me guilty. I spent the next three years in a room about 6 x 8 feet. I got out of the cell about three times a week for a few hours, ankles shackled, and wrists shackled to my waist.

“My case went before the Arizona Supreme which ordered a new trial. My family mortgaged their home, cashed in their retirement funds, friends took up collections, and we were able to get an attorney.

“My second trial was in 1996. My family took off work and came out to sit through those six and a half weeks. There was hair, footprints and DNA that didn’t match mine but the jury came back and found me guilty again. As hard as it was the first time it was nowhere near the heart-stopping gut wrenching emotion that I felt at that second trial, because I still believed in the system.

“My attorney went over all the evidence that pointed to someone else. The footprints in the bathroom where the victim was found were size 9, when I wore a size 11. DNA on the body did not match mine. In the end the judge ruled that there was lingering residual doubt about my guilt so he sentenced me to 25 years to life, then he added another 21 years for kidnapping. I was 35 years old when this happened so I was looking at being 81 years old before I ever had a chance of parole.

“In 2001 the Arizona State Legislature passed a new law making it easier for inmates to petition the court to get DNA testing done on previously untested materials. When they extracted the DNA from the pants and the victim’s underwear and compared it to mine it didn’t match. When a lab technician plugged the DNA into the nationwide DNA data bank he came back with a match to a man who was at that moment serving a ten year sentence for having sexually assaulted another person. With his admission of guilt, and the DNA result, my attorney and my investigator went to the prosecutor’s office and after a few weeks I was finally released. After 10 years, 3 months and 8 days, I walked out of prison to start my life all over again.

“I’ve seen people executed; I’ve seen innocent people in jail. I’ve seen it become a matter of race and income level. I don’t wish what happened to me to happen to anybody but if they can do it to me here in the United States of America it can happen to anybody.

“I hope you will carefully consider the testimony you’ve heard here today, examine your hearts and your beliefs, and vote for this resolution.

## **Conclusion**

The stories of these three men, and the images of the execution of Saddam Hussain earlier this year, are telling testimony of how the death penalty brutalizes all involved and devalues

human life. There are three reasons why all UN Member States should now join a call for a moratorium on all executions.

First: there is a trend towards abolition worldwide. In 1977 16 countries had abolished the death penalty for all crimes. Now that number stands at 90. Furthermore, some 40 countries have abolished the death penalty for ordinary crimes or abolished it in practice: no less than 133 states have abolished the death penalty in law or practice, which is more than two-thirds of the current UN membership.

Second: the High Commissioner for Human Rights and most recently Secretary-General Ban Ki-Moon have made specific calls supporting a moratorium on executions worldwide and support the trend towards abolition of the death penalty.

Third: the current draft resolution calling for a moratorium on executions is a genuine cross-regional initiative: it is co-authored by Angola, Albania, Brazil, Croatia, Gabon, New Zealand, Mexico, the Philippines and Timor Leste, and has the support of many other states in all regions. It is not the initiative of any one state or of any one region.

### **Amnesty International urges all UN Member States:**

To support the proposed resolution calling for a global moratorium on executions with the following elements:

- An affirmation of the right to life and stating that abolition of the death penalty is important for the protection of human rights;
- A call on retentionist states to establish a moratorium on executions as a step towards abolishing the death penalty;
- A call on retentionist states to respect international standards that guarantee the protection of the rights of those facing the death penalty;
- A request to the UN Secretary-General to report on the implementation of the resolution on the moratorium to the next session of the General Assembly.

[This event was co-sponsored by the Permanent Missions of Argentina, Brazil, Chile, New Zealand, Rwanda, Timor-Leste and Uruguay.]