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# **Testimonies from Judges and Prosecutors on the Death Penalty**

**Amnesty International Panel Discussion**

**United Nations - 21 October 2008**



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# Testimonies from Judges and Prosecutors on the Death Penalty

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### Introduction

The General Assembly adopted resolution 62/149 on 18 December 2007 and called on all states to adopt a moratorium on executions. Since then, the UN Secretary-General concluded in his report on the implementation of the resolution (A/63/293) that “the solid and longstanding trend towards global abolition of the death penalty continues. The contribution of states to the present report suggests that a moratorium of the death penalty is a key step towards eventual de jure abolition of this form of punishment.” Amnesty International welcomes the steps by countries in many regions of the world towards implementing the resolution.

The drop in countries carrying out executions is dramatic. In 1989, executions were carried out in 100 states. In 2007 Amnesty International recorded executions in only 24 countries. However, some countries ignore the trend and continue carrying out executions, even though innocent people have been executed. Many were put to death after trials that lacked the most basic legal safeguards. They can never be brought back to life.

Amnesty International opposes 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. As the accounts below demonstrate, the claim that any legal system, however well developed, can prevent any miscarriage of justice is a fallacy. Amnesty International also opposes the death penalty because it is inherently arbitrary and discriminates against those who are poor, who belong to minorities or are marginalized. Finally, the death penalty 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.

**On 21 October 2008, four judges and prosecutors from Japan, Jordan, Nigeria and the USA, who have participated in death penalty cases, gave their personal accounts at the United Nations on what made them oppose the death penalty<sup>1</sup>. Here are their stories.**

#### **Former Judge Kumamoto (Japan)**

*Forty years ago Mr Kumamoto was one of three judges to impose the death sentence on Iwao Hakamada, who still faces imminent execution in Japan and spends his time in virtual isolation. Judge Kumamoto has now broken his silence and filed for a retrial. His wife, who also spoke at the UN, detailed the terrible personal effects the case has had on Mr Kumamoto throughout his life. He said:*

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<sup>1</sup> Amnesty International is grateful to the Permanent Missions of Argentina, Chile, Mexico, The Philippines, Rwanda, Timor-Leste and Uruguay for co-sponsoring the event.

“My name is Kumamoto Norimichi. The case I want to talk about happened in June of 1966. I had worked in three cases that involved the death penalty before this case. In 1966 in Shizuoka Prefecture in Japan, four people were killed, and the house was put on fire. Two months later, a man called Iwao Hakamada was arrested as the culprit.

“I was one of three judges deciding the case of Iwao Hakamada in 1968, a man who was arrested because there were rumours about his character and his behaviour. Objectively the evidence for him committing this crime was almost none; however, the investigator thought from the beginning that he was guilty, so the police conducted the investigation assuming that he was responsible for the crime. He was detained and coerced into making a confession because the police had arrested him. In Japan you can be detained for 22 days like this.

“Although I was the youngest of the three judges somehow I was appointed to be chief judge. As the leader I participated throughout the trial and had to write up the sentence. The other judges were around 35 and 50 years old. I was only 28. I had two main questions concerning the case: 1) Was there any other evidence besides his confession? 2) Was he guilty of the crime? Supposedly the police had already investigated these points, but from the early stage of the trial I had the impression that the police had conducted their investigation on the assumption that Mr. Hakamada was guilty, so I was not sure if I could trust them. It became clear later that the police tortured him both physically and mentally during 22 days of investigation to get his confession.

“I could not convince the other two judges that Hakamada was not guilty so I had to convict him as the decision was made by majority. Personally the fact I had to write this judgement was against my conscience, something I still think about to this day.

“I could not bear the burden of my conscience so I resigned from being a judge after a further six months. Later I decided that since I had made him guilty I felt very guilty myself. I still do to this day. I cannot regret enough what I did. To this day, others like Hakamada are still detained for 22 days. This leads to coercive confessions. Gaining confession is one of the most effective ways of convicting an accused person in Japan. I wonder how it would have been, if I had not resigned as a judge, to live with my conscience.

“There are appeals in process for Iwao Hakamada. I pray for his exoneration every day.”

**Shimauchi Kazuko – his wife** “For 40 years my husband Kumomoto Norimichi did not speak to anyone ever about this, not even his family. To forget this torment he tried to commit suicide many times. He turned to drinking heavily. He jumped in front of a train and he tried to jump into the ocean. I want to spend the rest of our lives calmly, to travel and enjoy what are perhaps our last 10 years.”

**Dr. Muhammad Al-Tarawneh** (Jordan)

*Dr. Al-Tarawneh worked in the court of appeal in Jordan for 25 years, striving for fair trial standards. He said:*

“I would like to express my deepest thanks to Amnesty International and the United Nations for the opportunity to talk about this very important subject. My name is Mohammad Al-Tarawneh and I am from Jordan. Our small country is one of the countries that has not carried out the death penalty for women or children since independence.

“My main concern is for human rights, international laws and the international criminal court. I had the joy of participating in the process leading to Jordan acceding to the International Criminal Court. I have written many papers and as a lecturer, I speak about standards of fair trials.

“I have never considered a case that has resulted in the death penalty although for some crimes it is allowed in law. For one case where I thought I might have to pass the death penalty, I asked to be removed from the case. I consider that the death penalty contravenes the right to life. This is a gift understood by all religions to be from the creator to the created. No one can usurp this right from the creator.

“I was in the court of appeals to correct or return cases to the first courts of Jordan. In all cases new evidence can arrive later. This can be after the execution. At this stage there is no way to correct these mistakes.

“The death penalty in my experience does not achieve deterrence. Maybe in this seminar there is not enough time to produce and discuss all the evidence pointing to this from around the world, to demonstrate that all the countries that abolished did not since find crime to be on the rise.

“Imagine the legal contradiction that for serious crimes of humanity such as genocidal rape and mass murder under the Rome Statute (of the International Criminal Court) we do not use the death penalty. However in Jordan we still use the death penalty for less egregious crimes.

“Many societies in the third world accept that the death penalty should no longer be used. In 2007 we held a seminar in Jordan and out of it the first national Arab coalition against the death penalty was formed. It is now one of 10 coalitions that have since formed. In the same year 13 Arab countries had a conference about the death penalty. We hope to hold another one in Morocco later this year. Our coalitions particularly respect the position and actions of Algeria as they accepted the United Nations position on the resolution on the moratorium on executions in 2007.

“More than half of all countries in the world have abolished the death penalty for all crimes, 10 for ordinary crimes and 35 have de jure ended. The number of countries that continue to use the death penalty are relatively small at sixty. There is a general trend towards objecting to this penalty.

“My humble research notes that the right to life is the basis of all other freedoms.

The death penalty is a crime committed in the name of justice. It is cruel and inhumane. It is not consistent with human dignity.

“We must thank the United Nations and ask all countries to accede to the Second Optional protocol to the ICCPR. There is a discrepancy for all countries that are party to the Rome Statute, but retain the death penalty in their domestic laws. Abolition leads to no rise in crimes.

“Reform of the criminal justice system and respect for human rights is the answer.”

**Muhammad Zubair, (Nigeria)**

*Mr Zubair was invited to attend but unable to reach New York in time due to technical reasons. He was a prosecutor from 2001 to 2004 and his prosecutions resulted in several death sentences. He left his job because he was convinced that many convictions in death penalty*

*cases were based solely on confessional statements probably extracted under torture or duress. Here is his story:*

“My name is Muhammad Zubair from the Federal Republic of Nigeria. I am a practicing lawyer and Lecturer in Law and now a post graduate student at the Human Rights Centre at the University of Essex, United Kingdom.

“I started my career ten years ago in 1998 as a Constitutional Law Lecturer at the College for Legal Studies Yola, Adamawa State. In November 2001 I joined the office of the Director Public Prosecution (DPP), Jigwa State as a Senior State Counsel. I was later posted to Hadejia Judicial Division - one of the six judicial divisions in the State.

“I have prosecuted several cases ranging from culpable homicide to armed robbery and got convictions and death sentences in most of them. All have one thing in common: a confessional statement that is alleged to be extracted by the police at the State Criminal Investigation Department.

“Once I started a case and sought to tender the confessional statement of the accused incriminating him before the court, it was challenged under duress. The court then ordered for a trial within a trial to ascertain whether the statement was made voluntarily or otherwise. The accused person has nobody to testify in his favour but himself and fellow suspects who may be in a cell with him. But who would believe a criminal?

“We invited the investigating police officer to come and testify whether he tortured the accused person during the investigation. We then went further to request for his superior to come and corroborate his statement. The superior said that he then asked the accused whether he was forced, tortured or intimidated to make the statement. The accused then said no and signed or thumb printed the statement in his presence. It is now the word of the police against the word of the accused person.

“I can still remember a case where the court decided in my favour and convicted the accused persons on the first day of their arraignment before any evidence was adduced before the court. The accused persons were nine and I filed a charge of armed robbery against them. They were brought to court in chains and hand-cuffs and a lawyer as an *amicus curiae* requested the court to unchain them as it contravenes their right to freedom from torture, inhuman and degrading treatment and negates the right to presumption of innocence. The judge became furious, saying to the lawyer in English (which the accused person didn't understand) “*you don't know them that is why you are pleading on their behalf, if these are unchained none of us here would be safe*”. These men were later convicted to death and are now waiting for the hangman in one of Nigeria's prisons.

“After three years of practice in the DPPs office, I started asking myself several questions - What if the story about the police torture is true? Can every accused person in Nigeria be so sincere to simply tell the police that yes I am an armed robber or a murderer but cannot be sincere enough to maintain that status in the court? What if his appeals did not succeed? What if he is executed wouldn't I be guilty of his death? Can I ever forgive myself if I got one single person wrongly sentenced to death or even executed?

“I became very worried about the plight of these accused persons who are mostly very poor and cannot afford the services of a legal practitioner and have to resort to the one and only legal aid counsel in the state. This legal aid counsel can only be in one judicial division in a day because of the distance between the divisions and has no personal or official vehicle but has to

resort to the use of a commercial vehicle to attend the court.

“I therefore decided to quit in September 2004 and went back to my previous job as a Lecturer in Law at the Kano State Polytechnic teaching constitutional and administrative law. I also started legal practice providing pro bono services to indigent accused persons. I also train defence lawyers, prosecutors and Sharia court judges on integrating human rights norms in their respective practices.

**Sam Millsap, (USA)**

*Mr Millsap was a prosecutor in Bektar, Texas, from 1982-1987. He is the only former elected District Attorney in America who has prosecuted capital murder cases and has taken personal responsibility for the execution of a man, Ruben Cantu, who may have been innocent. He has since campaigned against the death penalty in the US. He said:*

“Let me say first of all what a privilege it is for me to have the opportunity to address this very important issue at such a critical time for the United Nations. I come from Texas and Texas is a place where 12 people will be executed in the next 6 weeks, and I want to talk with you briefly about what’s wrong with the death penalty from my perspective as a person who has not only worked as a prosecutor but as a person who has been responsible for the prosecution of death penalty cases.

“In recent years I have become an outspoken opponent of the death penalty because of my personal experiences prosecuting those cases and I am today, to my knowledge, the only former elected District Attorney in America who has accepted personal responsibility for the execution of someone who may have been innocent. I am confident that there are others, and I believe fervently that prosecutors whose best efforts have produced unfortunate results in death penalty cases have a personal and moral duty to accept responsibility for their mistakes.

“Based on my personal experience as an elected major metropolitan prosecutor I am certain that the American criminal justice system is simply not competent to decide who may live and who must die.

“You know there is a tendency for people to think of Americans as people who sort of move together, that Americans are either good or bad and that we think alike, but that is really not the case and there is no issue in which it is more clear than that of the death penalty. In one half of the states in the US today executions simply do not occur. It is illegal in 13 states to impose the death penalty. In another 12-13 there have been no executions in the last 30 years. Almost all the executions take place in 11 states.

“The state that executes more defendants than any other is my state, the state of Texas. More than 40% of all executions that have been carried out in the last 11 years have been carried out in the state of Texas.

“The first and most important reason why the death penalty has to be abolished is because its application is inherently arbitrary and capricious. We have 50 different legal systems [in the USA]. They do not all permit the death penalty. Last year the state of Texas took the unique step of actually broadening its death penalty to include additional offences while the state of New Mexico, which is right next to Texas, was in the process of abolishing the death penalty. And that’s why I say it is arbitrary in its application. Whether you get prosecuted for a capital offence like murder in the United States is dependant on where you commit the crime.

“The second thing that is important for people to understand is that mistakes are made. And the reason why I am here is not because I did something great but because I made a mistake. And I can tell you that judges and prosecutors and juries and police officers in the United States who are dedicated and who are doing the very best job that they can do each day make mistakes on their very best days.

“I prosecuted Rubin Cantu in 1985. Rubin Cantu probably received what in America would be considered to be a perfect trial. He had a fine defence lawyer. He had a fine prosecutor. He had a terrific judge and the jury did the only thing that they could do in that case. They found him guilty just as we asked them to and he was sentenced to die and was ultimately executed.

“Twenty years later the star witness in that case recanted his testimony and did so under circumstances that made his recantation very credible. So today there is a serious question as to whether or not Ruben Cantu was innocent or not. I had the power, as all prosecutors or most prosecutors do in America, of seeking the death penalty on the basis of the testimony of a single eye witness and that is what I did in the Cantu case. It was a horrible mistake because there was no physical evidence that attached him or connected him in any way to the crime, and once my star witness recanted what I was confronted with at a personal level is that I may be responsible for the execution of an innocent man.

“The final point I want to make and the central argument in favour of the death penalty, and it doesn’t matter if you are talking about Jordan or the United States, is that it deters. It does not deter. If you go state by state in the United States and ask where the homicide rate is highest, the answer is that the homicide rate is highest in those states in the US where the death penalty is permitted. In the states where the death penalty is not permitted the homicide rate is actually lower.

“I would love to be able to tell you that there will be a day when there will be a formal abolition of the death penalty. I fear that that will not occur but what I can tell you is that public support for the death penalty is dropping. In 2006 for example the number of death sentences imposed in the US was dramatically down and the number of executions was significantly lower than it had been 10 years ago.

“And so the death penalty is in the process I believe in the US of being abolished at least informally. The reason I tell you that is because what we have done in the US, even though the death penalty is permitted in at least 37 states, is that we have made it very expensive to execute a human being. In cities and counties the cost of executing a human being in the US is absolutely staggering and it will bust the budgets of most governments eventually.

“One of the most compelling arguments in the United States is that it actually costs less to imprison a human being for the remainder of his or her natural life than it does to take that very same person through all of the processes and through all of the requirements that have to be satisfied before he or she can be executed.

“It’s a great privilege to be here. Thank you so much.”

## **Conclusion**

These testimonies demonstrate once more how unreliable the evidence can be on which death row inmates are convicted. Two of the panellists are still haunted by the conviction that the men they helped being sentenced to death may in fact be innocent. They underlined that often the sole evidence in death penalty cases is the ‘confession’ of the accused, apparently

frequently extracted through coercion, ill-treatment or torture. The panellists stressed what is also one of Amnesty International's key findings: that those sentenced to death are often poor and cannot afford the services of lawyers to defend them properly. They stressed that mistakes in death penalty cases are made even in the most developed legal systems.

Some panellists informed about the debates about the death penalty in their country or region: coalitions against the death penalty are being formed, for example, in Arab countries. Two panellists emphasized conclusions reached by academics, the United Nations itself and Amnesty International: that there is no evidence demonstrating that the death penalty has a deterrent effect. According to the former US prosecutor, for example, the homicide rate is believed to be highest in those states in the USA that retain the death penalty.

Last year's resolution calling for a moratorium on executions received the endorsement of 104 states and nearly 90 states co-sponsored resolution 62/149.

Bearing in mind that 10 December 2008 marks the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights,

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

- To reaffirm resolution 62/149: moratorium on the use of the death penalty;
- To welcome the report of the UN Secretary-General on moratoriums on the use of the death penalty, which confirms that the solid and long-standing trend towards global abolition of the death penalty continues;
- To call on retentionist states to respect international standards on the protection of the rights of those facing the death penalty and to establish a moratorium on executions;
- To request the UN Secretary-General to report on the implementation of General Assembly resolutions calling for a moratorium on executions at its sixty-fifth session;
- To fully support the call for a global moratorium on executions by voting for the resolution on this issue at the sixty-third session of the General Assembly, in the Third Committee and in plenary, and for all states that co-sponsored resolution 62/149 and all states that no longer carry out executions to co-sponsor the resolution on moratorium on the death penalty presented at the Assembly's sixty-third session.