

**Mothers Against the Death Penalty and Torture (Uzbekistan)
Office for Human Rights and the Rule of Law (Uzbekistan)**

**PROBLEMS RELATED TO THE DEATH PENALTY AND THE USE OF TORTURE
IN UZBEKISTAN**

Report by the NGO "Mothers Against the Death Penalty and Torture" and the Office for Human Rights and the Rule of Law (Uzbekistan) to be presented at the December (2008) UPR session of the United Nations Human Rights Council

Summary: The report refers to articles 2, 5, 7 and 10 of the International Covenant on Civil and Political Rights as well as on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and shows how these provisions are reflected in the national legislation of Uzbekistan and how they are being implemented in practice. The report notes that in spite of the legislative abolition of the death penalty there are still many problems relating to death sentences and the use of torture on prisoners detained but not yet convicted.

Keywords: death penalty, torture, places of detention.

1. This report examines how Uzbekistan respects the human right to life, freedom and inviolability as well as the prohibition of the use of torture and other types of cruel, inhuman or degrading treatment and punishment as enshrined in the Universal Declaration of Human Rights (articles 5, 8 and 11) as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Both of these international documents were ratified by Uzbekistan. The country's national legislation, as a whole, follows the principles laid out in these documents. Articles 24 and 25 of the Constitution of the Republic of Uzbekistan, for example, enshrine the human right to life, freedom and inviolability. Article 26 states that no one shall be subject to torture, violence, other cruel or degrading treatment. In practice, from the very beginning of Uzbekistan's acquisition of independence, these Constitutional provisions have been systematically violated.

I. Torture

2. Local and international nongovernmental organizations in Uzbekistan have consistently raised the issue of the use of torture in our country. Consequently, the visit of the UN Special Rapporteur against Torture, Theo van Boven, to Uzbekistan was organized in November 2002. In March 2002 Mr. Van Boven presented a report in which he concluded that the use of torture in Uzbekistan was systematic and widespread.¹ This report also contains 22 crucial recommendations for the government of Uzbekistan. To date most of these recommendations have either not been implemented or have been implemented partially. The practice of torture has never publicly been condemned by the authorities and the accepted definition of torture in article 235 of the Penal Code does not fully correspond with the definition in article 1 of the Convention against Torture. This article of the Penal Code has an ambiguous formulation and, in spite of numerous requests by local and international NGOs, article 235 of the Penal Code has not been amended or expanded. This was noted by the CAT in the examination of Uzbekistan's State Report in 2007 at the 39th session and was highlighted in the

¹ The report of the UN Special Rapporteur against Torture, Theo van Boven, was presented in accordance with Resolution 2002.38 of the Committee against Torture

recommendations. The Committee against Torture expressed its concern about the routine use of torture and other types of cruel, inhuman treatment and punishment.²

3. We can see evidence of the continuing practice of torture in the example of **four young men who were unlawfully sentenced** and who were subjected to cruel torture in 2004 after being arrested: they were beaten, electrocuted, tortured with gas masks. (More detail in Appendix 1). Further, a **young man** together with 9 of his relatives, was also cruelly tortured after his arrest in 2005. A further example involves **a person who was arbitrarily detained by policemen** and whose doctors' diagnosis confirmed torture by a group of policemen: "6 hematomas on the head, numerous hematomas on the body, internal brain hemorrhage, two red marks from electrocution near the neck". (In more detail in Appendix 1).

4. Unjust death sentences were often combined with torture. Torture is a means to force a suspect to admit murder when police authorities are incapable of finding the real perpetrators or have committed these crimes themselves (cf. Appendix 2).

II. Abolition of the Death Penalty

5. Legislation with respect to the death penalty has undergone improvements over the last few years. Whilst the Penal Code of the Republic of Uzbekistan adopted on September 22, 1994 contained 13 instances in which the death penalty could be passed, there are now only two types of crimes punishable by death - terrorism (article 155 of the Penal Code) and murder (article 97 of the Penal Code).

6. Under to the Presidential Decree of May 1, 2005, the death penalty in the Republic of Uzbekistan was abolished with effect from January 1, 2008. However, in the period of more than two years after the adoption of the Decree, no moratorium has been introduced. The law on the abolition of the death penalty adopted on June 29, 2007 does not provide that anyone who was sentenced before January 1, 2008 will not be executed.

7. But there are still problems in relation to sentences already executed. Information about the death penalty is a de facto state secret and because of this it is impossible to obtain data about the number of sentences issued, the number of people awaiting the implementation of punishment and the places of interment. Relatives of persons shot to death in Uzbekistan were unable to say goodbye to the condemned since last meetings were not permitted by law. Until today many do not know the date of death of their relatives and cannot visit their graves because the place of interment is not published and is a state secret. In his report in March 2003, the Special Rapporteur, Theo van Boven, recommended: "...relatives of those sentenced to death have to be treated humanely so as to avoid causing them unnecessary suffering due to the secrecy and ambiguity surrounding the cases for which the death penalty is given..." In spite of these recommendations, no, if any information surrounding the death penalty is given. In addition, even the current law does not provide for access of places of interment of those executed in Uzbekistan or the notification of all relatives of those sentenced to death about the date of execution. Many still do not know what has happened to their relatives and when they were executed. This approach should be considered inhuman and there are many of these examples in Uzbekistan. (Appendix 3).

8. The law on the abolition of the death penalty ("On the introduction of amendments and additions to some legislative acts of the Republic of Uzbekistan in relation to the abolition of the death penalty" adopted in 2007) in itself has a clearly progressive tone. But legal enforcement commentaries of this law have contradictions. The section dealing with life sentences, for example, has a series of mutually opposing provisions that leave room for interpretation to judicial authorities.

² According to information from the website: www.globalsecurity.org/military/library/news/2007/11/mil-071124-rferl02.htm dated June 13, 2008

9. The law does not clearly prescribe the instances when a life sentence is issued since according to commentary on the law, **punishment in the form of a life sentence is given at the discretion of a court of law** after considering the personal characteristics of the defendant.

10. The section about the submission of an application for clemency states that the punishment of a prisoner condemned to life in prison, if given clemency, will be changed to long-term imprisonment (25 years). This provision does not consider the age of the condemned. The average life expectancy in Uzbekistan is 59.9 years. If a person condemned to life in prison were 55 years old on the day of clemency and reduction of the term of punishment, then this person would actually be freed after reaching 80. But there are slim chances of this person surviving to this age. In prisons of Uzbekistan, especially in Zhaslyk, on the Ustyurt plateau, people do not live that long.

III. Re-examination of sentences in relation to those sentenced to death:

11. After the Law on the abolition of the death penalty came into force, the Supreme Court of Uzbekistan started to re-examine previously issued death sentences. However, this procedure was surrounded by an inexplicable curtain of secrecy. Although the legal application of this law was adopted by the Plenum of the Supreme Court of November 14, 2007, it was published only at the end of May 2008, five months after the law came into force. Because of this legal interpretations were inaccessible to lawyers, members of the public and their relatives.

12. Relatives, lawyers and even those being sentenced were not informed about the date of re-examination of life sentences. Those sentenced to death got to know about the change of their sentence only when they were transferred to another prison. The re-examination of sentences itself was carried out without the presence of defense lawyers. **To date neither lawyers nor the relatives of those sentenced have received the decision to change the sentence of those sentenced to death.** Not knowing the date of re-examination and the decision of the Supreme Court, neither the lawyers nor those sentenced nor their relatives had the chance to appeal the rulings in time within the period established by law (10 days from the time the ruling was issued) and have the sentence changed. Consequently, the application for clemency under the new law can be submitted only after 20-25 years.

13. In light of the above, there is an acute need for monitoring how the law on the abolition of the death penalty is being realized and our organization intends to carry this out.

IV. Implementation of the UN recommendations on individual cases

14. In his speech Theo van Boven mentioned instances when specific persons were subjected to torture. Recommendations were given on their cases in the form of a reduction of sentence, payment of reparations for torture and the granting of access to places of interment if a person had been executed.

15. The UN Committee on Human Rights examined cases involving 17 persons based on individual complaints submitted. Recommendations were given on each complaint but they are yet to be implemented. In particular, relatives have not yet been given access to places of interment and reparations have not yet been paid. Loved ones have also not been recognized as victims by state authorities. Relatives do not receive social insurance payments for the loss of the breadwinner although many of those shot to death have children under the age of 18 and elderly parents.

16. Those who remain alive and are in places of detention have not been given lesser sentences or have not had their sentences re-examined or have not been paid reparations for torture.

V. Conditions of detention in prisons and Prison Settlements (PS or Russian acronym - KIN)⁴

17. Prison's facilities in Uzbekistan may be characterized as having inhumane conditions of detention. Although imprisonment in itself is a cruel punishment, prisoners in prisons are stripped of all rights. They do not have access to medicine. Photo X-rays of lungs prescribed by health authorities once every six months are not carried out. The majority of prisoners suffer from various kinds of tuberculosis. Insufficient, meager diet without fats and severe climatic conditions worsen the already poor health of prisoners. The conditions at specific prisons are described below.

18. **UYa/64 KIN 33, KIN 49 and KIN 54 – Karshi** (*maximum security and minimum security prison's facilities*): There is insufficient food, no access to medicine, no drinking water (prisoners drink salty water from a water pipe). Most prisoners are sick: there are various forms of tuberculosis, many patients with AIDS and HIV are not provided with fortified diet, nor do they receive additional fats or special preparations.

19. **UYa/64 KIN-38 - camp/town of Buka, Tashkent oblast**, (*camps/towns designated for prisoners spending their last year or two of imprisonment before being set free are considered the lightest form of imprisonment*): There is no access to medicine. Prisoners are not given breakfast. At 7 am prisoners are driven to work on a cart that is chained to a tractor and that is unfit for transporting people. The work day lasts 12-13 hours. If a place is far from the location of the camp/town, then lunch is not given. Salaries are not paid so prisoners who have no relatives starve. Prisoners are placed in lockup even for small violations.

20. Examples³: A prisoner working at the personal dacha of the director of UYa/64 KIN 38 as a stoker suffered from carbon monoxide poisoning and died but no one was punished for the prisoner's death. In 2007 a prisoner for whom hard labor was categorically contraindicated due to a severe case of tuberculosis suffered bleeding in his lungs as he was working and only afterwards was he brought to hospital in Buka. In the same year the director of UYa/64 KIN-38 severely beat a prisoner who was to be freed in 3-4 months after having served his time. After the beating, the prisoner was brought to hospital where he never recovered consciousness and died.

21. **UYa/64 MZhIEM -71 "Maxsus Izhro Etish Muassasi", Zhaslyk**. (*Special Treatment Penal Correction Facility No. 71 – Zhaslyk*): Unfortunately, it needs to be noted that after the re-examination of sentences, persons who had previously been sentenced to death were transferred to the new prison in Zhaslyk, built on territory adjacent to the then already existing Special Treatment Penal Correction Facility. Cruel conditions of detention and the very climate in this ecological disaster zone turned the detention into a long and harrowing torture... This camp is located on the Ustyurt plateau, in the Kara-Kalpak mountains, Kungradsky region, which was a chemical weapons testing ground during Soviet times. The UN Special Rapporteur against Torture specifically recommended the closure of this camp, which more closely resembles a prison (in terms of detainment), because there are up to ten - twelve prisoners per room there. Prisoners are prohibited from speaking to each other. Walks are allowed once a day for one hour. The food is horrible. Instead of grit they use the seeds of brooms to feed prisoners. Tuberculosis patients do not receive additional fats or sufficient nutrition. Water provided for drinking is salty and is inadequate. There are unsanitary conditions during bathing days when the heads and beards of up to 10 - 20 prisoners are shaved with one blade and the blade is washed in a pail of dirty water. There is no access to medicine. Photo X-rays of the lungs are not made. Prison authorities have recently refused to receive medicine from relatives to be passed on to prisoners. Many are sick of a severe form of tuberculosis. According to this facility's regulations, special treatment penal correction facilities are intended for highly dangerous habitual offenders who pose a danger to society to serve their sentence. Maximum

³ For reasons of security, names and dates are not mentioned.

⁴ Prison settlements are divided into special treatment, maximum security, minimum security and camp/towns (least strict security)

and minimum security prison facilities do not provide for the confinement of prisoners in prison cells.

VI. Recommendations:

1. Allow members of the public to visit all places of confinement, especially KIN UYa/64 MZhIEM-71 (Zhaslyk).
2. Improve the law on life imprisonment in terms of its application and clemency.
3. Work out a mechanism and formalize it in law upon implementation of recommendations of the UN Human Rights Committee with respect to individual complaints under consideration. Implement UN recommendations - reduce sentences and pay reparations for torture.
4. Open access to places of interment of persons executed in Uzbekistan.
5. Provide prisoners with access to lawyers and ensure their right of defense.
6. Improve the confinement of prisoners in places of detention: ensure a decent diet, access to medicine, and institute criminal proceedings against prison workers who have carried out torture and violence.
7. Institute criminal proceedings for the use of torture that has led to a person's death and classify torture as an attempt to take a person's life or premeditated murder.
8. Introduce amendments into criminal legislation, incorporating medical examination by a private doctor as evidence of torture during preliminary investigation relating to a suspect or defendant.
9. Upon receipt of complaints against the use of torture, have independent authorities and members of the public carry out an immediate investigation into the facts involving the use of torture
10. Immediately invite the UN Special Rapporteur against Torture to inspect how the UN recommendations are being implemented.

APPENDICES:

Appendix 1. Examples of the use of torture:

Botir Klimentyevich Saparov (1977) arrested on April 1, 2004, his acquaintances were also arrested with him: **D. Chintashev (1984), B. Muminov (1972), X. Gylyamov (1977)** on charges of murder (art. 97 clause 2), terrorism (art. 155, clause 3 and 6 more articles of the Penal Code of the Republic of Uzbekistan). After being arrested all of them were subjected to cruel torture: beatings, electrocution, torture with gas masks, etc. But in court all four persons denied the testimonies given under torture since they were innocent and denied the charges laid against them. The court disregarded the statements of the defendants. In addition, there was no proof of their guilt in the charges brought against them. There is no object of crime, no evidence of premeditation to commit crimes. In court there were no prosecution witnesses apart from law enforcement officers who, relying on fabrications without any basis of proof, gave false testimony against the defendants. The court delivered a judgment only based on confessions made under torture. The suspects were never provided with a lawyer during the investigation and the prosecutor prohibited lawyers hired by relatives from participating in the investigation. The defendants who were slandered by the law enforcement officers received sentence of 15 - 16 years of imprisonment and were sent to serve their sentence in UYa/64 MZhiEM-71 (Special Treatment Penal Correction Facility No. 71 - Zhaslyk) although each person's sentence stated that each is to serve his sentence in a minimum security prison settlement.

Elmurod Xojimatovich Almatov (1984) was sentenced to death on June 28, 2005. Before being indicted he was detained and was tortured at a temporary detention facility of the Police Headquarters of Tashkent. Nine other persons were detained with him (his brothers and cousins, three of whom were minors). The minors were released after three days, all beaten up and in a state of psychological shock. The remaining persons were beaten and tortured for nine days. After E. Almatov was indicted, his brothers were released. Three of these were afterwards hospitalized with various degrees of trauma.

The basis for the accusation was a droplet of blood found on a telephone from the scene of the crime whose blood group coincided with the blood group of E. Almatov. But the time the crime was committed is yet to be established. There is no instrument of crime and the charge laid was not confirmed by irrefutable evidence. The entire evidence is based on confessions made under torture to which not only E. Almatov's testimony in court bore witness but also the examination report upon his arrival at UYa 64/IZ-1 (Tashkent prison) on December 30, 2004, which described physical injuries 12 days after his arrest.

Baxodir Muxsimov was detained on November 28, 2005 by officers of the Department of Internal Affairs of Parkentsky region, Tashkent oblast. According to words of the physician on duty, Xakim Adburaimov, on November 28, 2005 at 5 in the evening four policemen brought B. Muxsimov to hospital with a bloody face. Baxodir Muxsimov was pleading with the policemen: "let me go, I will go home", but, in spite of this, he was again forced into a car and brought to the Department of Internal Affairs of Parkentsky region, Tashkent oblast. Early in the morning of November 29, 2005 B. Muxsimov was again brought to the hospital by policemen but already in an unconscious state. B. Muxsimov was placed in the intensive care unit after an X-ray of the head and examination of a doctor named Ugulbek who made the following diagnosis: "6 places of hematoma on the head, many on the body, internal brain hemorrhage, two red spots from electrocution near the neck". On December 1, 2005 B. Muxsimov died from heart failure. Vali Dustmatov, a worker of the Department of Internal Affairs of Parkentsky region, who was present at the time of detention and confinement at the Department of B. Muxsimov, in response to the question of the wife on why her husband was beaten, said: "...and what can you do to us?" Authorities refused to initiate criminal proceedings on the death of the detained Muxsimov in spite of the numerous requests filed with the General Prosecutor of Uzbekistan.

In **April 2008** a young man, a Kazakh, was arrested by officers of the Bostanlyksky police precinct of the city of Tashkent (Tashkent oblast) for suspicion of committing a crime. After several days this young man died from torture.

Over the last three years there have been three instances of death from torture in the Bostanlyksky police precinct of the city of Gazalkent (Tashkent oblast).³

Torture and the absence of access to medical assistance during the investigation and in prisons - death of persons under investigation and convicts:

Shavkatzhon Kamilzhonovich Madumarov (1977) died one day after being sentenced on September 14, 2005. Sh. Madumarov was **arrested on February 16, 2005**. After his arrest he was beaten and tortured at the National Security Council of the Republic of Uzbekistan. During his stay at the Tashkent prison, Madumarov was given unknown injections after which his health sharply worsened and he suffered from high temperature.

In violation of the law, the court did not single out in separate proceedings the case involving the dying Sh. Madumarov and, causing him physical and moral suffering, conducted the court proceedings on the territory of the Tashkent prison. Sh. Madumarov was brought to the courtroom on a stretcher and tied to a chair to prevent him from falling. He could not speak and asked only for something to drink. But the judges, ignoring the condition of Madumarov, continued the court process. On September 12, 2005 he was sentenced to 5.5 years of imprisonment and on **September 14, 2005 he died**. The postmortem diagnosis of Sh. Madumarov: 3rd stage anemia, 4th stage AIDS.

To date the mother of Sh. Madumarov has not been recognized as a victim. No official investigation has been conducted on his death and the refusal of medical assistance to the dying Sh. Madumarov.

A. Buryachek (1976) gouged out both his eyes in order not to sign accusations fabricated against him. He declared his innocence in court and said that he was tortured. But the court, in spite of the complete blindness of Aleksei Buryachek, sentenced him to death on December 29, 2004.

A complaint about the unauthorized methods of investigation and the unlawful sentence with respect to A. Buryachek was registered as No. 1252/2004 with the UN Committee and the government stated its commitment not to implement his sentence. But during the entire time of his stay in death row he was refused medical assistance in spite of numerous applications for the provision of medical assistance because of his tuberculosis while in death row. Three days before he died A. Buryachek was transferred from death row to the hospital of Tashkent prison. **On March 1, 2006 Aleksei Buryachek died in Tashkent prison from a severe form of tuberculosis.**

Appendix 2. Materials related to the death penalty:

Unjust death sentences were often combined with torture.

On May 10, 2002 **Sherali Mamadievich Zhuraev (1983)** was sentenced to death by the Samarkand regional court.

On August 13, 2002 the panel of judges in charge of criminal cases at the Supreme Court reversed the sentence. On August 19, 2002 the Samarkand regional criminal court again sentenced him to death. On February 25, 2003 the Board of Appeals at the Zhizzakhsy regional criminal court upheld the sentence.

On May 20, 2003 the Presidium of the Supreme Court reversed the sentence and sent the case for re-examination to the Board of Appeals of the Zhizzakhsy regional court. On August 5, 2003 the Board of Appeals of the Zhizzakhsy court again sentenced Sherali Zhuraev to death.

A complaint against the unjust sentence and torture during the investigation was registered with the UN Committee on Human Rights on February 25, 2004.

During the investigation Sherali Zhuraev and his minor brother, Sherzod, were sodomized by policemen using a billiard stick. They were arrested with their brother and were tortured in order to obtain confessions of having committed murder. They were tortured by electrocution, beaten in the crotch between their legs. Water was poured over them and they were held naked in the cold. Even in court, which was unlawfully conducted in a closed session, they were beaten by officers of the regional police precinct of Samarkand.

After the abolition of the death penalty, on what did the Supreme Court of Uzbekistan base its ruling to sentence Sherali Zhuraev to life imprisonment?

Before his arrest Sherali Zhuraev was studying in college, did not drink or smoke, did not use drugs and was law-abiding. On the day of his arrest Sherali Zhuraev was 18 years old and his brother Sherzod was 15.

On the day of re-examination of his 6-year sentence Sherali Zhuraev was being cruelly tortured in death row.

Even after execution of the accused, relatives for years do not know what has happened with the person. Characteristic examples:

Naimzhon Bazarov was sentenced on June 11, 1999 by the Samarkand regional court to the exceptional measure of punishment - the death penalty. For more than three years the mother of Bazarov looked for him in prisons and only in January 2004 did she find out that her son, Naimzhon Bazarov, was executed on July 15, 2000 in Tashkent prison.

To date relatives have not received any notification or certificates about the death of the following: **Azizbek Karimov** who was sentenced on February 16, 2004; **Khamrai Yuldashevich Khalilaev** (born 1976) – sentenced to death on July 2, 1999; **Temurbek Yuldashevich Babazhanov** (born 1975) - sentenced to death on July 2, 1999; **Maxim Yurievich Strakhov** (1977) - sentenced on April 18, 2001 and many others whose death sentence was implemented.

Appendix 3. Those sentenced to death, even those for whom individual complaints were registered at the UN, did not have any guarantee that they will survive.

On February 19, 2004 **Akhrorkhuzha Akbarkhuzhaevich Talipkhuzhaev** (born 1980) was sentenced to death by the Military Court of the Republic of Uzbekistan.

On May 18, 2004 the Supreme Court of the Republic of Uzbekistan issued a protest and reversed the sentence. But on October 29, 2004 the Military Court of the Republic of Uzbekistan again sentenced A. Talipkhuzhaev to death, **basing its sentence on testimonies of defense lawyers who were subpoenaed and questioned by the prosecution. M. Seisinbaev and M. Kadyrov were the prior defense lawyers of Akhrorkhuzha Talipkhuzhaev in 1980.**

During the investigations A. Talipkhuzhaev was subjected to physical and moral violence. His ribs were broken and his head punctured. He had many injuries on his body and this was confirmed in the criminal case by Report No. 27/26 dated December 12, 2003 of the Director of the Temporary Detention Facility of the Ministry of Internal Affairs of Tashkent, Police Lieutenant Colonel R. R. Arutyunan. An individual complaint in relation to the torture and unlawful death sentence of A. Talipkhuzhaev was registered as No. 1280/2004 with the UN Committee on May 6, 2004 and **the Supreme Court of the Republic of Uzbekistan gave its commitment not to implement the sentence in accordance with Rule 92 of the procedure of the UN Committee.**

In violation of these obligations of the Supreme Court of Uzbekistan **A. Talipkhuzhaev was shot on March 1, 2005.**