



## International Covenant on Civil and Political Rights

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### Human Rights Committee

117th session

#### Summary record of the 3271st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 22 June 2016, at 3 p.m.

*Chair:* Mr. Salvioli

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Kazakhstan (CCPR/C/KAZ/2; CCPR/C/KAZ/Q/2 and Add.1)*

1. *At the invitation of the Chair, the delegation of Kazakhstan took places at the Committee table.*
2. **Ms. Azimova** (Kazakhstan), introducing her country's second periodic report (CCPR/C/KAZ/2), said that it had been prepared in a transparent and inclusive fashion, in consultation with all relevant stakeholders. The Government of Kazakhstan had adopted a plan entitled "The 100 Concrete Steps", which set out reforms designed to shape a modern, competent and effective civil service, establish the rule of law, achieve industrialization and economic growth, unify the nation and ensure transparency and accountability. The Government reported annually to the nation on issues relating to constitutional rights and the public interest.
3. Turnout at recent national elections had been high. In 2015, a law on public councils and access to information had been adopted, which focused on the involvement of the public in the decision-making process and the strengthening of the accountability of public bodies. In total, 70 per cent of public information was available online, along with national legislation and international instruments. Bills were only adopted following consultation with the public councils. More than 500 different public services had been grouped together under the same government body in the interests of transparency. Citizens could freely take part in peaceful assemblies, which were regulated by local authorities. A State commission on land issues had been set up, with the involvement of civil society.
4. Under a law on self-governance adopted in 2015, citizens could participate in the decision-making process through self-regulatory bodies and local authorities. There were plans to devolve non-State functions to self-governing bodies. Greater support had been provided to non-governmental organizations (NGOs) and tripartite cooperation was being developed in the field of employment. The Government had worked with the social partners to overhaul national labour legislation and was strengthening human rights mechanisms, including through the introduction of the "Ombudsman Plus" model and the creation of ombudsmen for children, banking, insurance, the rights of entrepreneurs and investment.
5. A new Code of Civil Procedure had recently entered into force, providing for constitutional guarantees on the primacy of ratified international agreements and their direct implementation by the courts. Members of the public could lodge complaints online and audio and video equipment had been installed in 83 per cent of courtrooms. A code of judicial ethics had been developed and a Supreme Court council of national and international experts was working to improve the judicial system and legislation on its functioning. The courts had been mandated to sanction actions that might restrict citizens' rights.
6. **There was zero tolerance for torture.** The Government provided support to the national preventive mechanism. Allegations of torture and other unlawful acts by law enforcement officials were investigated by the Special Procurator and judgments had recently been issued relating to two such cases. **A new bill on torture was currently before Parliament. Measures were being taken to strengthen mechanisms for the lodging of complaints relating to the acts and omissions of executive and law enforcement bodies.** More police officers had been recruited. Work was ongoing to extend the use of non-custodial sentences. A project strengthening the probation service had been launched in conjunction with the European Union and Penal Reform International. Over the past five

years, the prison population index had fallen considerably. Progress had been made on the prevention of violence, in particular, offences of domestic violence, which were investigated by specialized police officials.

7. National legislation had been aligned with the Convention relating to the Status of Refugees. The migration service was introducing a visa-free regime designed to promote tourism and investment. There were 130 different ethnic groups and 18 religious confessions living peacefully together in Kazakhstan. The Congress of Leaders of World and Traditional Religions was recognized internationally as an important body in the field of religious, political and social dialogue. A plan to strengthen national identity and unity was currently being implemented. Recent attacks in Aktobe had highlighted the need to address the factors leading to terrorism.

8. Kazakhstan had already achieved the first three Millennium Development Goals relating, respectively, to the eradication of extreme poverty and hunger; the achievement of universal primary education; and the promotion of gender equality and the empowerment of women. Guarantees had been put in place with regard to high school-level education and free vocational training for all. A document on the implementation of a gender policy by 2030 was currently being prepared. Around 30 per cent of parliamentarians and 22 per cent of local councillors were women. The Government and the National Commission for Women's Affairs and Family and Demographic Policy were working to promote reproductive health and family values.

9. In line with its obligations arising from the Convention on the Rights of Persons with Disabilities, the Government had launched a plan to improve the quality of life of that section of the population. The promotion of inclusive education was a priority under the State Programme for the Development of Education and Science. Almost 45 per cent of all schools were equipped to cater for students with disabilities.

10. **Mr. Ben Achour** said that, according to article 4 (3) of the Constitution, "International treaties ratified by the Republic shall have priority over its laws and be directly implemented, except in cases when the application of an international treaty shall require the promulgation of a law." Under the Constitution, treaties that were directly implemented automatically acquired the force of a law and entered into the national legal framework. Any legislation contrary to those instruments should be amended accordingly. He asked under what circumstances the implementation of a ratified treaty depended on the promulgation of a specific law. Such an arrangement would seem to give too much discretionary power to the executive branch of Government with regard to the fulfilment of the country's international obligations.

11. A number of NGOs had claimed that the provisions of the Constitution on the primacy of international standards over national legislation only had declaratory effect and that the courts rarely applied or referred to the provisions of the Covenant. In paragraph 1 of its replies to the list of issues (CCPR/C/KAZ/Q/2/Add.1), the State party observed that reference had been made to the Covenant in a court decision only once, whereas in paragraph 10 of its second periodic report it stated that the decisions of local courts contained references to international instruments, including the Covenant and that such references were included in the prison sentences handed down and in rulings on trafficking in persons and minors and on many other matters. He asked for clarification of that apparent contradiction and for examples of cases in which the national courts had referred to the provisions of the Covenant.

12. Turning to paragraph 6 of the replies to the list of issues, he asked how the State party ensured the effectiveness of the visits by Chinese and Kyrgyz diplomatic representatives in Kazakhstan to places of detention to monitor the state of health and conditions of detention of, respectively, Mr. Israil (communication No. 2024/2011 (*Israil v.*

*Kazakhstan*) and Mr. Valetov (communication No. 2104/2011 (*Valetov v. Kazakhstan*)). He asked whether measures had been taken to provide Mr. Israil and Mr. Valetov with an effective remedy, including adequate compensation, in accordance with the Committee's Views.

13. As to communication No. 2137/2012 (*Toregozhina v. Kazakhstan*), the position set out by the State party in paragraph 7 of the replies to the list of issues — to the effect that the case had, to all intents and purposes, been resolved because Ms. Toregozhina's claim for damages in civil proceedings had been dismissed as a consequence of a judgment of 16 March 2010 finding her guilty of holding an unauthorized rally and because she had paid the corresponding administrative fine — seemed indefensible. The Committee had expressed the view that the restrictions imposed by the State party on the exercise of the freedom of assembly and of expression disclosed violations by Kazakhstan of the author's rights under articles 9, 19 and 21 of the Covenant. The judgment of 16 March 2010 referred to by the State party constituted one of the restrictions denounced and deemed to be contrary to the Covenant by the Committee and contravened the principle of the primacy of international treaties over national legislation contained in article 4 (3) of the Constitution. In the light of the foregoing, the Government might wish to review its stance with regard to communication No. 2137/2012.

14. No information had been provided on the establishment of the Ombudsman and its limited mandate and financial and human resources. He asked what measures had been taken to implement the 2012 recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights relating to the fact that the Ombudsman could not rule on the decisions of a number of national political, judicial and electoral entities and to improve the status granted to the Ombudsman by the Sub-Committee on Accreditation. The State party was to be congratulated on the introduction of the "Ombudsman Plus" model.

15. The Government might wish to consider giving all citizens whose constitutional rights had been violated the right to appeal directly to the Constitutional Court.

16. **Mr. Iwasawa** said that the reply to the questions raised in paragraph 3 of the list of issues indicated that anti-discrimination clauses were contained in "relevant laws". There was therefore no particular legislation or jurisprudence on discrimination in Kazakhstan. He would like to know whether the Government intended to reform its legislation to protect women from discrimination, whether it viewed protection against hate-based crime as an obligation, and whether there existed a legal framework for protecting members of the lesbian, gay, bisexual and transgender (LGBT) community from discrimination and violence against them. The Committee disagreed with the statement, also contained in the reply, that establishing an exhaustive list of prohibited grounds for discrimination would have a limiting effect. Such a list should be inclusive rather than exhaustive.

17. With respect to the reply to issue 4 of the list of issues, he said that the Committee welcomed measures to protect the rights of persons with disabilities. According to independent sources, however, there was limited access to inclusive education for children with disabilities, staff were undertrained and facilities were inadequate.

18. Sources had also reported that acts of discrimination against the LGBT community were common, and that homophobic and biased views were expressed in the media. In addition, harsh retraining measures consisted in 30 days of involuntary institutionalization in a psychiatric ward and forced sterilization. He would like to know what measures the Government envisaged to end such attitudes and practices.

19. He asked whether the delegation could confirm the assertion made in paragraph 22 of the replies that over half a million educational and awareness-raising events and 15

million broadcasts had been devoted to combating discrimination against persons with HIV/AIDS over a five-year period. Those figures seemed unrealistic.

20. Turning to paragraphs 23 to 27 of the replies, he noted the State party's efforts to attain equality between men and women, in particular, the goal that 30 per cent of the country's leaders and decision-makers should be women. According to civil society sources, however, progress was slow and limited. What more could be done? He would also like to know what measures the Government had contemplated taking to narrow the gender gap.

21. **Ms. Seibert-Fohr**, referring to the reply to issue 6 of the list of issues, noted with satisfaction that penalties had been increased for crimes of violence against women. She would like to know, however, what mechanisms existed to encourage women to report cases of sexual violence, including domestic violence, and whether such crimes were investigated and prosecuted irrespective of the wishes of the victim. She wondered if it was appropriate to halt prosecutions when the parties reconciled. She would also like to know why the perpetrator was given free legal advice but not the victim. She asked whether, in the view of the Government, women victims of domestic violence should be sent to hospitals and homeless shelters because the crisis centres turned them away.

22. With regard to the reply concerning issue 13, she enquired whether the new Code of Criminal Procedure provided that the failure of a police officer to inform detainees of their rights and the reasons for their arrest was a procedural error, whether disciplinary measures were imposed as a result of that error, and what measures were taken to ensure that lawyers had access to their clients during pretrial detention. She enquired about the current status of the complaint proceedings brought in the case of Aydarbek Namazbaev, who had been held incommunicado and tortured.

23. More information would be appreciated on trials held in closed chambers in cases involving State secrets, including, in particular, a definition of the term "State secrets". How many trials of that kind had been conducted?

24. Turning to the reply concerning issue 14, she drew the delegation's attention to the Committee's new general comment No. 35 on article 9 entitled "Liberty and security of person", which stipulated that a detainee must be brought before a judge within 48 hours after arrest. Under Kazakh law, that time limit was 72 hours. She asked what disciplinary sanctions were imposed on officers who failed to comply with the 72-hour rule and whether the right to be brought before a judge applied solely to persons subject to pretrial detention. She would also like to know whether, in the view of the Government, it was appropriate to extend the length of detention for forensic and other investigations, and whether it was appropriate that the Procurator-General should have the power to extend the length of detention from 72 hours to 12 months. Statistics should be provided on the number of people held in pretrial detention, specifying how long they had been held there.

25. Lastly, she asked whether the "judicial investigators" mentioned in paragraph 117 of the replies were judges.

26. **Ms. Cleveland**, referring to the reply to issue 7 of the list of issues, said that concerns had been expressed about the breadth of the concepts of extremism and incitement of religious hatred or enmity. She asked what legal guidance was given to courts and law enforcement officials to clarify those concepts with a view to ensuring compliance with the principles of legal certainty and predictability and non-interference with protected actions and speech. Individuals had apparently been made subject to criminal prosecution on the grounds that they were members of an organization listed by the State party as an "illegal extremist organization", even though they had not committed any extremist action. She asked the delegation to explain the criteria for identifying an organization as "illegal extremist".

27. Thirty members of the Tablighi Jamaat Islamist Missionary Movement had been jailed between December 2014 and March 2016. She would like to know if all were Sunni Muslims, and what was the legal and factual basis for their arrest for extremist activities. She also asked how many closed criminal trials had been conducted involving cases of alleged extremism, and what measures were taken to ensure that they complied with international standards for a fair trial.

28. Turning to the replies relating to issue 11, she said that the Committee remained concerned by the high incidence of torture, the low rate of prosecution of perpetrators, the inadequate punishment of perpetrators, and the failure to provide full reparation to victims. While welcoming amendments to the definition of torture in Kazakh law, she observed that it was limited to acts committed by law enforcement officers or other persons acting at the instigation or with the acquiescence of law enforcement officers. Article 1 of the Convention against Torture gave a broader definition, as did article 7 of the International Covenant on Civil and Political Rights.

29. The focus on law enforcement personnel could lead to the misconception that torture only occurred during the investigation of crimes. Moreover, a note to article 146 of the new Criminal Code stated that physical or mental suffering resulting from the legitimate acts of civil servants was not recognized as torture under the law. She would like to know what legitimate acts causing physical or mental suffering were exempt from being considered acts of torture under the law, and what measures were envisaged for bringing Kazakh law into compliance with the definition of torture under international law.

30. She welcomed the increase in sanctions for torturers to a minimum of 5 and a maximum of 12 years. She enquired, however, whether there were different sentences for different degrees of harm. She observed that, while murder was punishable by a sentence of 15 years to life, the death of an injured person by negligence as a result of torture resulted in a sentence of 5 to 12 years. Clarifications should be provided on the significant difference between those penalties, and in particular with respect to the minimum terms of imprisonment.

31. Noting that the new Criminal Code contained an exemption allowing persons who had committed acts of torture that had not caused irreparable harm to the victim to seek reconciliation with the victim in order to provide compensation and thus avoid criminal prosecution, she enquired if that exemption had been invoked and in how many cases; how the amount of compensation was determined; whether the victim had the option of rejecting the compensation; and how the absence of a criminal penalty in such cases was commensurate with the nature and gravity of the crime.

32. With regard to the bill providing for the establishment of a victims' compensation fund that would give full compensation to victims of torture, she asked how "full compensation" would be established, whether the bill included a provision for rehabilitation, and whether it would also allow for civil remedies to be sought.

33. She was troubled that jurisdiction over the country's detention facilities had been transferred back from the Ministry of Justice to the Ministry of Internal Affairs. The Committee against Torture had expressed concern that placing control over places of detention in the hands of the same agency that was responsible for police and internal security created an incentive for abuse as a means to compel prisoners to confess and as a tool of the investigative process.

34. The Committee had received reports that the number of complaints of torture had increased significantly after the transfer. She asked whether the Government intended to return control to the Ministry of Justice, or would instead ensure that oversight was carried out by an agency that was independent of the police and internal security forces.

35. Turning to the reply to issue 12, she said that the Committee welcomed the establishment of the national preventive mechanism but had concerns about its independence and the scope of its authority. Would its mandate be extended to cover all places of detention and State-run residential institutions, and was it planned to ensure its independence, including by removing or limiting the supervisory jurisdiction of the Ombudsman?

36. It would also be useful to know whether the special procurators now had exclusive jurisdiction over investigations into torture claims, or if they continued to work with the alternative investigative jurisdiction scheme under which torture by the financial police was investigated by the criminal police, and vice versa. She enquired what measures had been contemplated to ensure that the special procurators carried out such investigations themselves and did not delegate that responsibility to law enforcement agencies acting under their supervision.

37. The Committee had learned that many claims of torture were dismissed at the outset owing to lack of evidence, that police officers were apparently exploiting provisions in the new Criminal Code that allowed them to delay the initiation of an investigation if the claim lacked factual detail, or to abandon it if the preliminary investigation revealed a lack of corroborating evidence. The Government should explain what standards of proof or credibility were applied when determining whether a criminal investigation should be pursued into an alleged act of torture or ill-treatment.

38. The Committee had also learned that claims of torture and ill-treatment could be held up in the investigating agency for many months, with no time limit for the conclusion of the investigation. What was the average length of such investigations? It would be useful to know if a time frame had been established.

39. The Committee had been informed that if a claim of torture or ill-treatment had been investigated and deemed unfounded, the prosecutor automatically opened criminal proceedings against the complainant for so-called “false reporting of a crime”. She would like to know what measures were taken to prevent the use of the charge of “false reporting of a crime” as a deterrent or punishment against alleged victims of torture or ill-treatment.

40. Finally, the Government should provide disaggregated data on the number of complaints of torture or ill-treatment received, the number of prosecutions carried out, the number of convictions secured, the type and length of sentences imposed, the number of victims and their families that received compensation, and the amount of compensation paid.

41. **Mr. Vardzelashvili** said he understood that Kazakhstan had introduced a moratorium on the death penalty. The Government had been asked whether it was moving towards full abolition, and it had replied that it was not; nor did it intend to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Media and other sources had suggested that a change in attitude towards the death penalty had occurred following the terrorist incidents in Aktobe. The replies to the list of issues stated, however, that Kazakhstan envisaged gradually narrowing the grounds for the imposition of the death penalty. Clarification would be welcome.

42. He wished to know whether under the new Criminal Code the grounds for the death penalty still encompassed such acts as premeditated murder, an attempt to kill the President or a member of the judiciary, or disobedience to a superior in times of war. In the view of the Government, did those grounds conform to the terms of the Covenant?

43. He would welcome a comment from the delegation on reports that the judge presiding over the trial of 37 persons accused of taking part in or organizing violence in

connection with street demonstrations had unjustifiably dismissed their complaints of torture or other ill-treatment. It would be interesting to know whether the law required investigation of complaints of torture, in particular when the persons alleged to have been the perpetrators were law enforcement officials. If so, were the allegations investigated by the very agencies whose members were the targets of the complaints?

44. He asked whether it was true that, as reports received by the Committee had noted, it was difficult for detainees to exercise their right to counsel. He wished to know what charges had formed the basis for the sentences currently being served by six former law enforcement officers for their role in the events in Zhanaozen in December 2011. The delegation should indicate whether the persons responsible for the death of A. Bozhenko had been prosecuted.

45. Additional information on suicide, such as the number of suicides committed in medical facilities, would be of interest to the Committee, as would a brief account of the steps being taken to lower the high rate of suicide in the State party, which, according to some reports, was higher than the official figure of 19 per 100,000 population. A more detailed description of the institutional measures that had led to a reduction of 35 per cent in the number of suicides by minors would be of particular interest. In the same connection, he wondered what was meant by the statement in paragraph 49 of the replies to the list of issues that in 2014, 33 persons “involved in criminal proceedings” had committed suicide. He also wondered whether investigations were automatically opened when detainees committed suicide. Lastly, he requested information on a number of cases in which prisoners had been found dead of apparent suicide.

46. **Mr. Shany** said that he would appreciate an update on the current status of the bill on the protection of children against information detrimental to their health and development, which evidently contained provisions penalizing the promotion of non-traditional sexual orientations among minors. He understood that the bill had been found unconstitutional and wondered whether it was due to be reintroduced. If so, what steps would be taken to ensure that it did not further stigmatize lesbian, gay, bisexual and transgender (LGBT) persons?

47. He asked whether the Kazakh authorities had taken any measures to implement the recommendation of the Committee on the Rights of the Child that Kazakhstan should fully eradicate the harmful practice of “bride kidnapping”. He invited the delegation to indicate whether the Government was of the view that the legal framework currently governing the practice was satisfactory and that the law enforcement efforts made to combat it were sufficiently determined.

*The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.*

48. **Mr. Sarsembayev** (Kazakhstan) said that all international instruments ratified by Kazakhstan became an integral part of domestic law. The only exception concerned instruments that themselves contained provisions requiring that an act should be adopted to incorporate the instrument in question into the domestic legal order. Article 78 of the Constitution recognized the right of the country’s courts to determine whether the application of laws or other regulations constituted an infringement of personal freedoms.

49. **Mr. Suindikov** (Kazakhstan) said that Arshidin Israil had been released. There was thus no longer any reason for Kazakhstan to monitor his situation, as the Committee had recommended in its Views on communication No. 2024/2011 (*Israil v. Kazakhstan*). Nikolai Valetov (communication No. 2104/2011 (*Valetov v. Kazakhstan*)) was detained in Kyrgyzstan. In keeping with the Views adopted by the Committee in connection with the case, he had been visited by the Kazakh authorities three times in the past six months. However, more needed to be done to implement the Views of the Committee in connection with communication No. 2137/2012 (*Toregozhina v. Kazakhstan*). The Office of the



Procurator-General had an inter-agency working group that had been given a mandate to study ways of acting on the recommendations made in such cases as those involving Mr. Israil, Mr. Valetov and Ms. Toregozhina.

50. **Ms. Agybayeva** (Kazakhstan) said that it was not uncommon for the courts in Kazakhstan to refer to the Covenant in their rulings. She mentioned several courts that done so, some of them very recently.

51. **Mr. Kalyuzhniy** (Kazakhstan) said that the broadening of the mandate of the Office of the Human Rights Commissioner had raised the Office's standing. The advantages of the "Ombudsman Plus" model that Kazakhstan had opted for had been recognized by the United Nations and the Organization for Security and Cooperation in Europe. Responsibility for the national preventive mechanism was therefore likely to remain with the Office. The current budgetary situation had not allowed Kazakhstan to establish regional branches of the Office.

52. **Mr. Abishev** (Kazakhstan) said that discrimination was prohibited in Kazakhstan. Kazakhstan was also a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, the provisions of which were directly applicable in the domestic legal order. Discrimination on various grounds, including a person's sexual orientation, was punishable under article 145 of the Criminal Code. The country's legislation contained the provisions necessary to combat discrimination. Nonetheless, consideration was being given to including a section on the defence of the rights of the LGBT community in a human rights action plan currently under development.

53. **Ms. Azimova** (Kazakhstan) said that the figures on inclusive education, HIV and the representation of women in decision-making bodies that appeared in the replies to the list of issues were accurate. However, they covered only the 2011-2015 reporting period.

54. **Ms. Koshkarova** (Kazakhstan) said that the Government had taken steps to promote inclusive education for children with disabilities. They included a programme geared to increasing the number of inclusive education programmes, education policies that encouraged the construction of barrier-free school environments and the establishment of eight resource centres staffed by psychologists and specially trained teachers. A systematic approach had been taken to training teachers to teach children with disabilities.

55. **Mr. Azilkhanov** (Kazakhstan) said that Kazakh labour law guaranteed equal pay for equal work and prohibited discrimination against women workers. The persistence of the gender pay gap was largely the result of the disproportionate share of women employed in education, social services and other areas, usually in the public sector, in which wages tended to be lower than average. The list of 25 jobs that were legally closed to women was currently being reviewed. In addition, government employment programmes gave priority to women.

56. **Ms. Azimova** (Kazakhstan) said that the gender development policy of the Ministry of Health and Social Development would also be discussed with civil society representatives and their views would be taken into account.

57. **Mr. Mukhitov** (Kazakhstan) said that local police units had recently been created with a mandate to prevent the occurrence of domestic violence. Measures had been taken to provide assistance to victims, regardless of their area of residence, with support from the National Commission for Women's Affairs and Family and Demographic Policy and the Ministry of Internal Affairs, which had established a special domestic violence section. Hotlines to report cases of domestic abuse had been set up and more than 26,000 women had received assistance in 2015.

58. **Mr. Nurymbetov** (Kazakhstan) said that there were 19 centres in Kazakhstan providing social assistance to victims of domestic violence; 7 of them were run by the State and 12 by NGOs. Together they had helped 15,900 persons. The State-run centres provided services not just to women in difficult domestic situations but also to women with no fixed abode. Annual State financing in that field amounted to 239 million tenge, with further funds being provided by NGOs.

59. **Mr. Suindikov** (Kazakhstan) said that no burden of proof rested upon rape victims. The authorities investigated all allegations of rape and the cost of legal and medical assistance was met by the State.

60. **Ms. Azimova** (Kazakhstan) said that free legal aid was offered to all socially vulnerable citizens, regardless of gender, in criminal, civil and administrative proceedings and was financed out of the State budget. Statistics disaggregated by gender had begun to be collected only in March 2016 and would be available by the end of the year.

61. **Mr. Lastayev** (Kazakhstan) said that, under the Code of Criminal Procedure, arrested persons had to be informed of the reasons for their arrest and of their basic rights. Law enforcement officials who failed to fulfil their duty in that regard faced administrative sanctions. State secrets, which were defined in law as information the disclosure of which could harm national interests, had been invoked in 173 cases over the previous year, which represented 0.04 per cent of all the cases that had come before the courts, and that figure had dropped to 0.01 per cent in the current year. In order to safeguard the rights of accused persons, the authorities were examining ways to ensure more rapid access to lawyers in cases involving State secrets.

62. Under current provisions, accused persons had to appear before a judge within 72 hours of their arrest. Under a proposed reform of the Code of Criminal Procedure, that period would be reduced to 48 hours, and to 24 hours in the case of juveniles. Any failure on the part of officials to respect those time frames was a serious violation, and transgressors would be held criminally responsible. A number of such cases had, in fact, come before the courts. Places of detention were monitored by prosecutors, who also investigated all cases of violation of the rights of detainees.

63. Under a recent change to the Code of Criminal Procedure, a confession on the part of an accused person was no longer of itself sufficient for criminal charges to be brought, unless backed by other evidence. The aim was to protect the rights of accused persons by removing an incentive to violate their rights. Another recent change to the Code provided that only investigating judges had the power to extend the period an accused person could be held in custody. Prosecutors had no such power.

64. **Mr. Suindikov** (Kazakhstan) said that, although extremism was prohibited under national law, it was a very difficult concept to define precisely. In fact, the legal definition in Kazakhstan had been criticized for being too broad and the authorities were working to improve it, also taking account of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In order to avoid arbitrary interpretations of legislation on the part of investigators, when a criminal case involving extremism arose, it had to be evaluated by independent experts including linguists and psychologists. Mere membership of prohibited organizations did not result in criminal charges. Only criminal activities were punishable by law. He had no specific information about the jailing of 33 Sunni Muslims. All Muslim citizens of Kazakhstan were Sunni and no one was prosecuted for their beliefs, only for their actions. Cases of terrorism and extremism were almost always examined in open court.

65. **Mr. Zhakayev** (Kazakhstan) said that legislation on torture covered the infliction of physical or mental suffering. It took account of the degree of suffering inflicted and included provision for suffering or death as a consequence of negligence. The difference

between death under torture and murder lay in the intention of the perpetrator. If the intention to kill was present, the offence was one of murder. Officials who committed torture were held responsible as individuals and investigations into cases of torture were never carried out by officials from the same department as those accused. The maximum penalty for torture had recently been increased to 12 years' imprisonment and the offence was not subject to amnesty.

66. The Civil Code admitted the principle of compensation for persons who had suffered unlawful harm, including harm due to coercive actions on the part of the investigating or prosecuting authorities. Torture victims could use that provision to seek financial redress. A bill concerning compensation for victims was currently being examined by Parliament and the Code of Criminal Procedure also included provision for a victims' compensation fund.

67. The Procurator-General was working with other State agencies and NGOs to examine the possibility of launching a zero tolerance policy on torture and introducing amendments to the Criminal Code in that regard; those amendments would also affect the powers of the Special Prosecutor.

68. **Mr. Suindikov** (Kazakhstan) said that measures had been taken to ensure that the investigation into the 2011 uprising in Zhanaozen remained impartial. The public inquiry commission had included veterans, civil society activists, journalists and even relatives of persons suspected or accused of having participated in the uprising. A small number of complaints of torture in connection with those events had been received. They had all been examined but there had been inadequate evidence to proceed with criminal charges. Almost all the complainants had accepted that decision. All persons detained in connection with the uprising had, in any case, been visited by representatives of Penal Reform International and other independent organizations. When their case had come to court, it had been heard in public in the presence of numerous foreign observers including diplomatic representatives and members of international organizations, and the sentencing had been based not just on confessions but on the depositions of around 200 experts and more than 1,500 witnesses. Of the 37 accused persons, 3 had been acquitted while 6 law enforcement officers had also received prison sentences for their actions during the uprising. Mr. Bozhenko had died as the result of an assault during a robbery and his killers had been brought to justice.

*The meeting rose at 6.05 p.m.*