



**Convention against Torture and
Other Cruel, Inhuman or
Degrading Treatment or
Punishment**

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 842nd MEETING

Held at the Palais Wilson, Geneva, on Thursday, 6 November 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.842/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (*continued*)

Second periodic report of Kazakhstan (CAT/C/KAZ/2; CAT/C/KAZ/Q/2;
CAT/C/KAZ/Q/2/Add.1 (document circulated in Russian only)

1. *At the invitation of the Chairperson, Mr. Kusdavletov, Mr. Tastemirov, Mr. Dembayev, Mr. Seksenbayev, Mr. Bayzhanov, Ms. Amirova and Ms. Utegenova (Kazakhstan) took places at the Committee table.*

2. Mr. KUSDAVLETOV (Kazakhstan) said that Kazakhstan had recently undertaken radical economic reforms that had already produced striking results. Furthermore, like other countries interested in maintaining security and stability, it was on course for demilitarization and disarmament and sought actively to combat terrorism and religious extremism. Amendments to the Constitution had recently been adopted, together with amendments to the constitutional laws relating to elections, the Government, Parliament and the powers of the President of the Republic. Various plans for the promotion of civil society were under consideration and a national plan of action on human rights was being developed. Kazakhstan had also ratified the International Covenant on Economic, Social and Political Rights, without reservations, as well as other international instruments, including the Convention against Transnational Organized Crime and the International Convention for the Suppression of Acts of Nuclear Terrorism.

3. The Kazakh Criminal Code had been supplemented by article 347-1, pursuant to which torture was an offence in accordance with the provisions of the Convention. The prison administration, pretrial detention centres and civil registration services, which had previously been under the Ministry of Internal Affairs, now came under the Ministry of Justice. Since September 2008, the requirement had been that pretrial detention of a suspect must be authorized by a judge instead of by the Office of the Procurator. The number of authorizations of that type had consequently fallen to 1,350 per month, compared with an average of 1,900 a month in 2004, which represented a reduction of some 40 per cent. The Kazakh Government was also steadily nearing its goal of abolishing the death penalty. The moratorium on executions declared on 1 January 2004 remained in force and would continue until the matter of the abolition of the death penalty was finally settled. As a result of the constitutional reforms under way, the death penalty now applied only to the most serious crimes and persons sentenced to death were able to plead clemency. Moreover, all of the 31 recorded death sentences in Kazakhstan had been commuted to life imprisonment and the Parliament was considering a bill designed to reduce the number of capital offences from 18 to 8.

4. Kazakhstan had made the declarations provided for under articles 21 and 22 of the Convention, pursuant to which it recognized the competence of the Committee to receive and consider communications under those articles. In addition, it intended in the near future to accede to the First Optional Protocol to the International Covenant on Civil and Political Rights and also to recognize the competence of the Human Rights Committee to consider communications from individuals. Lastly, it had laid the necessary foundations for the establishment of an independent preventive mechanism, as provided for by the Optional Protocol to the Convention against Torture, which Kazakhstan had ratified in October 2008.

5. Since 2004, civil society had been monitoring the detention institutions and centres of the prison administration in order to ascertain whether the freedoms and fundamental rights of detainees were respected. The High Commissioner for Human Rights, as well as non-governmental organizations (NGOs) and media representatives, visited the prison institutions and sites run by the internal affairs departments. In all regions, the human rights situation in detention centres was monitored by public commissions. A bill on the probation system and the reintegration of convicts on their release from prison was to be drafted in 2009.

6. The judicial system was undergoing reform. In particular, the Code of Criminal Procedure and the Code of Civil Procedure had been amended in order to strengthen the role of local and appeal courts and simplify procedures. New provisions on the participation of juries in criminal proceedings had entered into force on 1 January 2007. Lastly, special tribunals had been established, including a juvenile court, and the Parliament was currently considering a bill to amend and supplement certain laws in order to guarantee that persons deprived of liberty had access to a duly qualified lawyer.

7. Policies aimed at ensuring more humane conditions of detention in the prison system were being pursued. Following the reforms undertaken in that regard, the prison population had fallen from 66,000 to 49,000 between 2002 and 2008, which was explained in particular by the amnesties granted in 1999, 2000 and 2002 and by the fact that various provisions of the Criminal Code had been amended or repealed, with the result that some acts no longer constituted a criminal offence.

8. Kazakhstan had 73 prison institutions and 20 pretrial detention centres. Detention conditions had gradually been brought into line with the Standard Minimum Rules for the Detention of Prisoners. New prisons were being built and old building renovated. The move from the system of shared cells to that of individual cells had begun, to which end approximately US\$ 83 million had been allocated. A psychologist's post had also been established in all prison institutions and prison personnel now received training at a specialized institution attached to the Ministry of Justice. Lastly, Parliament was presently considering two bills, one on domestic violence and another on social services, under which victims of violence or cruel treatment would be allowed the benefit of State assistance.

9. Mr. KOVALEV (Country Rapporteur) remarked that the definition of torture in article 347-1 of the Kazakh Criminal Code did not contain all elements of the definition set forth in article 1 of the Convention. In particular, it made no mention of acts inflicted by or at the instigation of or with the consent or acquiescence of other persons acting in an official capacity. As used in the Kazakh Criminal Code, the term "public official" was much narrower in scope than the expression "person acting in an official capacity" contained in the Convention, which consequently limited the scope of application of article 347-1 of that Code. Furthermore, the penalties provided for in cases where a suspect was convicted of torture, specifically a fine representing two to five months' salary or a penalty of six months' imprisonment, were too lenient for such a serious crime, the perpetrators of which were consequently likely to escape with impunity. The Kazakh delegation was asked to react to those remarks and to comment on the definition of the cruel treatment covered in article 107 of the Criminal Code.

10. Concerning article 2 of the Convention, according to information available to the Committee, violations of the rights of suspects arrested by the police were apparently commonplace. Indeed, the rather lengthy interval between the apprehension and the formal registration of a suspect increased the risk of violations

being committed during that period. Moreover, once in police custody, suspects were often unable to inform their relatives that they had been arrested. Under article 138 of the Code of Criminal Procedure, an investigator had 12 hours within which to inform a suspect's relatives of his arrest. In certain circumstances, the period could be extended to 72 hours with the authorization of the Procurator. What were those circumstances and who was competent to determine whether or not an extension of police custody was necessary? According to some sources, moreover, the 72-hour maximum period of police custody was not respected in practice. The delegation was therefore asked to explain why the period of police custody was in many cases extended beyond the legal limit. It was also asked to comment on allegations that colleagues of the human rights champion Rakhat Aliev had been arrested and were being held incommunicado in a pretrial detention centre where they had been tortured in order to make them confess that they had fomented a coup.

11. Also requested were further details on the progress achieved in the implementation of the Standard Minimum Rules for the Detention of Prisoners. In particular, what was the cell size in prisons and detention centres and what measures had been taken to resolve the problem of prison overcrowding, bearing in mind that promiscuity encouraged the spread of disease, and also to bring prison institutions into line with international standards?

12. According to one NGO, a number of juvenile delinquents had been subjected to cruel treatment during questioning. The delegation might wish to indicate whether any judicial enquiries into those incidents had been carried out and whether any measures had been taken to improve the juvenile justice system.

13. Given that the imprisonment rate had risen from 342 per 100,000 in 2005 to 378 per 100,000 in 2008, the delegation should provide an explanation for that trend and state whether the provisions of article 2 of the Convention, pursuant to which no exceptional circumstances could be invoked as a justification of torture, had been incorporated into Kazakh legislation. It should provide examples of cases, if any, in which courts had applied those provisions.

14. It should also provide details concerning the cases of three persons, Mr. Imranov, Mr. Ponomarev and Mr. Polienko who, according to information brought to the Committee's attention, had been beaten during police questioning with plastic bottles filled with water, a technique that left no visible signs. Had the alleged perpetrators of those violations been prosecuted and, as necessary, convicted?

15. Article 16 of the Criminal Code provided that only persons suspected or accused of an offence could have access to a lawyer in the event that they were arrested or placed in police custody. Persons arrested for other reasons therefore had no right to the services of a lawyer. Furthermore, under the Code of Criminal Procedure, persons entitled to those services were provided with a lawyer only in the 24 hours following their arrest; it was then that the preliminary questioning of suspects took place, during which time they might be subjected to physical or mental abuse. Suspects without means to seek the assistance of counsel were afforded the services of a public defender, a group whose qualifications and professional ethics were said by NGOs to leave much to be desired. That being so, how were lawyers trained, was there a mechanism in place to test their competence and what measures had the State party taken to remedy such shortcomings? It was also said that the right of any person with physical injuries to see a doctor within 24 hours was frequently violated and that doctors responsible for writing medical reports often failed to include all of their observations insofar as the medical personnel in places of detention had no independence with regard to the criminal

justice system. Had the State party taken measures to ensure that suspects had access to a lawyer and a doctor in the hours immediately following their arrest and had complaints about the quality of legal aid and medical examinations been investigated? As appropriate, the delegation should state how many doctors had been convicted on the basis of a complaint of that type, what sentences had been handed down and whether doctors used the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) to detect possible signs of torture or ill-treatment. The delegation was also requested to provide recent statistics on the number of complaints of illegal police detention and the number of public officials prosecuted following such complaints, as well as on any convictions.

16. In June 2008, domestic legislation had been amended by the addition of a provision pursuant to which a suspect could be remanded in custody only with the approval of a judge. By way of an assurance that Kazakh law was compatible with the principle of habeas corpus and with the legal standards protecting individuals against torture and illegal deprivation of liberty, could the delegation state whether there were procedures in place for victims of torture to bring a civil claim for compensation against the State?

17. According to information provided by NGOs, 600 women and young girls had died from marital or domestic violence between 1996 and 2007 and 20,000 rapes were reported annually. The delegation might wish to provide information on measures taken by the public authorities to combat such violence and reduce those alarming figures. Although NGO-run centres for battered women had been opened country-wide, almost 8,000 cases of violence against women had been recorded in 2007 alone. It would therefore be interesting to know whether the State party had taken it upon itself to adopt legal provisions to protect women against domestic violence.

18. With regard to article 3 of the Convention, it had transpired, from a 2006 report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/4/33/Add.1), that a number of non-nationals had been expelled from Kazakhstan to countries where they could be subjected to torture or ill-treatment. It was important to have information, in particular concerning the fate of Yusuf Kadir Tohti and Abdulkadir Sidik, two Uighurs who had been deported to China, where they had been accused of separatism and placed in incommunicado detention, and of Temirbaev Gabdurafih, an Uzbek who, at the time of the report, was in the process of being deported to his home country for having practised Islam outside the State-controlled religious system.

19. The delegation was requested to provide the Committee with statistics on the number of persons who had sought asylum in the State party in 2007, stating how many of them had been successful and how many had been expelled and to which country. The delegation should also state whether the Kazakh authorities requested diplomatic assurances from another State before extraditing a person to that State and whether a monitoring mechanism had been established to ensure that such guarantees were respected. Lastly, it would be useful to know how many asylum-seekers were registered in the country, how many non-nationals had been expelled to other countries in which human rights violations, in particular torture, were committed and whether asylum officers suspected of having breached the non-refoulement requirement set forth in article 3 of the Convention, had been prosecuted and convicted. According to information reported to the Committee, a number of asylum-seekers had been returned to China and Uzbekistan. The delegation should indicate whether those allegations were true and, if so, whether the officials who

had ordered those expulsions had been subjected to administrative or criminal prosecutions.

20. Concerning article 4 of the Convention, although article 347-1, under which torture was an offence, had been added to the Criminal Code in 2002, criminal courts continued to rely on articles 308 and 347 of that Code to characterize acts that in fact constituted torture. That confusion between torture and abuse of authority could serve to mask the actual number of torture cases. The delegation should therefore specify what the links were between article 347-1 and the other articles of the Criminal Code that punished acts amounting to torture, such as abuse of authority or duress used to make a suspect confess, provide false statements, retract statements or give false testimony. It should also give a more detailed explanation of the definition of the above-mentioned offences and provide statistics on the number of persons prosecuted under those articles of the Criminal Code. Lastly, it would be interesting to know what action the Kazakh authorities intended to take to ensure that the concept of torture under article 1 of the Convention was not confused with other concepts set forth in the Criminal Code.

21. With regard to article 5 of the Convention, had Kazakhstan taken the necessary steps to establish the universal jurisdiction of its courts with regard to cases involving acts of torture in the sense of article 1 of the Convention? In cases where the Kazakh authorities refused to extradite a person suspected of having committed such acts abroad, which court was competent to try that person, which provisions of the law could it invoke, and how many, if any, cases of that type had been considered by the national courts and of which acts had the suspect been accused? Lastly, did Kazakhstan intend to ratify the Statute of the International Criminal Court?

22. Concerning article 6 of the Convention, could a person suspected of having committed acts of torture abroad be apprehended without an international arrest warrant and how would the Kazakh authorities react if the State in which the violations had been committed requested them to extradite that person in order to bring him to justice? It would also be useful to know whether a person who had been arrested and deprived of his liberty without having been informed of the charges against him was able to invoke habeas corpus and ask for the legality of his detention to be considered by a court. In the event that the court concluded that his detention was illegal, what measures could it order? In that regard, Kazakhstan did not yet have a law on habeas corpus implementing the provisions of paragraphs 4 to 9 of the International Covenant on Civil and Political Rights. The introduction of that procedure would therefore represent substantial progress in the area of combating torture and cruel, inhuman or degrading treatment. Lastly, did the law provide the opportunity for persons illegally deprived of their liberty to claim reparations and how many law enforcement officers had in recent years been convicted for illegal detention?

23. It was stated in paragraph 79 of the State party's report that consular officers "had the right to visit a national of the sending State" who was imprisoned. Such visits were not a right, however, but an obligation to be fulfilled by consular officers, who were required to do their utmost to protect their nationals abroad, in particular those who were in detention.

24. According to information available to the Committee, police investigators of torture used physical and mental duress amounting to torture during the interrogation of suspects. Furthermore, persons tortured or ill-treated by an investigator were unable to obtain medical reports documenting the signs of such violence, as doctors working in police lock-ups or detention centres wished to avoid

problems with the prison administration. What guarantees did the State party offer to ensure that victims of torture could obtain a full and objective report of signs of abuse inflicted on them and that doctors provided certificates in accordance with the Istanbul Protocol?

25. Lastly, according to information brought to the attention of the Committee, suspects were frequently confined against their wishes in a psychiatric institution on the pretext of mental health problems. The delegation was requested to provide statistics on the number of police officers and doctors brought to justice for having illegally confined a suspect in a psychiatric institution.

26. With regard to articles 8 and 9 of the Convention, it would be interesting to know whether Kazakhstan had concluded any mutual assistance agreements governing the extradition of alleged perpetrators of acts of torture with countries other than the United States of America and, if so, which countries. It would also be useful if the State party were to indicate whether it intended to introduce a law under which it could extradite anyone suspected of such a crime to a State with which it had no extradition treaty, how many suspects had already been extradited and to which State, and on the territory of which State the offences had taken place.

27. Mr. WANG Xuexian (Alternate Country Rapporteur) welcomed the fact that the State party had, since the consideration of its initial report (CAT/C/47/Add.1), taken a series of measures and adopted various legislative provisions aimed at the prevention of torture. To that end, the State party had also followed the recommendations contained in the concluding observations made by the Committee following that initial consideration (A/56/44, paras. 121 to 129), which proved that it took the Committee's recommendations very seriously. Noting that good legislation only had value if it was implemented, he wished to know if the State party had established training programmes for all of the personnel mentioned in article 10 of the Convention and a mechanism for assessing the results.

28. He also wished to know whether the State party had established a procedure for the systematic review of interrogation rules, instructions, methods and practices in accordance with article 11 of the Convention, and the nature of the means covered by Ministry of Justice Order No. 146 of 11 December 2001, mentioned in paragraph 90 (c) of the report under consideration.

29. With regard to article 12 of the Convention, he was concerned by information from reliable sources that it sometimes took two months for the competent authorities to launch a preliminary investigation into a complaint of torture, which prevented them from making a timely report of any possible signs of acts of torture and left the victim at the mercy of his torturers. Another matter of concern arose where a crime of torture committed by a member of the police was investigated by personnel from the Department of the National Security Committee, who were under the same chain of command, meaning that the procedure could be biased. Lastly, he asked why there were frequent violations of the provisions of the Code of Criminal Procedure mentioned in paragraph 101 of the report and what measures the State party had taken to prevent that situation.

30. Concerning the implementation of article 13 of the Convention, the Kazakh delegation should state which were the "competent authorities", mentioned in article 129 of the report, responsible for considering complaints from alleged victims of human rights violations. Furthermore, was there any civil procedure in place for the payment of compensation and the implementation of rehabilitation measures for victims, in accordance with article 14 of the Convention?

31. Regarding article 15 of the Convention, he welcomed the amendment of article 116 of the Code of Criminal Procedure, pursuant to which information obtained through the use of torture was inadmissible as evidence (para. 138 of the report), and asked whether that new provision had already been applied. Lastly, with reference to article 16 of the Convention, he wished to know whether the State party had investigated the phenomenon of self-mutilation in prisons, the incidence of which had much increased in recent years, in order to understand the reasons behind it and to bring it to an end.

32. Ms. BELMIR expressed criticism of the fact that torture was not specifically characterized in the domestic law of the State party and that physical or mental suffering inflicted by a public official acting within the framework of the law was not regarded as torture (para. 14 of the report). The period between the arrest of a suspect and his appearance before a trial court was lamentable and should be accompanied by guarantees aimed at preserving the life, physical integrity and health of the person concerned and avoiding the infliction of any suffering on him. According to information reported to the Committee, opponents of the regime held in detention were still sometimes beaten by law enforcement officers. A review of the Criminal Code was therefore imperative to the protection of accused persons against such abuse. Moreover, the appointment of judges by the President of the Republic was contrary to the principle of the independence of judges and prejudicial to a fair trial.

33. With reference to the concluding observations adopted by the Committee on the Rights of the Child (CRC/C/OPSC/KAZ/CO/1) following its consideration of the initial report of Kazakhstan submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/KAZ/1), she recalled that the credibility of the police was damaged by the fact that State officials were guilty of complicity in trafficking and that the corruption was such as to impede the effectiveness of preventive measures taken in that regard.

34. With regard to juvenile justice, information from a variety of sources indicated that young delinquents had no access to a lawyer from the start of their detention. They were therefore poorly defended; their lawyers were unable to assist them throughout the whole of their detention and were consequently unaware of how they had been treated. Detention conditions appeared to have improved insofar as each detainee was now allocated over two square metres of space. She nevertheless wished to know whether the law provided for alternative penalties and the placement of minors in semi-open detention centres. She also wished to know the reason for the increasing number of female detainees.

35. Given that the right of asylum was not governed by any of the State party's laws, the delegation should state whether it was true, as claimed by various NGOs, that the nationals of certain countries were more often expelled than others and that the homes of members of certain communities and certain refugee groups were regularly destroyed.

36. Mr. GALLEGOS CHIRIBOGA asked whether the State party intended to establish an impartial mechanism that would promptly and thoroughly investigate acts of torture and ill-treatment and consequently combat impunity. He wished to know how the Kazakh Government protected the rights of torture victims, including those who had lodged no complaint, and in particular whether their lawyers or legal representatives or family members were permitted to take part in the process in full transparency.

37. Mr. MARIÑO MENÉNDEZ wished to know whether the Procurator, rather than the judiciary, was empowered to request a criminal investigation and consider the results or who decided to place a suspect in detention or transfer him to a secure facility, a police station or other location. He was also concerned by the fact that detainees were not always duly registered as soon as they were placed in detention; at times some waited almost 68 hours before being registered as detainees and others were never registered, which could have dramatic consequences, as it was not until they were registered that detainees were able to claim the rights to which they were entitled under the Code of Criminal Procedure and to be protected against such serious acts as disappearance.

38. It would be interesting if the delegation could explain the guarantees in place in detention centres that were not part of the judicial system but run by the security departments of the Ministry of Internal Affairs. Such centres were presumably intended for alleged terrorists and other particularly dangerous criminals. The delegation might also clarify whether a suspect could be held incommunicado in the detention centres of the Ministry of Internal Affairs before being charged and whether the conditions of detention in those centres were subject to monitoring.

39. He asked whether the member States of the Commonwealth of Independent States (CIS) automatically returned to their countries of origin nationals of a CIS member State who requested asylum or refugee status in another CIS member State or whether, on the other hand, such requests were duly considered before any decision of return was made. Political asylum could be granted in certain cases provided for by law, but the final decision lay with the President of the Republic and was consequently not subject to judicial review. It would be useful to know whether there were any adequate protection mechanisms in place for persons seeking asylum or refugee status.

40. Kazakhstan had ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Committee welcomed. In accordance with the Protocol, Kazakhstan should establish a national preventive mechanism to visit all places of detention. He wished to know whether the Ombudsman would assume those functions, in which case it was essential to ensure his full independence, extend his mandate and strengthen his means of action, in particular by providing him with the necessary resources.

41. Ms. SVEAASS said that the protection of the rights of the child warranted priority attention. She welcomed Kazakhstan's ratification of the Convention on the Rights of the Child and its two Optional Protocols but noted that, in practice, the rights of the child were not as well protected as they should be. The juvenile justice system in particular left much to be desired. Minors aged 14 years were placed in prison-like institutions, whereas what they needed was counselling and education. Furthermore, it appeared that juvenile delinquents were not always afforded the guarantees of due process. Details of the legal framework of juvenile justice would be useful, as would information on measures planned by the State party to guarantee assistance for juveniles in conflict with the law and care tailored to their needs.

42. Domestic violence was a problem that also demanded full attention from the State party. A bill on the protection of women against violence had apparently been drafted but its consideration postponed. If that were so, it would be helpful to know why and also when it would be considered. Information campaigns were also indispensable in the fight against domestic violence. The delegation could perhaps indicate whether campaigns of that type had been conducted. There were also too few shelters for women victims of violence and they lacked resources. The care of

such women was, however, an essential part of their protection and the State party should take measures to strengthen those care structures.

43. The Committee had been informed that various persons had been subjected to ill-treatment and acts of torture while in police custody. Some had also been held in police stations for longer than legally permitted without being charged. Complaints lodged by some of those persons had been deemed to require no further action. It would be useful to hear what the delegation had to say on that subject. As to the treatment of asylum-seekers, she wished to know whether independent human rights organizations were able to visit detention centres and whether the State party took all necessary measures to guarantee respect for the principle of non-refoulement.

44. Ms. GAER said that, following his visit to Kazakhstan in 2004, the Special Rapporteur on the independence of judges and lawyers had noted with concern that the Procurator continued to play a dominant role and had recommended to the State party that it should drastically amend its Criminal Code and Code of Criminal Procedure so as to reduce the Procurator's dominating role and secure a fairer balance between the respective roles of the prosecutor, the defence lawyer and the judge (E/CN.4/2005/60/Add.2, paras. 70 and 79). It would be interesting to know whether measures had been taken to follow up that recommendation. In its concluding observations concerning the initial report of Kazakhstan (A/56/44, paras. 121-129), the Committee had recommended that the State party: adopt measures to ensure that doctors were provided at the request of detained persons from the very start of the detention period; provide independent judicial oversight of the period and conditions of pretrial detention; and review cases of convictions based on confessions that may have been obtained through torture or ill-treatment, and ensure adequate compensation to victims. What specific measures had been taken to implement those recommendations?

45. The Committee had also recommended that the State party transfer responsibility for prisons from the Ministry of Internal Affairs to the Ministry of Justice, which had been done with the exception of the pretrial detention centres (SIZO). The delegation could perhaps explain the reason for that exception and indicate whether plans were being made to change the administration of those institutions and promote the protection of persons detained in them, who, judging by the number of allegations of acts of torture committed during pretrial detention, were particularly at risk of torture.

46. Several relatives of Rakhat Alien, former son-in-law of President Nazarbaev, who had been accused and convicted of an attempted coup, had reportedly been arrested and held in incommunicado detention. They had been tortured, tried by a secret court without due process and had since been reported missing. The two daughters of a member of a Kazakh mission of the Organization for Security and Cooperation in Europe (OSCE) had suffered the same fate. She wished to hear what the delegation had to say about those allegations and to know whether investigations had been carried out to shed light on those disappearances.

47. The number of deaths in pretrial detention was disturbing. In 2006, 32 persons had died in pretrial detention centres, including 6 who had committed suicide. In 2007, there had been 40 suicides of detainees among the prison population as a whole. Given the security measures adopted in detention centres, such as 24-hour video surveillance, routine sharing of cells by at least two detainees and the confiscation of belts, it might be asked how so many detainees succeeded in committing suicide. Information on the procedure for investigating deaths in detention would be useful, as would detailed statistics of the number of recorded deaths, the investigations undertaken and their findings.

48. The report by Kazakh NGOs made various allegations of physical and psychological violence inflicted by police during interrogations in order to obtain confessions. In several cases, the victims – men, women and minors – had been threatened with sexual assault. She wished to know whether such matters had been investigated and whether any police officers had been charged and convicted. Some police officers still appeared to regard the extortion of confessions as the only means of establishing a suspect's guilt and throwing light on a case, even though it was incompatible with the rule of law and the basic requirements under the Convention. In a modern judicial system, moreover, a confession alone was insufficient to establish guilt. The Committee had already drawn the State party's attention to that serious problem during the consideration of its initial report and it would be interesting to know what measures had been taken to remedy it and whether any further measures were planned.

49. Ms. KLEOPAS noted that, during the previous 18 months, Kazakh NGOs had lodged with the competent authorities some 150 complaints of violations of the Convention by State officials, corroborated by evidence, only 1 of which had led to an investigation. The Committee would await the explanations of the delegation, as any allegation of torture, whatever the source, demanded an investigation. The difficulties encountered by women victims of violence in complaining about ill-treatment to which they were subjected was due in particular to the burden of proof imposed on them, which was often too heavy and promoted impunity. Lastly, on the subject of human trafficking, she asked what measures had been taken to protect victims on the one hand and to prosecute and punish those responsible on the other.

50. Mr. GAYE requested further details of the two amnesty laws mentioned in the State party's report (CAT/C/KAZ/2, paras. 12 (c) and (k)) and any information on the groups of persons included; the scope of those laws should not be such as to enable perpetrators of violations of the Convention to escape with impunity.

51. The CHAIRPERSON expressed the hope that the delegation would be able to respond to all of the subjects of concern raised by Committee members, particularly with regard to: the definition of torture; detention centres administered by the national security services; the application of procedural guarantees (right to contact a doctor and a lawyer) from the time of being charged not from the time of arrest; the lack of means for contesting the legality of detention; the conformity of extradition and expulsion procedures with the principle of non-refoulement; access to justice for vulnerable groups; and lastly, the training of law enforcement personnel in the provisions of the Convention. Concerning the definition of torture, the Committee looked forward with great interest to the delegation's reply to the question of whether a State official could be held criminally liable under article 347-1 of the Criminal Code for acts of torture committed at his instigation or with his consent or acquiescence. Given that few State officials were prosecuted under that article, it would be interesting to know whether measures had been taken to train Procurators so that they could charge persons who committed torture with the offence of torture rather than with less serious offences. With regard to procedural guarantees, they should apply to all persons deprived of liberty, including persons suspected of belonging to terrorist groups.

52. The amendment made in May 2006 to article 16 of the Kazakh Constitution provided that everyone had the right to personal freedom and that arrest and detention were permitted only in the cases prescribed by law and only with the sanction of a court. The phrase "sanction of a court" was somewhat vague and required clarification. Furthermore, the Vienna Convention on Consular Relations provided that persons in

detention had the right to communicate with the consular post of the country of which they were nationals. Was that provision applicable in Kazakhstan and was there an official procedure for enabling an official who placed a national of another country in detention to communicate with the representative of that country?

53. According to information provided by NGOs, complaints of acts of torture committed by police officers were handled by the Office of Internal Affairs of the Police Department. Experience showed that when a member of a professional body was accused of having committed a violation and the matter was investigated by that same body, the accusation was usually dropped. Kazakhstan should comply with best practices and take steps to ensure that the independence of investigations was guaranteed. In that regard, it was also important to know whether the decision of the Office of Internal Affairs of the Police Department in such a case was simply the first stage of the complaint procedure for torture or whether continuation of the procedure depended on a favourable decision by that Office.

54. Concerning the question of the burden of proof in matters of torture, torture did not generally occur in the presence of witnesses, which made it difficult to prove. He wondered what type of evidence a person having lodged a complaint of an act of torture was required to provide in order to ensure that the investigation was pursued further. If, for an investigation to be pursued, it had to be established beyond all reasonable doubt that an act of torture had been committed, any proceedings concerning allegations of torture would be destined to fail. In that context, it was essential to guarantee prompt access to a doctor. The delegation might also state whether, pursuant to article 116 of the Code of Criminal Procedure and article 77 of the Constitution, any court had already ruled that evidence based on confessions obtained by torture was inadmissible. In its report, OSCE affirmed that acts of torture were much more frequent than official statistics would lead it to be believed and that they were rarely investigated or punished. For their part, NGOs affirmed that in 2005 and 2006, 40 per cent of complaints of acts of torture had not even been considered by judges and that the vast majority had been dismissed after a perfunctory examination.

55. Citing the case of Alexandre Gerasimov, he wished to know how the matter had been followed up, whether the police officer who had tortured Mr. Gerasimov had been disciplined and whether compensation had been awarded. With regard to vulnerable groups, one case attracted particular attention: on 21 March 2008, Zhezkagan municipal court had ordered the Ministry of Finance to pay five million tenge (US\$ 42,000) to Amantaj Usenov, who had been tortured and severely traumatized. The Ministry of Finance had appealed against the decision, arguing that the Kazakh Criminal Code did not state that torture was an illegal act for which the State could be held liable to pay compensation. It was surprising that an official organ should assert that the victim of an act of torture had no right to obtain redress. The matter was still pending, but the delegation was invited to state its views on the matter; if victims of acts of torture were denied the right to compensation, it would constitute a violation of article 14 of the Convention. Lastly, a positive fact worth noting was that NGOs consulted by the Committee had had no criticisms to make concerning the treatment of human rights activists.

56. Mr. KUSDAVLETOV (Kazakhstan) thanked the Committee members for their additional questions, to which the delegation would reply at a later meeting.

57. *The Kazakh delegation withdrew.*

The first part (public) of the meeting rose at 12.20 p.m.