



## International Covenant on Civil and Political Rights

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### Human Rights Committee 102nd session

#### Summary record of the 2811th meeting

Held at the Palais Wilson, Geneva, on Friday, 15 July 2011, at 10 a.m.

*Chairperson:* Ms. Majodina

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

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

*Initial report of Kazakhstan (continued) (CCPR/C/KAZ/1; CCPR/C/KAZ/Q/1 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Kazakhstan took places at the Committee table.*
2. **Mr. Akhmetov** (Kazakhstan), replying to a question on reproductive health asked at the previous meeting, said that his country had seen a downward trend in the number of pregnancies terminated by abortion among girls under the age of 18 in recent years, and aimed to further reduce the rate, which had stood at 3.3 per cent in 2010, through a comprehensive awareness-raising programme. A strategy for reproductive health programmes in schools was also being developed through the Ministry of Education, with the participation of NGOs, and special health programmes targeting women in rural areas were also being implemented. In addition, a new employment programme was in place to help improve the status of women in all spheres.
3. **Mr. Lepekha** (Kazakhstan) said that the Domestic Violence Prevention Act, adopted in December 2009, defined domestic violence in its different forms, including physical, psychological and sexual violence, and causing financial hardship. It outlined preventive measures, such as restraining orders, and a complaints procedure, which could be initiated either by the persons suffering from domestic violence themselves or through information from the police or State bodies and local authorities. The Act included provisions for organizations to provide assistance to victims and to inform the police of actual or potential acts of domestic violence. The police worked with 28 crisis centres, of which 20 were State-funded. The Act provided for the defence of victims and the punishment of perpetrators, which included imprisonment. Since the adoption of the Act more than 30,000 restraining orders had been issued in cases of domestic violence, and in 2010 those actions had helped to significantly reduce the number of crimes involving domestic violence.
4. **Mr. Kustavletov** (Kazakhstan), replying to a question on torture, said that his Government was fully committed to its obligations under international law regarding torture. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had visited Kazakhstan in 2010 and, in his report to the Human Rights Council (A/HRC/16/52, para. 31), had commended the Government of Kazakhstan for its official invitation to pay a follow-up visit to the country, as that indicated “a serious commitment to combating torture and improving conditions of detention”.
5. **Mr. Seidgapparov** (Kazakhstan), replying to a question on measures to combat terrorism, said that the rights and freedoms of citizens as provided for under the Covenant were respected during counter-terrorism operations. There were provisions under national legislation for temporary restrictions, but these were applied only in extreme cases and in accordance with the law, including restrictions on movement during counter-terrorism operations. Under the Counter-Terrorism Act, the Procurator-General’s Office monitored the implementation of legislation during such operations. If they resulted in serious bodily harm not consistent with self-defence, the perpetrators were held accountable and punishments imposed.
6. A state of emergency could be declared in situations of political instability and serious and immediate threat to public order, in accordance with article 44, paragraph 16, of the Constitution.

7. **Mr. Kustavletov** (Kazakhstan), addressing the issue of the death penalty, said that there were procedural guarantees for the review of cases. The Government had plans to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; its commitment to that end had been reaffirmed through its participation in the universal periodic review (UPR) in 2010.

8. Prisoners serving life sentences could be released early and without bail, in accordance with relevant provisions of the Code of Criminal Procedure. The Constitution set strict limits on the imposition of the death penalty, which was applicable only to terrorist offences resulting in death or particularly serious offences committed during time of war. The crime of torture had been brought fully into line with article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Government had been actively decriminalizing a number of offences through amendments made to the Criminal Code in January 2011. It had decriminalized more than 20 offences, abolishing deprivation of liberty as a form of punishment and reducing prison terms for a number of offences. It considered torture to be one of the most serious crimes, as evidenced by its 2010–2012 plan of action for the implementation of the recommendations of the Committee against Torture.

10. The Procurator-General's Office participated directly in verifying reports and investigating cases of torture and other illegal methods of inquiry and investigation involving the ill-treatment of parties to criminal proceedings. In the first quarter of 2011, that Office had received 70 notifications of torture or ill-treatment, all of which had been investigated and had resulted in two criminal proceedings. Recently, a number of law enforcement officials had been sentenced to several years in prison for inflicting torture on a prisoner, who had been awarded compensation. All victims of torture were in fact entitled to compensation.

11. Referring to the question on the Shanghai Cooperation Organization, he said that his Government's ratification of that organization's counter-terrorism convention did not annul, restrict or otherwise affect its obligations under other treaties, as no international treaty was accorded more importance than others in Kazakh legislation. Before treaties were ratified, they were reviewed to ensure that they were in accord with previous treaties and prior obligations.

12. On the question of Kazakhstan unjustifiably including people on so-called blacklists, the authorities could not place any individual on such lists until a corresponding decision was taken by a court. It would have to be the result of fair judicial arbitration carried out in accordance with all the relevant obligations and with due respect for human rights.

13. **Mr. Sadybekov** (Kazakhstan) said that the Penal Enforcement Code regulated the conditions of detention and legal status of persons sentenced to life imprisonment. They served their sentences in special facilities and occupied two-person cells. They were entitled to three short visits (up to two hours) and three longer visits (up to three hours) each year by close relatives and other persons, including members of their religious denomination. In addition, all prisoners, including those serving life sentences, were guaranteed an unlimited number of confidential meetings with lawyers and other persons representing their interests.

14. Prisoners serving life sentences were entitled to daily walks lasting one and a half hours. The duration of the walks could be extended to two hours for good behaviour. Prisoners were served three hot meals a day and could obtain additional food and toiletries. They could also make phone calls, receive medical care and attend classes.

15. A four-year programme for the further development of the penalty enforcement regime had recently been adopted. The programme provided, inter alia, for: the transfer of prisoners to individual cells; further improvement of detention conditions; alternatives to imprisonment; modernization of the prison regime by applying the “from warders to technology” principle; and employment for prisoners.

16. Civil society would continue to be involved in the oversight of places of detention. The authorities were preparing a joint project with Kazakh NGOs to monitor facilities housing prisoners serving life sentences, as well as their legal status.

17. **Ms. Keller** noted that a special commission had been assigned responsibility for ensuring that treaties to be ratified by Kazakhstan were compatible with its obligations under existing international treaties. She asked whether the commission also systematically investigated whether proposed new treaties were compatible with its human rights obligations.

18. While she was pleased to hear that nobody was blacklisted without a court decision, she wished to know how Kazakhstan dealt with persons who had been blacklisted by other members of the Shanghai Cooperation Organization. Did the Organization accept such listings regardless of whether they had been endorsed by a court decision?

19. According to the delegation, the Charter of the Shanghai Cooperation Organization required members to abide by all human rights treaties and the principles of the Charter of the United Nations. She noted, however, that the conflict between combating terrorism and protecting human rights was virtually universal. Her own country, Switzerland, for instance, was facing a serious challenge in that regard before the European Court of Human Rights in the *Nada v. Switzerland* case.

20. **Mr. Salvioli** welcomed the State party’s admission that torture existed in Kazakhstan, as well as its determination to take vigorous action against it.

21. He enquired about the Government’s policy in cases where a person to be extradited faced a risk of being subjected to torture in the requesting country. The Committee against Torture had called for interim measures with a view to staying the extradition of 28 Uzbek nationals to Uzbekistan. The group had nevertheless been extradited. A number of NGOs had also expressed concern about such practices. What action was the State party taking to prevent violations of the principle of non-refoulement?

22. **Mr. Neuman** said that he was unsure whether he had properly understood the delegation’s description of the framework for reconciling counter-terrorism legislation with the Constitution and the Covenant. He asked whether article 4 of the Covenant concerning a state of emergency had been invoked in support of the derogation of certain rights under the legislation in question.

23. **Mr. Thelin** said that he was somewhat disappointed to hear that the State party was not planning to accede to the Second Optional Protocol to the Covenant in the immediate future. He gathered that no date was likely to be set before the second round of the UPR, although the step from de facto moratorium to de jure abolition of the death penalty did not, in his view, require a great deal of deliberation.

24. Welcoming the information on the conditions of prisoners serving life sentences, he said that he had heard conflicting estimates of the total number of such prisoners. It was also unclear whether they had any prospect of early release on parole. If there was no such provision in the Criminal Code, he advised the State party to introduce an appropriate amendment.

25. **Mr. Seidgapparov** (Kazakhstan) said that criminal legislation in Kazakhstan comprised the Criminal Code, the Code of Criminal Procedure and the Penal Enforcement

Code. The latter Code regulated the manner in which sentences were to be executed and the rights and obligations of convicted prisoners. Article 170 of that Code dealt with the possibility of parole, including for prisoners serving life sentences.

26. The Counter-Terrorism Act set specific time limits on all derogations from the rights and freedoms of individuals. Restrictions were applicable only for the duration of, and within the area covered by, a counter-terrorist operation. Moreover, they were confined to rights and freedoms in respect of which restrictions were permissible under the Constitution and the Covenant. Article 39, paragraph 3, of the Constitution listed rights and freedoms that could not be restricted under any circumstances, even in connection with action to combat terrorism. Its provisions were fully in line with those of the Covenant.

27. Torture was also prohibited in the fight against terrorism. The State pursued a zero tolerance policy vis-à-vis of all forms of torture and ill-treatment. Any participant in a counter-terrorist operation who breached the prohibition of torture or ill-treatment would be severely punished.

28. **Mr. Sadybekov** (Kazakhstan) said that his country had been adopting a step-by-step approach to the abolition of capital punishment. A moratorium was in force and no prisoner was facing the death penalty. The penalty of life imprisonment had been imposed as an alternative to capital punishment since 1 January 2004. A total of 86 persons were currently serving life sentences. The figure of 71 contained in the written replies related to 2009.

29. **Ms. Jarbussynova** (Kazakhstan) said that the Almaty City Migration Department had decided on 9 June 2011 to reject an application for refugee status from 28 Uzbek nationals, who had then been extradited in response to an official request from the Office of the Prosecutor-General of Uzbekistan. The request had been supported by documents providing evidence of the involvement of the applicants in serious crimes in Uzbekistan. Some of them had earlier been granted refugee status by UNHCR, which had itself subsequently rescinded their status. The Kazakh Procurator-General's Office had requested written guarantees that the human rights of the Uzbek nationals would be respected and had awaited receipt of the guarantees before granting its approval for extradition. Uzbekistan was a party to the Covenant and to the Convention against Torture, and its Government had assured the Procurator-General's Office that representatives of the International Committee of the Red Cross, the World Health Organization and international NGOs would be given access to the places where the extradited persons were to be detained.

30. She assured the Committee that Kazakhstan would accede to the Second Optional Protocol to the Covenant before the second round of the UPR. It would complete the procedures for accession as soon as its legislation had been aligned with international standards. She noted in that connection that Kazakhstan had aligned itself with the statement made by the European Union on the abolition of the death penalty on 19 December 2006 at the sixty-first session of the General Assembly. It was also a member of the International Commission against the Death Penalty established on the initiative of the Spanish Government.

31. **Mr. Salvioli** noted that the Committee on the Elimination of Discrimination against Women had expressed concern about the lack of information on whether marital rape was criminalized (CEDAW/C/KAZ/CO/2). He asked whether the Criminal Code now included provisions concerning marital rape.

32. **Mr. Neuman** welcomed the adoption of the 2009 Refugee Act and the recent amendments to article 523 of the Code of Criminal Procedure, which had prohibited extradition in certain cases. While the non-refoulement obligation under article 7 of the Covenant did not address all forms of persecution, it prohibited extradition, deportation and any other kind of return to a country where individuals faced a real risk of torture or cruel, inhuman or degrading treatment. Unlike in the 1951 Convention relating to the Status of

Refugees, there were no exclusion clauses in the Covenant, rendering the obligation of non-refoulement applicable even if an individual was accused of serious crimes. It would be useful to know whether the State party's legislation was consistent with article 7 of the Covenant in that respect, or whether there were exceptions in the law that had not been mentioned in the written replies.

33. He asked whether article 523 of the Code of Criminal Procedure prohibited extradition in all cases where there was a real risk of torture or cruel, inhuman or degrading treatment and requested details of the applicable standard of probability under that provision. It would be useful to know whether the definitions of torture and cruel, inhuman and degrading treatment that were applicable to article 523 were the same as those in the Covenant and the Convention against Torture. The Committee would appreciate information on whether the State party fully complied with the non-refoulement obligation in practice, even in cases of extradition or deportation to States that had formerly been part of the Soviet Union and to China.

34. He asked whether the Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States (CIS), which apparently barred refugee protection for nationals of other CIS States, was being applied in a manner inconsistent with the Covenant. He requested clarification whether the Government and the courts understood the obligations under the Covenant and under article 523 of the Criminal Code as limiting their obligations to extradite under the Minsk Convention and the Shanghai Cooperation Organization treaty. Did the State party sometimes extradite or deport people who feared torture or cruel, inhuman or degrading treatment on the basis of diplomatic assurances that they would not be mistreated? If so, did the diplomatic assurances cover both torture and cruel, inhuman and degrading treatment, and were they accompanied by subsequent procedures to ensure that they had been respected by the other States involved?

35. The Committee had received reports indicating that, since the entry into force of the Refugee Act, the State party had reduced its cooperation with UNHCR and was restricting that organization's ability to perform its protective role. Since UNHCR assistance could also be valuable in ensuring compliance with article 7 of the Covenant, he would welcome the delegation's comments on whether restrictions were being imposed on UNHCR and, if so, why.

36. While welcoming the State party's prohibition of corporal punishment of children, he noted that the Committee had received reports that children were subjected to serious beatings, inter alia with wooden and metal objects, as a form of discipline in juvenile detention facilities, orphanages and other group settings. He therefore asked what steps the State party was taking to eliminate such treatment as its own laws required. It would be useful to know whether the ban also applied to military colleges. Given the apparent widespread use of corporal punishment of children who lived with their parents, he wondered whether the State party was implementing any measures to promote the use of less violent methods of discipline by parents.

37. Turning to the issue of prison conditions, he asked whether steps were being taken to eliminate the use of the *stakan* — a tall, narrow, windowless cell in which prisoners were sometimes confined for more than a day as a form of inhuman punishment — in prisons and other places of detention. He wished to know whether the State party's independent public monitoring commissions had access to all places of detention and, if so, whether they were able in practice to visit those places unannounced. In particular, he wished to know whether unannounced visits were made to institutions operated by the security services, including UK-161/3 in Zhitykara. During his visit to the State party in May 2009, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had been unable to make unannounced visits to places of detention. He had found that there were parts of prisons or even entire prisons where some

prisoners were allowed to attack and sexually abuse other prisoners, and in some cases prisoners were transferred to those places to that end. He would welcome the delegation's comments on that situation.

38. Given the alarming statistics on deaths in custody, he asked whether the State party had a policy of investigating the cause of all deaths in custody. He also wished to know what steps the State party was taking to reduce prison overcrowding, including any plans to increase capacity or introduce alternative sentencing options that did not require imprisonment.

39. **Mr. Thelin** asked whether the State party's legislation contained a provision requiring the police to inform detainees that they had the right to a lawyer (question 15 of the list of issues), since that right was of no use unless detainees were informed about it. If domestic legislation contained no such provision, he urged the State party to introduce one as soon as possible. The Committee remained concerned at reports that lawyers were refused contact with their clients and prohibited from appearing in court on their behalf when cases involved so-called "State secrets". Given that the written reply to question 15 made no reference to exceptions of that sort, he would welcome the delegation's comments on those reports.

40. He requested clarification whether the maximum period of 30 days' detention still applied in the centres for the temporary detention, adaptation and rehabilitation of juveniles in the State party (question 17). It would be useful to have details of the precise practical implications of the transfer of responsibility for those centres from the Ministry of Internal Affairs to the Ministry of Education. He would welcome confirmation that the courts for minors referred to in paragraph 28 of the initial report and the juvenile courts mentioned in paragraph 118 were the same. He asked whether the State party had set a date by which the juvenile justice system would be fully operational. It would be useful to know what alternatives to deprivation of liberty would be available for juveniles who had committed "minor" or "moderately serious" offences (written replies, para. 58) and exactly what type of offences those were.

41. The State party's written reply to question 18 had indicated that the Government had no official information supporting allegations that the National Security Service, in its counter-terrorism operations, used unofficial places of detention such as rented apartments and houses to keep suspects in de facto unacknowledged and incommunicado detention. He asked if that meant that it had unofficial information supporting those allegations, or whether it could confirm that no locations of that nature existed.

42. Turning to question 19, he said the information available to the Committee gave the impression that the State party's judiciary was under the control of the executive arm of Government. Given that the President appointed the Higher Council of the Judiciary, he failed to understand how that institution could be free from interference by the executive.

43. In 2004, the United Nations Special Rapporteur on the independence of judges and lawyers had found that about 50 per cent of complaints of corruption related to the police and the judiciary. He requested updated statistics on charges of corruption in the judiciary and on the disciplining of judges, including the number of dismissals. He asked how the Supreme Court and the Procurator-General's Office were able to monitor the professional activities of judges and procurators without infringing their integrity and independence. He would welcome a detailed explanation of what that monitoring involved in practice. The Committee would also appreciate the delegation's comments on reports that it was impossible to become a judge without connections or bribes, and on the lack of transparency surrounding the disciplining of judges. As a result of a 2010 presidential decree on measures to optimize the human resources of government bodies, some 400 judges had been dismissed. While the official reason had been budget cuts, many of the 400

concerned had apparently been independent-minded. He would welcome the delegation's comments on such practices.

44. Given that the State party had introduced the jury system, he wished to know whether it had also introduced the adversarial system, in which the judge was a passive umpire between the prosecution and the defence. Reports suggested that only 1 per cent of all criminal indictments resulted in acquittal because the justice system continued to reflect the former Soviet style, in which judges rarely ruled against prosecutors, who were considered judges' superiors.

45. He asked how many cases there had been in which courts had found evidence inadmissible on the grounds that it had been obtained through torture (question 20).

46. **Sir Nigel Rodley** said he wished to know why there had been an increase in cases of human trafficking in the State party, despite the strength of the relevant domestic legislation. He asked whether there was a problem of law enforcement or of choice of law. He noted that, of all the criminal proceedings instituted by the human trafficking unit in the first nine months of 2010, two thirds had been for procurement and keeping a brothel (written replies, para. 69), for which the maximum penalty was 5 years' imprisonment. By comparison, fewer than a tenth had been for trafficking in persons, for which the maximum penalty was 15 years' imprisonment. It might thus be inferred that the unit was focusing on the victims of trafficking and lower-level offenders rather than the traffickers themselves. NGOs had reported that it was common practice in the State party for foreign sex workers who had been caught up in human trafficking to be deported before their cases were processed. Presumably they were therefore no longer able to give evidence against those who might have exploited them. While that jeopardized effective law enforcement, it also raised the question of States parties' obligation to support victims of trafficking. He asked what measures were taken in practice to support and care for victims of trafficking in the State party. The Committee would appreciate any information that was available on the sentences that had been handed down in the cases listed in paragraph 69 of the written replies.

47. **Ms. Chanet** said it would be useful to have a core document that would provide the Committee with detailed background information on the State party, particularly its administrative organization, its judiciary and its criminal procedure.

48. In their respective reports, both the Special Rapporteur on torture (A/HRC/13/39/Add.3) and the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2005/60/Add.2) had raised major concerns about the role played by prosecutors in the State party, which was clearly not in line with the provisions of the Covenant. As the latter Special Rapporteur had highlighted, prosecutors represented a major bottleneck as they could intervene in criminal or civil cases, had a crucial role with regard to pretrial detention, could appeal a court decision even when the case was already closed, and were able to suspend the application of a court sentence for up to two months. In the light of his visit to Kazakhstan in 2004, the Special Rapporteur had concluded that progress towards independence would be impossible until drastic changes were introduced to readjust the balance of competence and powers between the prosecutor, the judge and the defence lawyer.

49. She failed to understand how the assertion in paragraph 105 of the initial report that individuals could be imprisoned or sentenced to forced labour did not violate the provision in article 11 of the Covenant that no one should be imprisoned merely on the ground of inability to fulfil a contractual obligation.

50. Turning to article 12 of the Covenant, she asked whether the system of mandatory citizens' residence permits (*propiska*) had been abolished, thus enabling citizens to travel freely around the country without need to register their place of residence.

51. **Mr. Bouzid** asked whether the Refugee Act contained provisions specifying that refugees would not be penalized for illegal entry into the State party and provisions on family reunification. If not, he asked whether the State party planned to amend its legislation to bring it into line with the 1951 Convention relating to the Status of Refugees. He asked why stateless persons were deported from the State party and which countries they had come from, and requested additional data on them, disaggregated by gender and age.

*The meeting was suspended at 12.05 p.m. and resumed at 12.20 p.m.*

52. **Mr. Lepkha** (Kazakhstan), replying to the points raised by members, said that domestic violence was heavily penalized in the country's legislation. The Criminal Code covered the offences of murder, causing grievous bodily harm and all types of sexual assault in the context of domestic violence.

53. Children were protected by the Criminal Code and Code of Administrative Offences. The Criminal Code included sections on juvenile crime and antisocial behaviour, child prostitution, trafficking in children and neglect. On 23 November 2010, amendments to the legislation on child protection had entered into force, designed to make the policy of the State more humane. The age of criminal responsibility for offences such as robbery had been raised from 14 to 16, and provision had been made for non-custodial sentences for minors convicted of an offence, with the agreement of the victim. The amendments also increased the criminal liability of parents, teachers and others responsible for the welfare of children in respect of sexual offences. Parents could be sentenced to 10–20 years' imprisonment for such offences, while teachers could be banned from teaching. Incitement of a minor to commit antisocial acts (Criminal Code, art. 132) now incurred a prison sentence of up to 10 years, compared with 6 years previously. Involvement of a minor in pornography now incurred a prison sentence of 3–8 years, and the sale of pornography to a minor was also an offence.

54. In 2010, the police had adopted preventive measures in respect of 12,000 at-risk families, including over 20,000 children. Over 7,000 parents had been taken to court on charges of neglect, and the parental rights of 1,200 of them had been withdrawn.

55. As part of the new policy of making the law applicable to minors more humane, minors were now deprived of their liberty only for the most serious offences, such as murder or causing grievous bodily harm. Alternative penalties included community detention, which had been used in 2,500 cases in 2010, or release into the custody of a parent, which had been applied in 635 cases.

56. Replying to a question about the right to the services of a qualified lawyer, he said that recent reforms aimed, inter alia, to give more support to victims, including free legal aid where appropriate. In accordance with articles 68, 70 and 134 of the Code of Criminal Procedure, detainees must be informed of the reasons for their arrest within three hours and given the opportunity to appoint a lawyer. Detainees were able to speak with their lawyers in private. Since 2008, detainees could be detained for a maximum of 72 hours before the case was brought before a judge.

57. Replying to a question on trafficking in persons, he said that there had been 88 cases directly related to trafficking in 2010, compared with 54 in 2009. The police had concentrated enormous resources on combating trafficking, which explained why more cases had been detected. In 2010, 220 cases had been prosecuted under article 271 of the Criminal Code ("Keeping of brothels and procurement"): that was often the only article under which the cases could be prosecuted, since in most cases they involved groups of women renting an apartment in which they offered sexual services. Four cases of trafficking by organized crime groups had been brought to court in 2010. In a very recent

case, four Kazakh citizens had received prison sentences of up to 12 years for trafficking persons to other countries.

58. **Ms. Sher** (Kazakhstan) said that, in January 2011, responsibility for the centres for the temporary isolation, adaptation and rehabilitation of minors had been transferred from the Ministry of Internal Affairs to the Ministry of Education. The centres were now staffed by civilians – teachers and psychologists – and the minors were no longer locked up. Training seminars had been held and recommendations drawn up with the assistance of UNICEF experts. The centres provided specialized support for families in difficult circumstances in order to reduce the number of neglected and abandoned children. Wherever possible, children were placed with relatives or a foster family rather than in an institution. For example, of the 165 children who had been resident in the centres for the temporary isolation, adaptation and rehabilitation of minors as at 1 June 2011, 2 had since been sent to special establishments for children displaying abnormal behaviour, 68 had been entrusted to close relatives and the rest had been returned to their parents.

59. **Mr. Baishev** (Kazakhstan) said that the judicial system was regulated by the Constitution. Supreme Court judges were elected by parliament and served for life: they could be dismissed only through the procedure laid down in the Constitution and other legislation. Local judges were appointed by the President on the recommendation of the Higher Council of the Judiciary, following a competitive examination. The Council was made up of members of parliament, lawyers, academics and judges, and was thus removed from the influence of local authorities. The appointment process for local judges was transparent and open to public and media comment.

60. Supreme Court judges could be dismissed only by parliament on the recommendation of the Higher Council of the Judiciary. A college of judges appointed by the Council recommended disciplinary measures. Local judges could be dismissed only by the President, on the recommendation of the Council. In 2010, 152 local judges had been subjected to disciplinary measures, out of a total of approximately 2,000 judges, a figure which the Government considered high. Complaints about the way a judge conducted a trial were always investigated.

61. Juvenile courts had been set up in Astana, the capital, and Almaty. Eventually, such courts would be set up in all 17 provinces. The juvenile courts dealt with less serious crimes and imposed penalties which did not require deprivation of liberty, such as fines, appointment of a guardian or confinement to the home. Juveniles might also be sent to specialized educational establishments which did not form part of the prison system. The aim was to give them the chance to reform.

62. Replying to a question about the relationship between judges and prosecutors, he said that legal proceedings in Kazakhstan were adversarial, which meant that the prosecution and the defence had the same right to present and assess evidence, while the judge remained neutral and reached a decision based on the available evidence and consistent with the Constitution and other legislation. Judges did not favour State bodies over private individuals: indeed, some 80 per cent of complaints by citizens against State bodies were decided in the citizens' favour. If an action by a State body was found to be illegal, the law would be changed to ensure that the action could not be repeated. The courts were financed from the central budget of the Republic, not by any individual ministry, and were thus free of the influence of the executive branch.

63. There had been allegations that it was impossible to become a judge except by paying bribes. That was not true: judges were appointed following a competitive examination in which there were 50–100 candidates for every post. The appointment process was open and transparent, and judges' performance was subject to quality assessment. However, it was true that judges sometimes struggled to cope with their heavy

workload. For instance, he himself, as a Supreme Court judge, had had to decide as many as 83 cases in 15 days.

64. It was true that a very low number of cases, approximately 1 per cent, which came before the courts ended in an acquittal. However, that was partly due to the fact that cases were first submitted for preliminary investigation, which could last up to two months, and cases where the evidence was considered insufficient would be eliminated at that stage. Only cases backed by a strong body of evidence would ever get as far as the courts. By his own calculation, the number of cases dropped at the preliminary investigation stage, plus the number of defendants formally acquitted by the courts, amounted to approximately 10 per cent of all cases.

65. Replying to a question about extradition of individuals to countries where they might be at risk of torture, he said that relevant decrees of the Supreme Court obliged the courts to satisfy themselves that the country requesting extradition did not have a record of flagrant and widespread violations of human rights. If evidence of such violations existed, or even a strong suspicion, the individual concerned could not be extradited. A Supreme Court decree dated 28 December 2009 defined human rights violations relating to torture and cruel, inhuman or degrading treatment or punishment, and the penalties to be imposed by the courts.

66. On the issues of corruption among judges, he said that one judge had been convicted of corruption in 2009, and two further cases were at the preliminary investigation stage, which showed the determination of all groups in society to fight corruption.

*The meeting rose at 1 p.m.*