

(Translated from Russian)

Astana, August 2016

To: José Guevara, First Vice-Chair of the Working Group on Arbitrary Detention
David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association;
Michel Forst, Special Rapporteur on the situation of human rights defenders.

Sirs, Madam

Having considered your joint query in connection with events relating to the land law reform, I wish to provide you with the following information.

A law amending the Land Code of the Republic of Kazakhstan was adopted on 2 November 2015. It was well received by the general public and did not prompt any negative reaction. However, in the spring of 2016 certain parties began to stir things up.

With a view to raising awareness of the law, the President of Kazakhstan introduced a moratorium on its implementation until 31 December 2016. In order to discuss the law, on 11 May 2016, a special commission on land reform was established, composed of representatives of civil society, the agricultural sector, State bodies, and parliament. The commission remains open to Kazakh citizens, their views and proposals, which may also be submitted directly to the website “jerturaly.kz” or through a centralized call centre.

Despite the measures taken to ensure dialogue, certain individuals continued to try to portray the situation in a negative light, spreading rumours that the purpose of the amendments to the Land Code was the sale of land to foreigners, and called for rallies to be held on 21 May 2016.

In this context, it is important to note the following. Under Kazakh legislation, it is necessary to seek the local authority’s permission before holding meetings and rallies in public places. This is spelled out in article 3 of the Act of 17 March 1995 on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations. These provisions were established to ensure public order and to prevent it being undermined by disorderly and irresponsible conduct. There are no restrictions or conditions on holding meetings indoors.

The Procurator-General of Kazakhstan issued public statements on two occasions before 21 May to explain the procedures for the organization and conduct of peaceful assemblies and rallies and the penalties incurred for participating in unauthorized, i.e., illegal events. His statements were disseminated through the media and social networks. Citizens who had publicly announced that they intended to participate in illegal events received individual warnings. The last statement of the Procurator-General was made following the discovery near the proposed venues for rallies in Almaty of weapons, Molotov cocktails and scraps of metal that could have been used to cause riots.

With a view to ensuring public order and protecting the life and health of citizens, the internal affairs agencies stepped up their security measures so as to prevent any tensions. Law enforcement officers were placed on alert, but unarmed, in order to prevent illegal activities and avert their escalation into mass riots.

Nevertheless, some citizens continued to stir up the population. On 21 May, despite the requirements of the Act, the Procurator-General’s statements, and announcements about increased security measures, in several regions attempts were made to hold unauthorized protests. In view of the situation, law enforcement and local authorities continued their awareness-raising efforts. Citizens were invited to dedicated platforms for discussion of legal issues of concern to them.

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Persons who continued to engage in illegal activities were detained by police officers. Administrative penalties were imposed on those who committed serious breaches of the Act, in courts of law, in accordance with article 488 of the Code of Administrative Offences of Kazakhstan. There is no record of clashes between the police and the public during which special devices or weapons were used.

Administrative penalties were imposed on 51 persons by courts in different cities for offences committed on 21 May. Four of those persons were placed in administrative detention, 12 received administrative fines and the others a court warning. In total, between 16 and 21 May, administrative proceedings were instituted against 101 persons, 45 of whom were placed in administrative detention, 21 persons received administrative fines, and the remaining 35 were given a court warning.

Most of the offenders sentenced to administrative detention had not obtained permission to hold the rally and had incited citizens through social networks to attend the illegal gathering on 21 May, in other words, they were the organizers of the event. Their guilt was corroborated by official records and reports, video recordings, screenshots of social network pages and other evidence.

Twenty-four sentences were reviewed on appeal. As a result of the review, 22 sentences were upheld. Two persons — [REDACTED] and [REDACTED] — who had been sentenced to 15 days of administrative detention had their sentences overturned. The facts that they were minors against whom administrative proceedings had been instituted for the first time, they showed remorse and had served half their sentence (7 days) were taken into account.

I should like to draw your attention to the fact that, when dealing with the protesters, including those who attended the unauthorized rallies, Organization for Security and Cooperation in Europe and United Nations standards were applied, as law enforcement officials had received training from those organizations.

In terms of international human rights standards, the right of citizens to hold rallies and other public events is guaranteed by article 21 of the International Covenant on Civil and Political Rights. According to article 19 (2) of the Covenant, everyone shall have the right to freedom of expression. Similarly, article 33 of the Constitution of the Republic of Kazakhstan establishes the right of citizens to assemble peacefully and without arms, to hold meetings, rallies and demonstrations. However, the exercise of this right may be restricted by law in the interests of national security or public safety, the protection of public health or the protection of the rights and freedoms of others. This provision is in keeping with article 19 (3) of the Covenant, which allows States the right to restrict the right to freedom of expression and to impart information for respect of the rights or reputations of others, the protection of national security or public health or morals.

Accordingly, the provisions of articles 3, 4 and 8 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan relating to the obligation to obtain the local authority's permission to hold a rally are in keeping with international rules allowing the imposition of restrictions. Such restrictions must be reasonable and supported by reliable information indicating that during a peaceful assembly, or under the guise thereof, other, far from peaceful goals are being pursued by certain destructive forces. Under such circumstances, it is justified in the interests of State stability and national security to impose restrictions on the freedom of assembly by making it mandatory to obtain permission before holding such events.

In conclusion, I wish to assure you that Kazakhstan is willing to cooperate closely with all the mechanisms of the Human Rights Council. During the thirty-second session of the Council, Kazakhstan sponsored a joint statement by the Like-Minded Group of Countries on special procedures of the Council, which, among other things, pointed to the need for the activities of the special rapporteurs to be in strict compliance with their mandates.

Accept, Sirs, Madam, the assurances of my highest consideration.

(Signed) E. Ashikbaev
(Deputy Minister for Foreign Affairs)

Annex**Information on administrative proceedings in respect of the citizens of Kazakhstan mentioned in the query from the United Nations special rapporteurs.****1. Case of Max Kebenul Bokaev under article 488 (3) of the Code of Administrative Offences of the Republic of Kazakhstan**

By decision of the specialized administrative municipal court of Atyrau, upheld by the provincial court, on 17 May 2016, Mr. Bokaev was convicted of an administrative offence under article 488 (3) of the Code of Administrative Offences and was sentenced to 15 days of administrative detention. Article 488 (3) of the Code establishes administrative liability for the acts specified in paragraphs 1 and 2 of the article, if committed again within one year after the application of the administrative penalty or by the person who organizes the meetings, rallies, marches and demonstrations.

Under article 93 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan (Act No. 2126 of 17 March 1995, as amended by Act No. 13 of 20 December 2004), persons who do not comply with the procedure for organizing and holding assemblies, rallies, marches, protests and demonstrations are liable to penalties under Kazakh legislation.

In accordance with article 3 of the Act, an application to hold an assembly, rally, march, protest or demonstration must be submitted in writing at least 10 days before its scheduled date.

On 6 May 2016, Mr. Bokaev submitted an application to the head of the local authority (*akim*) to hold a rally-concert. On 16 May, he received a reply indicating that the event could not take place as Isatai-Makhambet Square was not included in the list of venues approved by the local representative body (*maslikhat*) for holding rallies.

In the meantime, from 24 April to 17 May 2016, Mr. Bokaev invited people to the rally on Facebook, recalling that according to the application submitted to the local authority (*akimat*) the rally-concert was to be held on Isatai-Makhambet Square in Atyrau at 11 a.m. on 21 May 2016.

The case file indicates that Mr. Bokaev, as the organizer, invited people to take part in an unauthorized rally and that his actions are classified under article 488 (3) of the Code of Administrative Offences, since he did not comply with the requirements of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan.

Background: the section entitled “Information on criminal cases” provides information on the preventive measures taken in respect of Mr. Bokaev, namely detention for a period of 2 months from 31 May until 31 July 2016.

2 Case of Alima Dzhumabaevna Abdirova under article 488 (1) of the Code of Administrative Offences.

By decision of the specialized administrative municipal court of Aktobe of 1 May 2016, upheld by the provincial court, Ms. Abdirova was convicted of an administrative offence under article 488 (1) of the Code of Administrative Offences and received an administrative fine of 20 monthly notional units, equivalent to 42,420 tenge.

The case file indicates that, at around 2.30 p.m. on 27 April 2016, Ms. Abdirova actively participated in an unauthorized rally, in the First President of the Republic Park, on Abylkhair Khana Avenue in Aktobe, in breach of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan of 17 March 1995. Similarly, at around 10.20 a.m. on 1 May 2016, Ms. Abdirova helped to organize an unauthorized rally opposite the Aktobe provincial authority building on Abylkhair Khana Avenue, and thus committed an administrative offence under article 488 (1) of the Code of Administrative Offences.

Under article 3 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan,

an application to hold an assembly, rally, march, protest or demonstration must be submitted in writing at least 10 days prior to the scheduled date of the event. The application must indicate the purpose, nature and place or route of the event, its starting and finishing times, the expected number of participants, the full names of the official organizers and of persons responsible for ensuring public order, their home addresses and the addresses of their places of work or study and the date of submission of the application. The date of submission of the application is considered to be the date of its registration with the local authorities in cities of national status, the nation's capital or districts (provincial centres).

It was ascertained that, between 21 April and 1 May 2016, the local authority did not receive any application to organize and hold an assembly, rally, march, protest, demonstration or other public event and that authorization for such an event was not given.

Pursuant to article 9 of the aforementioned Act, persons who have failed to comply with the procedure for organizing and holding assemblies, rallies, marches, protests and demonstrations incur liability under Kazakh legislation.

Article 488 (1) of the Code of Administrative Offences establishes administrative liability for breaches of national legislation on the procedure for organizing or holding, assemblies, rallies, marches, protests, demonstrations or other public events, for obstructing their organization or conduct or for participating in unauthorized assemblies, rallies, marches, protests, demonstrations or other public events, where there is no evidence of the commission of a criminal offence through such acts. Ms Abdirova's guilt in committing an offence under article 488 (1) of the Code of Administrative Offences was corroborated by the police records concerning the administrative breach, video recordings and other evidence. She organized and took part in a rally held without the permission of the local authority.

3. Case of Maksat Ilyasuly (Nurybaev) under article 488 (3) of the Code of Administrative Offences.

On 17 May 2016, Maksat Ilyasuly (Nurybaev) was convicted of an administrative offence under article 488 (3) of the Code of Administrative Offences and was sentenced to X days* of administrative detention by the specialized administrative court of Astana; the sentence was commuted to 15 days on appeal.

Article 488 (3) of the Code of Administrative Offences establishes administrative liability for the acts specified in paragraphs 1 and 2 of the article, if committed again within one year after the application of the administrative penalty or by the person who organizes the assemblies, rallies, marches and demonstrations.

The case file indicates that Maksat Ilyasuly (Nurybaev) was detained on 17 May 2016. He convened and issued an open invitation to people to participate in an unauthorized rally on the Facebook page entitled "Alash Zholy" that carried various slogans in Kazakh** concerning a rally to be held at 11 a.m. on 21 May 2016.

In accordance with article 3 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan, an application to hold an assembly, rally, march, protest or demonstration must be submitted in writing at least 10 days before its scheduled date.

Mr. Nurybaev did not file an application to hold the rally with the local authority in Astana, as required by law, consequently authorization to hold the event was not given.

Mr. Nurybaev therefore violated the provisions of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan. He organized a public and unauthorized event and thus committed an administrative offence for which he was liable under article 488 (3) of the Code of Administrative Offences.

* Translator's note: number of days illegible.

** Translator's note: Kazakh translation not available.

4. Case of Isatai Ersainovich Utepov under article 488 (1) and (3) of the Code of Administrative Offences.

On 18 May 2016, by decision of the specialized administrative municipal court of Uralsk, upheld by the provincial court, Mr. Utepov was convicted of an administrative offence under article 488 (3) of the Code of Administrative Offences and was sentenced to 15 days of administrative detention.

It was found that, on 24 April 2016, Mr. Utepov organized an illegal protest event on Abai Square on Dostyk Avenue in Uralsk for which, pursuant to a decision of the specialized administrative municipal court of Uralsk, he was held liable under article 488 (1) of the Code of Administrative Offences and received an administrative fine of 20 monthly notional units.

On 29 April 2016, the Procurator of Uralsk issued Mr. Utepov with a warning that breaches of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan would not be tolerated.

In accordance with articles 2, 3 and 4 of the aforementioned Act, an application to hold a rally must be submitted to the local authority of the provincial centre in writing at least 10 days before its scheduled date. The local authority considers the application and informs the official organizers of its decision no later than five days before the date of the event specified in the application.

Mr. Utepov, in his capacity as a member of the Abyroi civil society association, applied to the local authority for a permit to hold the rally and, following its refusal, continued his illegal activities by posting an invitation for people to attend the unauthorized rally on social media.

On 12 May 2016, Mr Utepov publicly incited people to attend a rally on 21 May on his Facebook page with messages such as: “Despite the fact that a moratorium has been declared, there is one date, 21 May, that no one has cancelled. Friends, be on your guard!” He also made several other appeals for people to attend the unauthorized rally thus showing that he was the organizer of the event.

Mr. Utepov’s guilt in committing the administrative offence in question was corroborated by the related police records, reports from police officers, printouts from his Facebook page, his written statement and other evidence.

Mr. Utepov therefore committed several breaches of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan. He organized a public and unauthorized event and thus committed an administrative offence under article 488 (1) and (3) of the Code of Administrative Offences.

5. Case of Baurzhan Esimovich Alipkaliev under article 488 (1) and (3) of the Code of Administrative Offences.

By decision of the specialized administrative municipal court of Uralsk in the province of West Kazakhstan on 3 May 2016, upheld by the provincial court, Mr. Alipkaliev was convicted of an administrative offence under article 488 (1) of the Code of Administrative Offences and was fined 20 monthly notional units.

By decision of the specialized administrative municipal court of Uralsk in the province of West Kazakhstan on 18 May 2016, upheld by the provincial court, Mr. Alipkaliev was convicted of an administrative offence under article 488 (3) of the Code of Administrative Offences and was sentenced to 15 days of administrative detention.

With regard to the first offence it was ascertained that, around 7 p.m. on 29 April 2016, Mr. Alipkaliev, in violation of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan, held a public protest in Abai Square on Dostyk Avenue in Uralsk carrying a banner which read: “Let’s keep the land left by our ancestors for future generations.”

Article 488 (1) of the Code of Administrative Offences establishes administrative liability for breaches of legislation relating to the organization or conduct of assemblies, rallies, marches, protests and demonstrations or other public events, for obstructing their organization or conduct or for participating in illegal assemblies, rallies, marches, protests, demonstrations or other public events, where there is no evidence of the commission of a criminal offence through such acts.

The court found that Mr. Alipkaliev's solo protest was unlawful since, in breach of the law, he had not applied to the local authority before holding the event. Furthermore, on 29 April 2016, Mr. Alipkaliev received a letter from the Procurator explaining that breaches of the law would not be tolerated.

It also found that, on 14 May 2016, in violation of the law, Mr. Alipkaliev had called upon the public to attend a rally on 21 May 2016 by posting on his Facebook page a message, which read: "The future of Kazakh land will be decided on 21 May. All come to the rally on 21 May!" By posting the message, he had organized an illegal rally.

In accordance with articles 2, 3 and 4 of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan, an application to hold a rally must be submitted to the local authority of the provincial centre in writing at least 10 days before its scheduled date.

The local authority considers the application and informs the official organizers of its decision no later than five days before the date of the event specified in the application.

In breach of these provisions, Mr. Alipkaliev did not apply to the local authority for a permit to hold the protest and went ahead with the illegal activity.

While in court Mr. Alipkaliev did not deny that he had posted the above-mentioned messages on social media inviting people to an unauthorized rally, in other words, that he had circulated the invitation.

Mr. Alipkaliev therefore committed several breaches of the Act on the Procedure for Organizing and Holding Peaceful Assemblies, Rallies, Marches, Protests and Demonstrations in the Republic of Kazakhstan. He organized a public and unauthorized event and thus committed an administrative offence under article 488 (1) and (3) of the Code of Administrative Offences.

Furthermore, it should be noted that there is no record of administrative proceedings brought against Olga Klimonova, Galym Agelov, Zhanbolat Mamai and Galym Akulbekov in Kazakh courts.

Information on criminal cases

Among the persons mentioned in the letter from the special rapporteurs there is only one person who was initially detained for an administrative offence that was subsequently remanded in custody (Max Bokaev).

However, when following up on the criminal cases involving the organization of unauthorized rallies, it was found that pretrial investigations are under way and preventive measures have been taken, including custodial measures, in respect of a larger group of individuals. Accordingly, more extensive information in addition to that requested in the special rapporteurs' query is provided below.

On 17 May 2016, the specialized interdistrict administrative court of Atyrau sentenced Max Bokaev and Talgat Ayanov to 15 days of administrative detention under article 488 (3) of the Code of Administrative Offences for having organized an unauthorized rally on the land issue on 24 April 2016 in Atyrau. The sentences were appealed, however, on 23 May 2016, the appeal chamber of the Atyrau provincial administrative court upheld the sentences.

Subsequently, on 3 June 2016, in response to an application from Divisional Directorate No. 9 of the National Security Committee for Atyrau province and pursuant to articles 24 and 179 (2) of the Criminal Code of the Republic of Kazakhstan, the investigating judge in Atyrau Municipal Court No. 2 authorized Mr. Bokaev's remand in

custody as a preventive measure (for two months, from 9.15 p.m. on 31 May to 9.15 p.m. on 31 July 2016).

On 3 June 2016, in response to an application from Divisional Directorate No. 9 of the National Security Committee for Atyrau province and pursuant to article 179 (2) of the Criminal Code, the investigating judge in Atyrau Municipal Court No. 2 also authorized Mr. Ayanov's remand in custody as a preventive measure (for two months from 9.40 p.m. on 31 May 2016 to 9.40 p.m. on 31 July 2016).

Articles 24 (3) and 179 of the Criminal Code under which the criminal offence of the aforementioned persons was registered relate to planning and attempting a constitutional coup and seizure of power.

Furthermore, according to the cases registered in the consolidated register of pretrial investigations, the investigating judges of Atyrau Municipal Court No. 2 considered three cases under article 55 of the Code of Criminal Procedure authorizing the preventive measures listed below.

On 23 May 2016, in response to an application from Divisional Directorate No. 9 of the National Security Committee for Atyrau province and pursuant to article 179 (2) of the Criminal Code, the investigating judge in Atyrau Municipal Court No. 2 authorized the house arrest of K.Z. Sholak for two months (from noon on 20 May to noon on 20 July 2016).

On 23 May 2016, in response to an application from Divisional Directorate No. 9 of the National Security Committee for Atyrau province and pursuant to article 179 (2) of the Criminal Code, the investigating judge in Atyrau Municipal Court No. 2 authorized the remand in custody of Bokhan Gatai-Taly (from 12.36 p.m. on 20 May to 12.36 p.m. on 20 July 2016). The appeal chamber of Atyrau provincial court overturned the sentence of the court of first instance and commuted it from remand in custody to bail.

On 23 May 2016, in response to an application from Divisional Directorate No. 9 of the National Security Committee for Atyrau province and pursuant to article 179 (2) of the Criminal Code, the investigating judge in Atyrau Municipal Court No. 2 authorized the remand in custody of Mr. S. Kapizov (for two months from 1.05 p.m. on 20 May to 1.05 p.m. on 20 July 2016). The appeal chamber of Atyrau provincial court overturned the sentence of the court of first instance and commuted it from remand in custody to house arrest.
