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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of acts of harassment against **Ms. Roza Tuletaeva**, leader of the workers' strike of the OzenMunaiGaz oil company, in the context of the court proceedings related to the protests in Zhanaozen of December 2011, and arbitrary detention of **Mr. Galym Ageleuov**, Director of the organization "Liberty", in the context of a peaceful assembly held near the monument of Abay, in the city of Almaty.

According to the information received:

The case of Ms. Roza Tuletaeva

On 4 June 2012, the Court of Aktau found Ms. Roza Tuletaeva, leader of the workers' strike of the OzenMunaiGaz oil company, guilty for organizing a mass unrest during the protests held in Zhanaozen in December 2011. She was sentenced to 7 years of imprisonment under article 241 of the Criminal Code.

According to the reports received, on 3 January 2012 Ms. Tuletaeva was arrested in her residence in Zhanaozen. On 16 April, she testified that she was subjected to acts of torture while in detention: plastic bags were allegedly put over her face to simulate suffocation; she was reportedly hung by her hair and brought to different rooms by men wearing civilian clothes. It is also alleged that while her family members were threatened, her daughter was arrested and detained in August 2011 for several days.

Moreover, according to reports received, during the trial almost all of the 37 defendants fully or partially retracted their testimonies, which were also allegedly obtained after being subjected to ill-treatment. It is also reported that the identities of police officers reportedly involved in such acts were revealed by several defendants during the trial. While the ruling was strongly opposed by members of the public, the defendants' counselors and local trial observers expressed concern with regard to procedural irregularities observed during the trial.

It is reported that another trial is scheduled in June 2012 against Ms. Tuletaeva for "incitement of social enmity" under Article 164 of the Criminal Code of Kazakhstan. The penalty for this crime could be of up to 10 years of imprisonment.

The case of Mr. Galym Ageleuov

On 2 June 2012, at approximately 12:00 hours, a group of between 20 and 30 individuals from the "Not-Agreed" movement allegedly gathered near the monument of Abay, in the city of Almaty. It is reported that Mr. Galym Ageleuov made a speech on the human rights violations related to the court proceedings on the Zhanaozen protests of 16 December 2011, and on allegations of acts of torture of protesters under detention. While the event had not been widely publicized, journalists and police were present.

According to the reports received, the police warned participants that the gathering was unsanctioned and invited them to disperse. Mr. Ageleuov was subsequently arrested by the police on his way home, asked to collect personal items and transferred to the Specialized Inter-district Administrative Court of Almaty. The Court found a violation of Article 373.3 of the Code of Administrative Violations and sentenced him to 15 days in administrative detention. Mr. Ageleuov is detained in the Special Ward for Persons under Administrative Arrest of the Department of Internal Affairs in Almaty.

It is reported that Mr. Ageleuov actively monitored the court proceedings related to the events occurred on 16 December 2011 in Zhanaozen. It is also reported that Mr. Ageleuov conducted meetings with activists in relation to these events, participated in a press conference on the case and disseminated information related to the court proceedings through the social media.

Without prejudging the accuracy of these allegations, serious concern is expressed that the sentencing of and additional charges against Ms Roza Tuletaeva and the detention of Mr. Galym Ageleuov may be related to their human rights activities. We are concerned that this could be part of a broader effort to obstruct and criminalize the legitimate activities of human rights defenders and activists working for the promotion and protection of human rights and fundamental freedoms, including those who may be critical of actions and policies of the Government. Concern is further expressed about the physical integrity of Ms. Tuletaeva amid allegations that acts of torture she was subjected to while in detention have not been investigated.

In connection with the events occurred in Zhanaozen on 16 December 2011, on 13 January 2012 a previous communication was sent on the matter by several Special Procedures mandate-holders, including the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We regret that no response has been received from the Government.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at <http://www.osce.org/odihr/66042> and to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

In this connection, we would like to appeal to your Excellency’s Government to take effective measures to ensure that the right to peaceful assembly is guaranteed without undue restrictions. In this context, as laid out in operative paragraph 1 of Human Rights Council resolution 15/21, we call on your Excellency’s Government “to respect and fully protect the rights of all individuals to assemble peacefully... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others..., seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly... are in accordance with (your) obligations under international human rights law.”

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” In this connection, we wish also to draw the attention of your Excellency’s Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion

and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information on measures undertaken to address the alleged irregularities related to the trial of Ms. Roza Tuletaeva.
6. Please provide information concerning the legal grounds for the arrest and detention of Mr. Ageleuov and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
7. Please explain any measure taken by your Excellency's Government to ensure that the rights of the aforementioned persons to freedom of opinion and expression and to peaceful assembly have been protected.

We undertake to ensure that the response from your Excellency's Government is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned

person(s) are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
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Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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