

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

REFERENCE: UA
KAZ 2/2016:

9 May 2016

Excellency,

We have the honour to address you in our capacity as First Vice-Chair on behalf 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 24/7, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest, detention, harassment and prosecution of protesters, human rights defenders and journalists in relation to recent protests**.

The human rights defenders, journalists and protestors arrested include: Mr. **Max Bokayev** (human rights defender from the human rights organization, Arlan), Ms. **Olga Klimonova** (member of the human rights organisation, the National Prevention Mechanism Against Torture), Ms. **Alima Abdirova** (member of the human rights organisation, Ary Ana and the National Prevention Mechanism Against Torture), Mr. **Galym Akulbekov** (human right defender), Mr. **Maksat Ilyasuly** (a member of the Antiheptyl movement and Blyalov), Mr. **Galym Ageleuov** (Director of the human rights organisation, Liberty), Mr. **Zhanbolat Mamay** (a leader of the youth opposition movement, Rukh Pen Til), Mr. **Issatay Utepov** and Mr. **Baurzhan Alipkaliyev**.

Concerns regarding the rights to freedom of association and freedom of expression in relation to the draft Law on NGOs were the subject of a communication sent on 6 October 2015, see A/HRC/31/79 (case no. KAZ 3/2015) and 15 October 2015, see A/HRC/31/79 (case no. KAZ 4/2015). We acknowledge receipt of your Excellency's

Government's reply of 26 October 2015, but we remain concerned given the new allegations received.

According to the information received:

From 24 April to 1 May 2016, peaceful protests and meetings took place across the country in response to amendments to the Land Code, which will come into effect on 1 July 2016. The Land Code governs the rental of agricultural land to foreigners, including an increase in the maximum period of rental from 10 to 25 years and for rentals to be given by auction. Reportedly, there were protests and meetings across six cities in response to the amendments, including on 24 April in Atyrau, where over two thousand people gathered; on 25 April in Kulsary; on 27 April in Aktobe and Semey; and on 1 May in Zhanaozen and Kyzyl-Orda.

Following these peaceful protests, several activists and human rights defenders have been targeted with allegedly arbitrary arrests and criminal cases, for exercising their rights to freedom of peaceful assembly and freedom of expression.

In particular, on 26 April, following the protests in Atyrau city, criminal cases were brought against eight protestors, human rights defenders, bloggers and journalists, including Mr. **Max Bokayev**. The charges against the eight individuals are based on article 174(2) of the Criminal Code of the Republic of Kazakhstan, for "kindling of social discord".

Approximately 90 protestors, human rights defenders and journalists have been allegedly arbitrarily arrested and detained following the peaceful assemblies in different cities, reportedly as preventative actions, prior to a press conference on the land law, as well as in response to their alleged participation in peaceful protests or meetings. Those arrested and detained include journalist and human rights activist, Ms. **Olga Klimonova**; activist Ms. **Alima Abdirova**, accused of the organization of meetings and propaganda activities; as well as several other activists and human rights defenders, including organizers of meeting and conferences and cameramen, such as, Mr. **Galym Akulbekov**, Mr. **Maksat Ilyasuly**, Mr. **Galym Ageleuov**, Mr. **Zhanbolat Mamay**, Mr. **Issatay Utepov** and Mr. **Baurzhan Alipkaliyev**.

All of the persons arrested have subsequently been released, many of whom face criminal charges, such as Ms. Alima Abdirova, who has been charged with organizing meetings and propaganda activities.

Grave concern is expressed about the alleged arbitrary arrest of protestors, human rights defenders and journalists across the country, including the above mentioned

individuals, which appear to be linked to their human rights and journalistic activities, for legitimately exercising their rights to freedom of peaceful assembly and association and freedom of opinion and expression. Particular concern is expressed at the targeting of journalists for reporting on a matter of public interest. Further concern is expressed for the criminal charges brought against some protestors, human rights defenders and journalists in the same connection.

Additional concern is expressed about the broader impact of the above allegations, which may negatively affect the exercise of the rights to freedom of peaceful assembly and association, and freedom of expression of the entire civil society, in particular human rights defenders, journalists and individuals expressing dissenting opinions.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of the concerned individuals is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

We would like to refer you Excellency's Government to articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006, which guarantee the rights of freedom of opinion and expression and freedom of peaceful assembly and association, respectively. We would like to remind your Excellency's Government that restrictions on the exercise of these freedoms must not put in jeopardy the rights themselves. It is not compatible with the above-mentioned provisions to invoke legislation on public order to limit the exercise of the rights to freedom of expression, assembly and association unless the strict test of necessity and proportionality is met, as provided under the ICCPR (CCPR/C/GC/34).

We are also referring to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5 and 6.

We also recall Human Rights Council resolution 24/5 which reminds States of their obligation to respect and fully protect the rights of all individuals to associate freely, including persons espousing minority or dissenting views or beliefs, and human rights defenders. It calls on States to take all necessary measures to ensure that any restrictions on the free exercise of the right to association is in accordance with their obligations under international human rights law. We would also like to refer you to the report on the proper management of assemblies (A/HRC/31/66).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 to freedom of peaceful assembly and association, and freedom of expression and opinion of the above-mentioned persons in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information about the legal basis of the arrest, detention and charges issued, as well as how the legal proceedings comply with international human rights norms and standards.
3. Please provide information about measures taken or to be taken to bring the enforcement of article 174 (2) of the Criminal Code into conformity with international human rights norms.
4. Please indicate the measures adopted to ensure that human rights defenders and associations are able to carry out their legitimate work in Kazakhstan in a safe and enabling environment without fear of reprisals, violence or harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure that the appropriate measures to change the situation are carried out.

We also wish to inform your Excellency's government that we reserve the right to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara

First Vice-Chair on behalf 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