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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur 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; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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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; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of **widespread acts of violence, excessive use of force by law enforcement officials and ensuing arrests of suspected organizers and participants in the context of the protests held on 16 December 2011 in Zhanaozen, Mangistau region.**

The issue of oil workers' strikes in the Mangistau region has been the subject of a previous communication sent in July 2011 by the Working Group on Arbitrary Detentions; the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association. We thank your Excellency's Government for its response.

According to the information received:

On 15 December 2011, the Socialist Movement of Kazakhstan allegedly called for action to mark the events of 16 December 1986. It is reported that a mass rally

was announced to take place at the main square of Zhanaozen, Mangistau region of Kazakhstan, to demand resignation of the President and the Government; nationalize the oil industry and other natural resources; and express distrust of all political parties and Members of Parliament. Allegedly, striking oil workers had been meeting peacefully on the square every day since July.

On 16 December 2011, Zhanaozen central square became the main point of assembly for both the oil workers (including those who had been protesting there since July 2011) and for the celebration of the official Independence Day organized by the local authorities. The estimated 100 to 150 oil workers were allegedly striking peacefully. According to the information received, 20 to 30 unidentified persons in OzenMunaiGaz Company uniforms went to the stage constructed for the Independence Day event, and began destroying sound equipment. Violent clashes occurred between protesters and the police. While it is unclear how the violence erupted, it is reported that two police officers were injured; decorations at the square and a police vehicle were vandalized; and a building of the city administration and an oil factory were allegedly set on fire. There are allegations that the law enforcement officials returned to the square later accompanied by internal military forces. Police were allegedly allowed to use live rounds against protesters. The violence led to the loss of numerous lives.

At approximately 1:00 p.m., a group of protesters reportedly blocked a railway line in Shetpe, about 100 kilometers north of Zhanaozen. A train was allegedly set on fire. At about 8:00 p.m., law enforcement officials allegedly attempted to remove protesters to halt further violence. According to the reports received, unidentified individuals shot several times at law enforcement officials, causing injury to five Interior Ministry officials. The police opened fire into the air and at protesters' feet. It is reported that 12 people were injured; six were hospitalized, and five were later discharged after medical treatment and one died. During the night of 17 December 2011, further attacks were reported on railway junctions in the Shetpe area.

According to the information received, the authorities have restricted the freedom of journalists. Foreign journalists who initially attempted to reach Zhanaozen were reportedly detained and then released shortly after. Since then, some journalists have reportedly gained access to Zhanaozen, but apparently only under close supervision of authorities. Statements by authorities have allegedly attributed the violence to protesters; emphasizing the role of 'hooligans' and 'bandits' in the violence as instigated by foreign and opposition groups.

On 18 December 2011, the General Prosecutor's Office reported that an attempt to seize a court building in Zhanaozen was thwarted.

On 19 December 2011, it is reported that approximately 3000 people protested in Aktau against the violence of the preceding days. On the same day, a

governmental commission was established to assess the damage resulting from the unrest and to undertake measures to stabilize the situation in Zhanaozen. According to the sources, civil society organizations offered to participate in its work.

It is reported that approximately 700 persons have been detained since the beginning of the violence; instances of rape, torture and ill-treatment of detainees have been reported as well. Allegedly, access to the detainees has not been granted. On 21 December 2011, 48 persons reportedly remained in detention, and were later sanctioned for administrative and criminal offences. On 26 December 2011, the Regional Mangistau Court reported that 16 persons were held in custody facing charges for participating in mass disorders. According to the information received, on 21 December 2011, a person detained in connection with the events in Zhanaozen died from injuries sustained while in police custody.

In addition, the police in Zhanaozen have allegedly identified the individual who recorded and uploaded a mobile video footage to YouTube depicting policemen shooting at fleeing protesters and beating those lying on the ground after being wounded. Reportedly, some journalists have been summoned to the police station for questioning. According to the source, mobile phones of civilians are also being monitored. It is reported that this video challenges official statements that refuted the use of firearms by law enforcement officials.

The General Prosecutor's office issued a press release confirming that 15 people were killed during the violence, including one minor who was 15 years old; 86 persons were injured, of whom at least five were police officers. The authorities confirmed that three died in hospital of wounds sustained in the clashes. According to unconfirmed reports from various sources, however, up to 70 people have been allegedly killed in the clashes and 800 have been injured. Morgues and hospitals were reportedly guarded by law enforcement officials.

On 20 December 2011, the General Prosecutor's office allegedly noted that numerous requests were made to the media to refrain from printing unverified reports. However, it regretted that information uncorroborated by official reports of State bodies continued to spread.

On 22 December 2011, the delegation of the Republic of Kazakhstan to the OSCE stated in Vienna that Kazakh law enforcement authorities are considering inviting foreign experts with experience in investigating similar cases of public disorder. In this connection, the Prosecutor-General has also expressed his wish to invite UN experts 'to take part in the investigation cases.'

On 26 December 2011, President Nazarbayev reportedly instructed the General Prosecutor's Office to ensure that a transparent investigation into the events takes place and that all organizers and *provocateurs* of the disorders are punished. On

the same day, it is reported that three internal investigations were launched for alleged abuse of power by law enforcement officials.

On 17 December 2011, a State of Emergency was declared until 5 January 2012 in the town of Zhanaozen. It banned peaceful assemblies; restricted entry to and exit from Zhanaozen; imposed curfew on inhabitants; and restricted the use of recording and broadcast equipment. On 4 January 2012, a Presidential decree was signed extending the State of Emergency until 7:00 a.m. on 31 January 2012. It is reported that no further explanation was given for the reasons behind such an extension.

Should this information be corroborated, grave concerns are expressed regarding the physical and psychological integrity of all persons involved in the aforementioned events. In particular, due to allegations received of excessive use of force by law enforcement officials against protesters and widespread acts of violence leading to the loss of life of at least 15 persons, including a minor of 15 years of age, and 86 persons injured, of whom 5 were law enforcement officials. Serious concern is further expressed with regard to the existence of competing accounts of the events, with significantly differing tolls of alleged victims; and the impact that such restrictions on movement and on access to information may have on the corroboration of the allegations by independent sources.

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).

Although death toll estimates vary, sources concur on the fact that many people have been killed in the context of the 16 December 2011 protests. In this regard, we wish to stress that the right to life of every individual is protected under article 6 of the ICCPR, which the Government of Kazakhstan ratified on 24 January 2006, and that no one shall be arbitrarily be deprived of his or her life.

While it is unclear under what circumstances the violence erupted, we are informed that following the violent clashes which allegedly took place on 16 December 2011, between the police and protesters, military force was deployed and live ammunition was used against protesters. In this respect, we wish to recall the international standards applicable to the use of force by law enforcement officials. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and

firearms only if other means remain ineffective or without any promise of achieving the intended result, in accordance with the principles of necessity and proportionality (principle 4).

If, however, the use of force is unavoidable, principle 5 requires law enforcement officials to: “(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

In respect of the reported deaths, we wish to stress that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions” in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, principle 9). Such investigations should clarify the circumstances of each death and shed light on the extent to which lethal force was used, and the extent to which the principles of proportionality and necessity were or were not complied with.

Regarding the allegations of torture and ill-treatment of detainees, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would like to draw the attention of your Excellency’s Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

In this context, we would 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.”

With regard to the alleged detention of journalists, we would like to refer your Excellency’s Government to paragraph 23 of General Comment No. 34 of the Human Rights Committee, which states that “States Parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. [...] Nor, under any circumstances, can an attack on a person,

because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.”

Moreover, with respect to the alleged restrictions imposed on journalists, we would like to appeal to your Excellency’s Government that “It is normally incompatible with paragraph 3 (of article 19 of the ICCPR) [...] to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.” (General Comment No. 34 of the Human Rights Committee, para. 45)

With regard to the alleged attribution of the violence to opposition groups and foreign agents, we call on your Excellency’s Government to ensure that the rights of all striking workers to freedom of opinion and expression and to peaceful assembly and of association are duly respected.

We wish to remind your Excellency’s Government that the limitations to the right to peaceful assembly set forth under article 21 of the ICCPR and article 29(2) of the UDHR, can only be justified if they are determined by law; are necessary in a democratic society to secure proper recognition and respect for the rights and freedoms of others; and are needed for the purposes of national security, national safety and public order. Should restrictions be made, we wish to recall General Comment 31 of the Human Rights Committee that states that “States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right”. Hence, they shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights. Moreover, and with regard to the alleged ban on peaceful assemblies during the State of Emergency in Zhanaozen, we would also like to make reference to the Human Rights Committee’s General Comment 29 that states that, “(i)f States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation...(T)he possibility of restricting certain Covenant rights under the terms of... freedom of movement (article 12) or freedom of assembly (article 21) is generally sufficient during such situations and no

derogation from the provisions in question would be justified by the exigencies of the situation”.

We would also like to recall Human Rights Council resolution 15/21 that recognizes that “exercising the rights to freedom of peaceful assembly... free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs.” Moreover, and in line with operative paragraph 1 of the same resolution, we call on your Excellency’s Government “to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and 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 and of association are in accordance with their obligations under international human rights law.”

We urge your Excellency’s Government to exercise the utmost restraint in managing the demonstrations and to launch immediately an independent, impartial and thorough investigation into the killings.

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 persons 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 information concerning the legal grounds for the arrest and detention of the forementioned persons and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether compensation will be provided to the victims or their families.
7. Please provide information concerning access of human rights monitors and independent civil society representatives to Zhanaozen, including to all places of detention.

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

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
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment