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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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
KAZ 4/2011

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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 independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the three cases of various human rights defenders in Kazakhstan, namely those of Mr. **Vadim Kuramshin**, Ms **Natalya Sokolova** and Messrs. **Ainur Kurmanov** and **Esenbek Ushtekbaev**.

Mr. Vadim Kuramshin, is a journalist and campaigner for the rights of prisoners. Over the past few years he has been investigating alleged cases of torture and mistreatment of prisoners in Kazakhstan. He works primarily in defending the rights of prisoners who have protested against their treatment in the Dolinka and Granit prisons.

Ms. Natalya Sokolova is a lawyer and the legal representative for the trade union representing employees of the Karazhanbasmunbay oil company in the Aktau region.

Ms. Sokolova was the subject of a communication sent by 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 and the Special Rapporteur on the situation of human rights defenders on 28 July 2011 concerning her on-going detention. We regret that to date no response has been received from your Excellency's Government to this communication.

Messrs Ainur Kurmanov and Esenbek Ushtekbaev are leaders of the campaign "Leave people's homes alone", which defends the interests of people who obtained

mortgages in the pre-crisis times and now find themselves facing eviction due to mortgage arrears.

According to the information received:

Over the weekend of 6-8 August 2011, Mr. Vadim Kuramshin was arrested on two occasions. He was reportedly informed that he was to face charges of “organising a criminal group”. Mr. Kuramshin has been imprisoned on several occasions. It is reported that these most recent administrative arrests are due to the fact that the trial of the prisoners involved in a protest at Granit prison is scheduled to be heard soon and as well as the fact that he is in possession of video tapes that allegedly provide evidence of corruption within the prison system.

It is reported that Mr. Kuramshin wrote to the Prosecutor’s office, requesting for action to be taken against the individuals who arrested him in apparent breach of proper procedure. To date no response has allegedly been received from the Prosecutor’s office.

During the first week of August, the trial of Ms. Natalya Sokolova on charges of “inciting social conflict” was heard. These charges are allegedly a result of her role as legal representative of the interests of oil workers who are on strike in the Aktau region. It is alleged that during the two months she spent in pre-trial detention she was denied access to her family.

On 8 August 2011, Ms. Sokolova was sentenced to six years in prison for these charges. According to information received the prosecution called many witnesses to provide evidence over the course of the hearing however, the defence was not permitted to call witnesses nor experts to give evidence.

During the past month, it is reported that the Almaty City Police has launched a series of investigations against Messrs. Kurmanov and Ushtekbaev and a number of other activists, allegedly at the request of the “BTA Ipoteka” finance company as a result of their work with the “Leave people’s homes alone” campaign.

It is alleged that supporters of the campaign have been called in for questioning by Investigator Ukanbek Abulhair, who is demanding the campaigners to give evidence against the two aforementioned human rights defenders, reportedly in return for unspecified favours. According to the information received, the Mayor’s office has also invited supporters of the campaign to provide evidence against Messrs. Kurmanov and Ushtekbaev promising to deal with their banking problems if they do so.

Although no charges have yet been brought against Messrs. Kurmanov and Ushtekbaev, it is reported that the solicitor of the “Leave people’s homes alone” campaign was informed by police that Messrs. Kurmanov and Ushtekbaev were likely to be arrested in early September. Reportedly, the charges suggested to be

brought against Mr. Kurmanov include the organisation of mass suicides or a charge relating to the refusal to recognize the law. Reportedly, suggested charges against Mr. Ushtekbaev include the infringement of the right to private ownership by organizing a campaign against the mortgage banks. These charges carry with them a sentence of up to seven years imprisonment.

On 6 September 2011, Mr. Ushtekbaev was reportedly taken in for questioning and interrogated for six hours. Similarly, Mr. Kurmanov was brought in for questioning on 7 September 2011 for ten hours. Both men have been reportedly banned from leaving the city.

Concern is expressed that human rights defenders Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova have been subjected to arrests, interrogation, detention and sentencing, respectively, as a result of their work in defence of human rights. These allegations, if confirmed, indicate an increasing climate of hostility and harassment against human rights defenders in Kazakhstan.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova. This right is set forth in, *inter alia*, [relevant mandate allegation codes/treaties].

Without in any way implying any determination on the facts of the case, Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person(s) is arbitrary or not, (I) we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his/her/their right not to be deprived arbitrarily of his/her/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 (and articles 9 and 14 of the International Covenant on Civil and Political Rights).

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 9, para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

- 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.

Principle 18 from the UN Basic Principles on Lawyers:

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

In this connection, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular:

- principle 6: The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Special Rapporteur/we wish(es) to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides 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 paragraph 3 of that article, 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.

We would like to refer your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights, and in particular: "1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Furthermore, we would like to draw your Excellency's attention to the Bangalore Principles of Judicial Conduct of 2002, in particular Principle 5 on the obligation of judges to ensure equal treatment, which states that : "ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office".

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 International Covenant on Civil and Political Rights, 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."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova 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.

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 Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova 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 above summary of these cases accurate?

2. Please provide the details, and where available the results, of any investigation, 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.
3. Please provide the full details of any legal basis for the arrest of Mr. Kuramshin on two occasions over the weekend of 6-8 August 2011.
4. Please provide details as to why Ms. Sokolova was not allowed to receive visits from her relatives whilst she was in pre-trial detention.
5. Please provide details as to why the defence in Ms. Sokolova's trial was not allowed to produce defence witnesses or expert opinions.
6. Please provide full details as to the legal basis of the interrogation of Messrs. Ainur Kurmanov and Esenbek Ushtekbaev as well as the legal basis for the travel ban imposed upon them.
7. Are the facts alleged in the above summary of the case accurate?
8. Has a complaint been lodged by or on behalf of the alleged victims?
9. Please provide information concerning the legal grounds for the arrest and detention of Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
10. Please explain the legal bases and the domestic law applicable to the arrest of Mr. Vadim Kuramshin, Messrs. Ainur Kurmanov and Esenbek Ushtekbaev, and Ms Natalya Sokolova
11. Please explain how the arrest of xxx is compatible with international human rights norms and standards on the right to freedom of opinion and expression, as contained, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), and international human rights norms and standards on the status and protection of human rights defenders as contained in, inter alia, the Declaration on human rights defenders.
12. In the event that the arrest and trial against of xxx is found to be unlawful under the applicable domestic law, please indicate whether, in accordance with international law, any disciplinary, administrative or penal action against the alleged perpetrators is provided for in national law, and if so, whether any such action has been taken and what they have resulted in.

13. Please provide the full details of any prosecutions which have been undertaken? Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
14. Please indicate whether compensation has been provided to the victim or the family of the victims.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Margaret Sekaggya
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