

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
KAZ 3/2016:

4 November 2016

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 24/7, 28/11, 25/2, 24/5, 24/6 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged persecution and ongoing arbitrary detention of human rights defenders, Messrs. **Max Bokayev** and **Talgat Ayan**, in relation to the exercise of their rights to freedom of expression and freedom of peaceful assembly through their peaceful defence of land rights in Kazakhstan and organization of peaceful protests in April and May 2016, as well as alleged denial of healthcare to Mr. Max Bokayev.

Mr. Max Bokayev is an environmental human rights defender and head of the NGO "Arlan". The organization monitors governmental policies in the area of human rights with the focus on the right to participate in public life. In addition, it is engaged in the protection of environmental rights, especially in the context of extractive industry. Mr. Bokayev has also been a member of the "Zhanaozen-2011" International Committee of the "Journalists in Trouble" Public Foundation, and the initiator of the "Azat" Coalition, which promotes freedom of expression on the Internet. Since 2016, Mr. Bokayev has been head of the regional group of the National Preventive Mechanism (NPM) in Atyrau region, aimed at the prevention of torture in prisons.

Mr. Max Bokayev was the subject of one previous communication sent by various Special Rapporteurs and Working Group on Arbitrary Detention, dated 9 May 2016, case no. KAZ 2/2016. We acknowledge the receipt of your Excellency's Government's replies of 18 May, 19 May and 29 September 2016, but we remain concerned given the new allegations received.

Mr. Talgat Ayan is a land rights defender and a lawyer. Together with Mr. Bokayev, he played a crucial role in organizing the social protests that followed the approval of controversial amendments to the Land Code of Kazakhstan in November 2015.

According to the information received:

Between April and May 2016, several protests took place in Kazakhstan, in which hundreds of individuals gathered, calling for the abolition of amendments to the Land Code that had been introduced in November 2015 to reportedly facilitate the lease of agricultural land by foreigners. The protesters, including Max Bokayev and Talgat Ayan, contended that the amendments infringed upon the rights of Kazakh citizens, in particular of landowners, and called upon the Government to respect their land rights.

On 17 May 2016, Messrs. Max Bokayev and Talgat Ayan were arrested on the charges of "calling for a non-sanctioned meeting" (Article 488 of the Administrative Offences Code), for making their intention to participate in the peaceful protest on 24 April public on the social media, and encouraging others to take part in the protest, as well as for uploading videos of the concerned protest. The Interdistrict Administrative Court of Atyrau approved 15 days of administrative detention of the two individuals. The ruling was appealed by the lawyer of the two human rights defenders. However, the Regional Court of Atyrau rejected the appeals on 23 and 31 May 2016.

On 19 May 2016, Messrs. Max Bokayev and Talgat Ayan were charged with the offenses of "preparation of a crime", "propaganda or public calls for seizure of power or retention of power or violent change of the constitutional order" and "organization of mass disorders" under articles 24.1, 179.3 and 272.1 of the Criminal Code, respectively.

On 20 May 2016 and following a court order, the officers of the Division 9 of the National Security Committee in Atyrau raided the houses of eight human rights defenders including that of Mr. Bokayev's mother and confiscated documents, computers, telephones, USB sticks and other data storage elements. During the search, Mr. Bokayev's mother was injured and the front door of the house was broken in.

On 31 May 2016, the two environmental defenders were transported to a remand centre of the Department for Internal Affairs of Atyrau.

On 3 June 2016, the investigative judge of Atyrau Court No. 2 ordered two months of pre-trial detention for the two human rights defenders based on charges of "preparation of a crime" and "propaganda or public calls for seizure of power or retention of power or violent change of the constitutional order" under articles

24.1 and 179.3 of the Criminal Code, while the charges of “organization of mass disorders” under article 272.1 of the Criminal Code were dropped.

On 21 July 2016, the charges under articles 24.1 and 179.3 of the Criminal Code were dropped, while new charges were declared: “incitement of social discord” (Article 174 of the Criminal Code), “dissemination of knowingly false information” (Article 274 of the Criminal Code) and “violation of the procedure of organisation and holding of meetings, rallies, pickets, street processions and demonstrations” (Article 400 of the Criminal Code). The articles foresee an imprisonment term of up to ten years.

On 29 July 2016, the Atyrau Court No. 2 extended the period of pre-trial detention of the two individuals until 31 August 2016. The extension was confirmed by the Court on 26 August 2016, despite the deteriorating health condition of Max Bokayev. Both hearings of 29 July and 26 August 2016 were held outside of the court premises, in one of the buildings of the correctional institution UG 157/1, upon the request of the Court. Therefore, public access to the court proceedings was severely limited, and representatives of the mass media and civil society were not allowed to enter the premises of the correctional institution.

On 12 October 2016, the first hearing took place at the Court No. 2 of Atyrau City. Mr. Talgat Ayan filed a motion for the judge to recuse herself from the case on the basis of procedural violations, particularly regarding the falsification of the date on which the judge had set the date and time for the first hearing, in an alleged attempt to avoid considering Mr. Ayan’s application to dismiss the case altogether and to prevent his release from pre-trial detention. However, the judge reportedly dismissed the motion for recusal.

During the second hearing on 13 October 2016, the two human rights defenders filed another motion to obtain more information about the experts of the Forensic Center of the Republic of Kazakhstan, who had provided part of materials submitted by the prosecution. In course of research on the background of those experts, it was reportedly ascertained that one of the experts had been dismissed by the Center, while the other had never been a staff member of the Center. This motion was also dismissed by the judge.

During the second hearing, the lawyers requested to replace the pre-trial detention with house arrest or bail for the two individuals, in particular considering the deteriorating health of Mr. Bokayev. However, the request was dismissed as well.

The subsequent hearings took place on 17 and 18 October, and were dedicated to the examination of witnesses. During the hearing on 18 October, Mr. Bokayev requested a break during the hearing because he did not feel well, but the judge dismissed his request arguing that he was “simulating faintness”.

Mr. Bokayev suffers from [REDACTED] and needs constant healthcare. After more than three months in detention, on 7 September 2016, Mr. Max Bokayev was allowed to undergo a medical check at the regional hospital of Atyrau. Doctors reportedly raised serious concern about his health and their recommendation was to provide urgent medical treatment. At the time of this communication, Max Bokayev has allegedly been denied access to such healthcare.

Serious concern is expressed at the allegations of persecution and ongoing arbitrary detention of the two environmental human rights defenders, which appear to be linked to their peaceful defence of land rights in Kazakhstan and the exercise of their legitimate rights to freedom of expression and freedom of peaceful assembly. Additional concern is expressed at the worsening health of Mr. Max Bokayev whilst in detention, and the continued denial of access to adequate healthcare. Furthermore, we express concern at the lack of due process and fair trial guarantees in connection with the cases of Mr. Bokayev and Mr. Ayan. We express equal concern that several of the charges brought against the above-mentioned persons do not meet the standards of international human rights law.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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, and 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 information concerning the legal grounds for the detention of and legal proceedings against Messrs. Max Bokayev and Talgat Ayan. Please also explain how they are in line with Kazakhstan's obligations under international human rights law, in particular given the apparent links of the actions taken against the two human rights defenders for their peaceful and legitimate human rights work.
3. Please provide information about the legal basis for the court order issued in relation to the raid the houses of eight human rights defenders and confiscation of their personal belongings, and explain how this is compatible with Kazakhstan's obligations under international human rights law. Please also provide information about whether any investigation has been carried out

in relation to the physical injury sustained by the mother of Mr. Max Bokayev in the course of the raid on 20 May 2016. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information as to how the judicial proceedings against Messrs. Max Bokayev and Talgat Ayan meet the requirements of international fair trial norms and standards, in particular with regard to the conduct of closed hearings.
5. Please provide information concerning the alleged denial of medical treatment to Mr. Max Bokayev, despite the deteriorating state of his health as reported by medical professionals.
6. Please provide information about measures taken to bring the Administrative Offences Code and the Criminal Code, as well as their implementation, into line with Kazakhstan's obligations under international human rights law.
7. Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan, including environmental and land rights defenders, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and persecution of any sort.

We would appreciate receiving a response within 60 days.

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 the accountability of any person(s) responsible for the alleged violations.

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
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

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 of 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 would further like to draw attention of your Excellency's Government to article 9 of the ICCPR, which guarantees the right to liberty and security of person and states that no one shall be subjected to arbitrary detention.

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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;

We would further like to draw the attention of your Excellency's Government to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society, and providing 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 also like to draw your attention to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "[r]eminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, 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 also wish to refer also to the Human Rights Council resolution 31/32, which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.