

**Mandates of 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:  
AL KAZ 4/2016

20 December 2016

Excellency,

We have the honour to address you in our capacities as 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 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning investigation and harassment against the human rights non-governmental organization **Kadyr-Kassyet (NGO Dignity)**, which appears to be aimed at undermining the organization's financial sustainability and obstructing its legitimate work in defence of human rights in Kazakhstan.

**Kasyr-Kassyet (NGO Dignity)** is a public association established in 2010, which provides consultation on and evaluation of the Kazakh legislation on human rights compliance with international human rights instruments. The organization conducts monitoring of human rights violations in the country and focuses on the issues of safety and security of human rights defenders. Ms. **Anara Ibraeva** is a human rights lawyer and director of Kadir-Kasiyet. She has represented victims of human rights violations in Kazakhstan through the submission of complaints on their behalf to the international and regional human rights bodies, including the United Nations human rights mechanisms.

According to the information received:

On 22 August 2016, Kadyr-Kassyet organized the Fifth Annual Platform for human rights defenders in Astana with the participation of representatives of embassies of the Netherlands and Canada. The platform was followed by a conference dedicated to the issue of implementation of the Kazakh national mechanism on the protection of human rights defenders. The two events were allegedly monitored closely by the National Security Committee of Kazakhstan.

A week after the events, on 31 August 2016, an official of the Service for investigating economic crimes under the State Revenue Committee went to the apartment of Ms. Anara Ibraeva to hand over a summons to appear at the State Revenue Committee. Despite Ms. Ibraeva's absence and only her minor daughter being present in the apartment, the officer urged the minor to open the door and handed her the summons, which appeared to be in violation of the Criminal Procedure Code of Kazakhstan.

On 1 September 2016, Ms. Ibraeva appeared at the State Revenue Committee, and was informed of a tax inspection being carried out into the financial activities of Kadyr-Kassyet for the period of 1 July 2011 - 31 December 2015. With regard to the reasons for initiating this inspection, a Committee official, Mr. [REDACTED], did not provide any details, but referred to a list of organizations they received for reviewing. On the same day, two female officials from social-cultural and educational departments of Akimat (local executive authority) arrived in the office of Kadyr-Kassyet, asking the employees of Kadyr-Kassyet to provide information and contact details of Ms. Ibraeva, and the organization's founders. When asked about the legal basis for those questions, the officials refused to provide justifications and left.

On 2 September 2016, Mr. [REDACTED] came to the office of Kadyr-Kassyet together with Mr. [REDACTED], who introduced himself as a trainee, but did not present an official badge. They asked the staff about the activities of the organization and requested a list of grants received by Kadyr-Kassyet. A week later, the two individuals visited the office again, questioning the accountant of Kadyr-Kassyet and examining employment contracts, agreements and financial documents. The organization filed a complaint about Mr. [REDACTED]'s presence during the visits, as he was reportedly not authorized to participate in those.

On 28 September 2016 and days afterwards, Mr. [REDACTED] visited the premises of Kadyr-Kassyet alone. The inspector questioned the employees about contracts for the grants, particularly their terms and conditions, procedures of expenditure reporting and accountability mechanisms. After repeatedly being asked about reasons for the investigation, the inspector said that the case had been opened following a complaint by an individual against several organizations, but did not provide any details.

On 4 October 2016, Mr. [REDACTED] presented the representatives of Kadyr-Kassyet with a written request of the State Revenue Committee to produce all contracts with financial donors of the organization, as well as any contract with experts and observers before 16 November 2016. Mr. [REDACTED] immediately received copies of the contracts, and he acknowledged receipt in writing, stating that no further documents were required.

On 12 October 2016, the State Revenue Committee responded to Kadyr-Kassyet's request for the basis of the investigation, by stating that the case was based on a request from the Ministry of Finance dated 26 July 2016 which called for a review of funding sources of Kadyr-Kassyet and two other Almaty-based NGOs.

On 28 October 2016, Mr. [REDACTED] emailed the organization a list of international and governmental organizations, as well as international and Kazakh NGOs and foundations, which were officially approved to provide grants in Kazakhstan, following the Governmental Decree no. 376 dated 20 March 2009. The inspector followed up by a phone call to Kadyr-Kassyet, saying that "embassies are not listed among legitimate grant-donors" and their grants

provided to Kadyr-Kassyet are therefore considered as taxable revenue. He dismissed the argument that article 12 (11) of the Kazakhstan Tax Code defines grants as any assets received from foreign states and their representative offices, which exempts those grants from income tax.

On 18 November 2016, Mr. [REDACTED] visited Kadyr-Kassyet again, stating that none of the documents listed in the official request were provided to him, despite his own written confirmation to the contrary made on 4 October. The inspector further mentioned that the organization had to pay 20 per cent of taxes on the grants received from embassies since 2011, as those funds did not qualify as tax-exempted grants.

Serious concern is expressed at the alleged investigation and harassment against Kadyr-Kassyet, which appears to be connected to the organization's legitimate human rights activities, including in relation to the protection of human rights defenders in the country. The investigation seems to aim at undermining the financial viability of the organization, curtailing and obstructing its work in promoting human rights and supporting human rights defenders. Additional concern is expressed that the summons by the State Revenue Committee were handed to the minor child of Ms. Ibraeva at her residential apartment, rather than at the official address of the organization, which appears to be not only in breach of procedural regulations, but also an act of intimidation against Ms. Ibraeva.

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

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the legal basis of the ongoing investigation against Kadyr-Kassyet. Please explain how the investigation and its seemingly broader scope of inquiry falls within the jurisdiction of the State Revenue Committee, and how it is compatible with Kazakhstan's international human rights obligations.
3. Please provide the details, and where available the results, of any investigation carried out in relation to the unlawful service of the summons of the State

Revenue Committee to the minor child at the residential apartment of Ms. Ibraeva.

4. Please indicate what measures have been taken to ensure that human rights defenders in Kazakhstan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment 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.

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

## **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 the article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006, which guarantees the right to freedom of association.

We would like to further refer to resolution 24/5 of the Human Rights Council in which it "[r]emind[ed] 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 (operative paragraph 2).

In addition, in his report (A/HRC/23/39), the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States "to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; *foreign Governments* and aid agencies; the private sector; the United Nations and other entities" (para. 82(b), emphasis added).

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, 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 wish to refer to article 5(b) of the Declaration, which provides for the right to form, join and participate in non-governmental organizations, associations or groups; and article 13 that provides for the right to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

Finally, we would also like to remind your Excellency's Government of the Human Rights Council resolution 22/6, which states that domestic laws should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).