

**Mandates of 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 KGZ 1/2018

13 June 2018

Excellency,

We have the honour to address you in our capacity as 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 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention, threat of extradition and denial of adequate medical care to Mr. **Muratbek Tungishbayev**, a Kazakhstani blogger.

According to the information received:

Mr. Tungishbayev, a Kazakhstani blogger was detained on 10 May, 2018 in Bishkek, Kyrgyzstan, on account of a request for extradition to Kazakhstan.

Mr. Tungishbayev has been very active preparing and publishing video content on YouTube blogs since 2010. His blogs cover alleged human rights violations, including freedom of expression and peaceful assembly, and also political persecution and corruption at the highest levels. His blogs have recently focused on alleged political persecution of supporters or perceived supporters of the opposition movement, Democratic Choice of Kazakhstan (DCK). He has also supported YouTube activities of Mr. Mukhtar Ablyazov, founder of DCK and has provided advice on how to expand YouTube social networks. According to Mr. Tungishbayev, his videos, produced under several pseudonyms, have reached over 120 million views, and more than 300,000 people are regular subscribers.

Mr. Tungishbayev believes that the request for his extradition is politically motivated. He alleges that the government of Kazakhstan has been trying to stop his blogging activities for many years. If extradited, he fears persecution and torture and/or cruel, inhuman or degrading treatment or punishment.

On the same day of his detention, Mr. Tungishbayev had undergone the first stage of surgery in his left eye, which had been diagnosed with central vein thrombosis.

Due to the lack of appropriate medical attention and the harsh conditions of detention, he fears he could lose sight in his eye.

On 15 May 2018, Mr. Tungishbayev applied for refugee status. However, he alleges that the State National Security Committee has not let representatives of the Migration Service interview him.

We express grave concern at the request of extradition to Kazakhstan of Mr. Tungishbayev. If extradited, he fears persecution and torture and/or cruel, inhuman or degrading treatment or punishment, due to his activities as a blogger and the exercise of his right to freedom of expression as well as to his right to freedom of peaceful assembly. Such extradition would be in violation of the state's obligations under the principle of non-refoulement. Moreover, we express concern regarding the lack of adequate medical attention to his recently operated eye and the harsh conditions of detention, which could lead to losing sight on his eye.

While we do not wish to prejudge the accuracy of these allegations, we call on your Excellency's Government to article 7 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kyrgyzstan on 7 October 1994, regarding the prohibition of torture or cruel, inhuman or degrading treatments.

We would also like to appeal to your 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 enshrines the right of everyone to hold opinions without interference. While this obligation should be understood as mainly requiring States not to directly interfere with this freedom in relation to individuals under their jurisdiction, the Human Rights Committee acknowledged in its General Comment No. 31 that States also have a duty not to expose anyone to the undue restriction of their freedoms by other governments, for example by extraditing them to a country where their rights would not be respected (CCPR/C/21/Rev.1/Add.13).

Similarly, we would like to recall article 12 of the ICCPR, which enshrines the freedom of movement, and in particular the right of all persons to leave any country. Likewise, article 13 determines that an alien has the right to be heard before the competent authority in cases of expulsion. As the Human Rights Committee determined in General Comment No. 31, the principles of impartiality, fairness and equality of arms stated in article 14 are also applicable in cases of extradition "where expulsion takes the form of a penal sanction or where violations of expulsion orders are punished under criminal law".

Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly, which can be subject to certain limited restrictions which are prescribed by law and which are necessary in a democratic society.

We would also like to refer your Government to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. We further would like to draw the attention of your Government to paragraph 16 of the resolution A/RES/65/205 of the UN General Assembly which urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.”

It is also an obligation assumed by your Government through article 33 of the Geneva Convention Relating to the Status of Refugees and its Protocol of 1967, acceded to by Kyrgyzstan on 8 October 1996, to refrain from expelling or returning any person who may be a refugee or otherwise be in need of international protection to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Lastly, we would like to refer 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.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information on the legal basis for the arrest of Mr. Tungishbayev.
3. Please explain what measures are in place to ensure an individual assessment is conducted in any return decision in accordance with the principle of non-refoulement; and that due process guarantees are respected.
4. Please provide additional information regarding the measures adopted to ensure that Mr. Tungishbayev is not forcibly returned back to Kazakhstan, where he faces a high risk of persecution for his activities as a blogger.
5. Please provide information on the measures adopted to ensure that Mr. Tungishbayev receives adequate and urgent medical attention regarding his eye, and that his conditions of detention met international human rights standards.

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 responsible of the alleged violations.

We may wish to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be informed about these matters. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

