

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls

REFERENCE:
AL KAZ 4/2021

15 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12, 41/18 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged harassment, intimidation and arbitrary detention of human rights defenders Gulzada Serzhan and Zhanar Sekerbayeva.**

Ms. **Gulzada Serzhan** and Ms. **Zhanar Sekerbayeva** are women human rights defenders, founders of Feminita Kazakhstan Feminist Initiative, a queer grassroots initiative formed to monitor, document and challenge discrimination and hate crimes based on sexual orientation and gender identity, including by means of strategic litigation, media campaigns and advocacy for the rights of lesbian, bisexual, trans, intersex and queer (LBTIQ) women in Kazakhstan.

A communication was previously addressed to your Excellency's Government concerning restrictions on the registration of Feminita as a legal entity, violations of the rights of freedom of expression and of peaceful assembly of its members, including Ms. Gulzada and Ms. Sekerbayeva (see AL KAZ 4/2019, sent on 25 October 2019). We thank the Government for its responses to this communication, received on 23 December 2019 and 22 May 2020, and in particular for its affirmation that Kazakhstan is a place where "all people" enjoy the right of free expression and peacefully assemble. However, we remain concerned in light of the following information.

According to the information received:

On 29 May 2021, an event organised by Feminita on gender equality and women's rights was set to take place in central Shymkent, with Ms. Serzhan and Sekerbayeva were scheduled to participate. The event was initially due to be held at a co-working centre in Shymkent, however, it was moved to the conference room of a city-centre hotel after the centre's administration cancelled the event. While awaiting the beginning of the event in a café near the hotel, Ms. Serzhan and Sekerbayeva were approached by a group of three unknown men, one of whom identified himself as a police officer. They

informed them that an anti-LGBT protest was taking place nearby and that the event planned by Feminita should be cancelled. Mses. Serzhan and Sekerbayeva were subsequently informed by the hotel's administration that the conference room could no longer be used for the event, which was then moved to the hotel's café. While at the café, the event's attendees were confronted by a group of approximately 30 unknown men, who surrounded, insulted and threatened Mses. Serzhan and Sekerbayeva.

As the acts of harassment were taking place, a police officer arrived at the location after receiving a call from the men who had confronted Mses. Serzhan and Sekerbayeva. The police officer allegedly proceeded to insult Mses. Serzhan and Sekerbayeva before violently arresting the two human rights defenders, forcing them into an unmarked police car with the assistance of men from the group, one of whom pulled Ms. Sekerbayeva by the hair and punched her in the face. At the time of their detention, no reason was given as to the reasons for the measure being taken against them, however, in a subsequent police statement it was stated that Mses. Serzzhan and Sekerbayeva had been taken into police custody for their own safety.

Mses. Serzhan and Sekerbayeva were brought by the police officer to Abay District Police Department, where their phones were confiscated and they were interrogated as to the reasons for their presence in Shymkent. Mses. Serzhan and Sekerbayeva were permitted to leave the Police Department at around midnight on the same date, after approximately eight hours in detention. During this time, they were permitted to meet with a lawyer. They were asked by the police to leave Shymkent, however, the police prevented them from traveling by train, and they were instead driven to Almaty by a group of five police officers, who filmed the human rights defenders without their consent.

While detained by the police, Ms. Sekerbayeva was informed that she would be charged with insulting state representatives under article 378 of the Criminal Code of Kazakhstan, yet no such prosecution was initiated. In response to a complaint filed by Ms. Sekerbayeva, an investigation has reportedly been opened into the unknown men who attacked those attending the event. No investigation has been launched into the actions of the policeman involved in the arrest of the two human rights defenders.

Prior to these events, Ms. Sekerbayeva had been receiving threats from unknown individuals via phone calls and messages after her phone number was published on various social media platforms.

Without wishing to prejudge the accuracy of the information received, we express serious concern at the alleged harassment and intimidation of Mses. Serzhan and Sekerbaeva, which would appear to be prompted by ordinary activities relating to their advocacy aimed at promoting women's rights and combating discrimination based on gender identity or sexual orientation. Our concern in this regard extends to the alleged violent arrest, detention and interrogation of Mses. Serzhan and Sekerbaeva by police, which, if proved accurate, would appear to greatly undermine their legitimate work as human rights defenders.

In relation to the above-alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites the international human rights instruments and standards relevant to these allegations.

As 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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual grounds for the arrest and detention of Ms. Serzhan and Sekerbaeva and the compatibility of these measures with Kazakhstan's obligations under international human rights norms and standards, and to ensure the enjoyment of due process rights.
3. Please provide information as to the status of any investigations opened in relation to the alleged attack on Ms. Serzhan and Sekerbaeva and the threats against them.
4. Please provide information as to why allegedly no protection was afforded to Ms. Serzhan and Sekerbaeva by police following the public attacks against them during the event at the hotel café in Shymkent.
5. Please indicate what concrete steps have been taken to create a safe and enabling environment for all persons seeking, individually or in association with others, to promote the rights of women and combat discrimination based on sexual orientation or gender identity. If no such concrete steps have been taken, please indicate a forum wherein which we would be able to engage with your Excellency's government on this issue.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan

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

Victor Madrigal-Borloz

Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Melissa Upreti

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In relation to the above-detailed allegations and concerns, we would like to remind your Excellency's Government of the following standards and norms of international human rights law, many of which we have previously referred to in the communication of 29 October 2019, previously referenced.

We would like to underline that the principles of equality and non-discrimination form part of the foundations of the rule of law. Articles 1 and 2 of the Universal Declaration of Human Rights state that '[a]ll human rights are born free and equal in dignity and in rights', and '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. This is reaffirmed in article 2 (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Kazakhstan is party since 24 January 2006, as well as article 2 (2) of the International Covenant on Economic, Social and Cultural Rights, ratified by Kazakhstan on the same date, and in several provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), acceded to by Kazakhstan on 26 August 1998.

In connection with this, we further wish to refer your Excellency's Government to the jurisprudence, general comments and concluding observations of United Nations treaty bodies which have consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law. In particular, we would like to refer to the Human Rights Committee's finding that 'States shall respond appropriately to patterns of violence against certain categories of victims, including violence against persons because of their sexual orientation or gender identity' (CCPR/C/GC/35, para 9).

We also wish to draw attention once again to the Concluding Observations of 29 March 2019 of the Committee on Economic, Social and Cultural Rights, in which the Committee recommended that Kazakhstan take all necessary steps to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, and to ensure their equal enjoyment of rights under the Covenant, and to enact tailored legal protections of these persons against attacks and harassment (E/C.12/KAZ/CO/2). Further to this, we would like to recall the concern expressed in the Concluding Observations of the Human Rights Committee, issued on 9 August 2016, relating to reports of violence against LGBT persons by both State and non-State actors (CCPR/C/KGZ/CO/2, para 9-10).

We further wish to stress that article 7 of the Convention on the Elimination of All Forms of Discrimination against Women to which Kazakhstan acceded in 1998 requires State parties to take all appropriate measures to eliminate discrimination against women in political and public life, and in relation to this we would like to recall General Comment No. 28 of the Human Rights Committee (HRI/GEN/1/Rev/9 (Vol. 1)), wherein it is stated that 'discrimination against women is often intertwined with discrimination on other grounds,' and added that 'State parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way'.

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. Today's rising fundamentalisms of all kinds and political populism, as well as unchecked authoritarian rule and uncontrolled greed for profit-making further fuel discrimination against women, intensifying the obstacles facing women human rights defenders. In addition to the risks of threats, attacks and violence faced by all human rights defenders, women human rights defenders are exposed to specific risks, such as misogynistic attacks, gender-based violence (including sexual violence), lack of protection and access to justice as well as lack of resources.

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

Concerning the right to freedom of association and assembly, we would like to refer to articles 19, 21 and 22 of the ICCPR, which state that no restrictions should be placed on the rights to freedom of expression, peaceful assembly and association unless they meet the requirements of necessity and proportionality for the pursuit of a legitimate aim. As highlighted by the former Special Rapporteur on freedom of peaceful assembly and of association, provisions restricting or prohibiting the right to freedom of association of a specific group on grounds of sexual orientation or gender identity is discriminatory and prohibited under the Covenant (A/HRC/26/29, para 64).

Finally, we would like to refer to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5 (a) and (b), 6 (c), 9 and 12.