

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL KAZ 1/2022
(Please use this reference in your reply)

18 January 2022

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; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 41/12, 42/22, 45/3, 44/5, 43/4, 43/16, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government latest information we have received about the **excessive and lethal use of force against protesters in the context of the large demonstrations held across many cities in Kazakhstan since the beginning of January 2022, as well as the widespread arrests and detention of protesters on charges related to counter-terrorism and the alleged enforced disappearances of trade unionists. We would like to bring further attention to information received on the targeted harassment of civil society activists, human rights defenders and journalists.**

We would like to thank your Excellency's Government for the briefing notes provided to Special Procedure mandate holders on 5, 6, 7, 8, 10 and 17 January 2022, as well as for the follow-up meeting between your Excellency's Government and the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 10 January 2022 and with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on 12 January 2022, as well as the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on 13 January 2022.

According to the information received:

Excessive use of force and emergency measures during the peaceful protests

In the morning of 2 January 2022, several hundreds of citizens assembled in the city of Zhanaozen in the Mangystau region, to protest the sudden and stark rise of liquefied petroleum gas (LPG) prices which had doubled. During these peaceful protests, participants called for measures to decrease and stabilize the gas price to its initial price - taking into consideration the average national

minimum wage – and to prevent fuel shortages. The protesters blocked roads, and later met with authorities who advised them to write a complaint letter to city officials, while protesters responded that their past complaints had been ignored by said officials.

The protests continued on 3 January 2022 in the Mangystau region, in the cities of Zhanaozen, Nur-Sultan, Aktobe, Uralsk and Almaty, among others. Reports of arrests were received from all five cities, while other cities and villages in the region witnessed an increased police presence in public areas.

In Zhanaozen, hundreds of residents gathered and camped overnight in the city square. In the afternoon, an estimated 1,000 people assembled in the city square, adding to their demands the direct election of local leaders. The local governor (“akim”) of Mangystau met with protesters and pledged a reduction of gas prices, which failed to satisfy their demands.

In Almaty, supporters of the unregistered Democratic Party of Kazakhstan assembled in support of Zhanaozen protesters. In response, authorities closed off the Republic and Astana Squares and deployed police guards around the perimeter, while a reported 20 protesters and activists were detained.

In the city of Aktau, a number of protesters gathered at the Yntymaq Square in front of the city administration building, setting up tents and yurts for the encampment. By that evening, approximately 6,000 people had rallied in the square, to call for a reduction of gas prices and for the resignation of the Government. The demonstrators were reportedly joined by groups of supporters from surrounding regions and cities. The *Akim* of Mangystau met with protesters to confirm that the Government had agreed to reduce gas prices and that they had initiated an antitrust probe into gas suppliers for a suspected price collusion. He further urged the protesters present to maintain public order, while encouraging them to hold a constructive dialogue with the authorities.

In a post on Twitter, President Kassym-Jomart Tokayev called on all demonstrators to avoid disturbing public order, recalling that while citizens have a right to publicly express their voice, it should be in “accordance with the law”.

On 4 January, protests continued to take place across most of the country, from cities to villages, with demonstrators blocking roads and railways. The largest gatherings were reportedly held in Atyrau with over 5,000 people, in Almaty with approximately 1,000 protesters, as well as in Aktobe, Uralsk, Aktau and Zhanaozen. In many regions, local governors met with protesters with calls to disperse the assemblies and pledges to meet their demands. Police forces arrested and detained a number of protesters, occasionally involving clashes in Almaty, as well as in Nur-Sultan, Shymkent, Uralsk, and Taldykorgan.

In Almaty, authorities deployed riot police who reportedly used tear gas and stun grenades in an attempt to disperse protesters marching to Republic Square and other locations in the city.

In the cities of Kyzylorda and Atyrau, police forces allegedly clashed several times with protesters. There were further reports of significant internet disruptions.

After meeting with protesters, a special governmental commission announced a further reduction of the gas prices but limited to the Mangystau region, which did not satisfy the protester's demands, who thereafter asked to meet with the President.

During the night of 4-5 January 2022, protesters continued to rally across the country with the largest demonstrations taking place in Almaty.

Early on 5 January 2022, President Tokayev introduced a state of emergency in the Mangystau and Almaty regions, as well as in Almaty city, from 01:30 local time on 5 January 2022 to 00:00 local time on 19 January 2022, with a curfew in effect daily from 11 p.m. to 7 a.m. local time. The state of emergency also provided, *inter alia*, for the increased presence of the security forces at state institutions and strategic facilities; the restricted movement of vehicles; the restricted entry to the city of Almaty and to the Almaty and Mangystau regions; the prohibition of mass assemblies and strikes; as well as the prohibition of the sale of weapons and explosives. A state of emergency was also introduced later that day for the capital Nur-Sultan. Special commandants were appointed in the offices of the Mangystau and Almaty regions and Almaty city to implement the new decree.

On that same day, the President accepted the resignation of the Cabinet of Ministers, and later announced he was henceforth Chairman of the Security Council of Kazakhstan, replacing former president Nursultan Nazarbayev.

In Almaty city, thousands of protesters reportedly marched in the city center, after security forces tried but were unable to disperse them with tear gas and stun grenades. Authorities deployed the military to the main square to allegedly ensure the security of the city administration. The offices of the city mayor were reportedly stormed and set aflame. The Almaty International Airport was subject to vandalism and destruction by armed individuals, which resulted in cancelled and rerouted flights, and the reported death of two soldiers.

Internet disruptions were also reported, which thereafter intensified until a nation-scale internet shutdown that took place by 5 p.m. local time on 5 January 2022.

The Interior Ministry confirmed that over 200 persons had been detained for "disrupting public order", and that it had initiated pre-trial investigations into 13 instances of alleged violence against officials, hooliganism and attacks on government buildings. The Ministry further alleged that protesters had blocked roads, attacked police officers and civil servants, and used stones, sticks, pepper sprays and bottles with explosives. In the cities of Almaty, Shymkent and Taraz, there were reported attempts by armed individuals to attack city administration buildings and police vehicles, which incurred damage.

Late afternoon on 5 January 2022, President Tokayev announced a nationwide state of emergency until 19 January 2022, which included a curfew from 11 p.m. to 7 a.m. local time, as well as temporary restrictions on movement, and a ban on mass gatherings. In a televised address, the President said he intended to act “as harshly as possible” against “selected individuals calling themselves ‘protest participants’” in response to “pleas” from citizens for protection.

After President Tokayev formally requested assistance from the Collective Security Treaty Organization (“CSTO”), troops arrived in the country on 6 January 2022 and subsequent days, from the Russian Federation, Armenia, Belarus, Kyrgyzstan and Tajikistan. The Secretary-General of the CSTO stated that the peacekeeping mission was not deployed to disperse the protests, but to support the Government, though peacekeepers would have the right to use weapons in case of attacks by armed groups.

On 6 January 2022, the Interior Ministry announced in a statement that the police department had launched a “mop-up operation in the streets of Karasaybatyr and Masanchi”, during which approximately 2,000 people were brought to police stations. Reportedly dozens of protesters were killed in clashes at protests throughout the country. In Almaty, two hospitals and several government buildings were reportedly stormed by armed individuals, including the state administration building, the presidential residence, and the airport, while widespread acts of looting were reported. A fire subsequently broke out in some of the facilities. The Interior Ministry issued a statement saying that riots, vandalism and looting, organized by “provocateurs” and supported by “hooligans” as well as attacks with stones, rebar, bats and incendiary mixtures, continued in several regions of the country. Significant material damage was reportedly caused to infrastructure: government offices, hospitals, shops, cars and other facilities.

The Interior Ministry reported that 2,298 people had been arrested, that 317 members of the security forces were injured, and that eight members of law enforcement had been killed at the protests. The Almaty police spokesperson told state media that “dozens of attackers were liquidated”. Demonstrators continued to gather in the Aktau town square, where shooting is reported to have taken place between the military and armed individuals. In Zhanaozen, a reported 6’000 people gathered to protest in the city center. The *Akim* of Zhanaozen, Maksat Ibagarov, affirmed that “none of the local activists [would] be persecuted”.

President Tokayev issued a number of urgent instructions to the Government including, *inter alia*: to establish a special investigative team to hold criminally and administratively responsible all those allegedly involved in violent acts; to increase the combat readiness and equipment of military personnel; to organize a direct line to provide citizens with information on victims and missing persons.

On 7 January 2022, President Tokayev conceded to one of the protesters’ demands by agreeing to restore vehicle fuel price caps for six months. The President issued a statement confirming that “Constitutional order has largely been restored in all regions of the country” and announcing that he had given the order to security forces to “open fire with lethal force” against those he

called “bandits and terrorists” and that lethal force without warning would continue to be used. He noted that the unity of society was being methodically undermined, through protest actions. He confirmed that an anti-terrorist operation would take place until the so-called militants could be “annihilated”, as he claimed terrorists were damaging public and private property and using weapons against citizens. Additionally, the President stated in a speech to the Nation with regards to a peaceful solution to the ongoing clashes, that there would be no negotiations with “criminals and murderers” and that they “need to be destroyed”.

Smaller-scale peaceful protests continued to take place in Zhanaozen from 7 to 8 January 2022, where participants asked for the reform of the Government, more freedom for human rights defenders, and a return to the 1993 Kazakh Constitution. Protests also continued in Aktau.

On 9 January 2022, the Interior Minister announced that the situation was stabilized in all regions, but that the counter-terrorism operation would continue until order was re-established in the country. The National Security Committee - the national counterintelligence and anti-terrorism agency - confirmed a day later that the situation in the country has “stabilized and is under control”. It is also reported that the Ministry of Foreign Affairs said that “foreign-trained religious radicals” were among those who had attacked government buildings and security forces, and that authorities had at the moment detained close to 8,000 people. That same day, the limited internet access was returned to Almaty after a five-day blackout. Meanwhile, major internet disruptions have reportedly continued across the country.

President Tokayev addressed Parliament on 11 January 2022 and suggested a new prime minister, that was accepted unanimously. In his statement, he said that the Government had not been aware of the presence of “sleeping cells of militants”, and that the Committee of National Security (KNB) had failed to identify early warning signs of the planned terrorist attack, while calling to restructure the work of the armed forces, police and foreign intelligence. The President further announced: the implementation of a number of measures to counteract religious extremism; the continued reform of the police; the increase of the number of Interior Special Forces and National Guards; and a more severe punishment for attacks against authority representatives and non-obedience to legal requirements.

Deaths, injuries and arrests of protesters and alleged “terrorists”

On 11 January 2022, the Interior Ministry reported that security forces had detained over 9,900 people in connection with the protests. Initial reports indicated a total of 164 people killed in the recent clashes with security forces. Three of the casualties were persons under the age of 18, including a four-year-old girl, according to the Ombudsperson for Children’s Rights. The Health Ministry specified that 103 people had been killed in the city of Almaty alone.

On 15 January 2022, the Prosecutor General’s office raised the reported death toll to 225 people killed in connection with the protests, including 19 members of the security forces. The Prosecutor’s office further reported that 4,353

people had been injured, of which 3,393 were members of the security forces.

The Prosecutor General's Office has reportedly opened criminal cases against alleged "riot organizers", who face penalties ranging from eight years to life imprisonment on charges under Articles 272 and 255 of the Criminal Code and counter-terrorism legislation. The Office has further opened a number of pre-trial investigations into alleged cases of murder, violence against authorities, robbery, hooliganism and theft. Family members of those detained during the protests in Uralsk reportedly do not have access to their relatives.

Moreover, according to the Prosecutor General's Office, 672 people suspected of committing crimes were placed in temporary detention facilities, while 446 of them were detained with court-issued authorization, as of 15 January 2022.

According to the Border Guard Service, 366 people were arrested and detained while attempting to cross borders, and they had seized firearms, stolen valuables, including mobile phones and large sums of money in both domestic and foreign currencies.

Violations against civil society activists, human rights defenders and journalists

There were reports of civil society, political activists, human rights defenders, and journalists being arbitrarily detained in the context of the protests. Several leaders of independent trade unions are allegedly subjected to enforced disappearance and their families unable to establish their fate and whereabouts.

Reports suggest that such an arbitrary arrest campaign targeting civil society, in addition to the inflammatory rhetoric used by the President against human rights defenders, civil society, trade unionists, and journalists, has fostered an environment of fear among these groups.

In the above-mentioned public statement on 7 January 2022, President Tokayev reportedly accused the "so-called free media" of alleged "complicity, even incitement of unlawful activity, while criticizing human rights defenders, saying that "all of these irresponsible demagogues became participants . . . and we will react severely to all acts of vandalism against the law."

Journalists have allegedly come under increased pressure by authorities. The Ministry of Information warned the media that under the emergency regulations, stronger penalties would be given for the crimes of "knowingly spreading false information".

Several journalists were reportedly arbitrarily arrested or injured while covering the protests. Violence against journalists both by the security forces, as well as by some violent protesters, has also been reported.

In Almaty, a national broadcaster confirmed the death of one of their crew members on 7 January 2022, alleging their crew came under gun fire while covering the protests in Almaty. On 8 January 2022 in Almaty, a man in uniform allegedly fired several shots at the feet of two journalists, one of

whom had been filming him manhandling another man.

A number of journalists covering the protests allegedly came under indiscriminate fire from security forces of rubber bullets and stun grenades, despite being clearly identified as journalists by vests with “PRESS” signs. Several journalists who had filmed scenes of violent altercations between demonstrators and security forces were reportedly also attacked and forced to delete their footage under pressure from alleged rioters in Almaty, Atyrau and Aktau, who in some cases tried to destroy journalists' equipment by force.

Reporters, despite carrying press IDs, were allegedly attacked, arrested and detained by riot police and security forces while covering the protests, reportedly without explanation, and including while documenting the arrests of protesters.

Several TV channel buildings were also reportedly attacked and looted by armed individuals, including the state TV channel building in Almaty, which was reportedly set alight. In addition, some of their journalists were reportedly sequestered.

Access to independent information, monitoring and reporting on the protests was curtailed as authorities have blocked independent media websites, mobile communications and access to social media channels, while Telegram, Signal and WhatsApp were also restricted.

While we do not wish to prejudge the accuracy and the veracity of the above-mentioned allegations, we are gravely concerned by the excessive, systematic, and indiscriminate use of force by security forces to disperse and violently repress protesters across various cities in Kazakhstan, using stun grenades, tear gas, and live ammunition, resulting in severe injuries and the deaths of scores of protesters, journalists, children, and bystanders. Despite some reported incidences of attacks by armed individuals against security forces as well as government and other buildings in some cities, most protests in other cities have remained peaceful. We deeply regret the fact that live ammunition may have been used against protesters, as security forces should not resort to violence during peaceful protests. Should these allegations be confirmed, they would be in violation of international human rights law, in particular articles 6, 19 and 21 of the International Covenant on Civil and Political Rights (“ICCPR”), acceded by Kazakhstan on 24 January 2006.

We would like to respectfully remind your Excellency's Government that peaceful assemblies may only be dispersed in exceptional cases, and lethal force may only be used against specific individuals to address an imminent threat of death, or serious injury, and is subject to strict requirements of necessity and proportionality, in situations where less harmful measures are manifestly ineffective to address the threat. The Special Rapporteur on the rights to freedom of peaceful assembly and of association also reiterates the concerns raised in the 2015 country visit Report on Kazakhstan (A/HRC/29/25/Add.2) of the former Special Rapporteur regarding the right to freedom of peaceful assembly, which called on the relevant authorities to ensure law enforcement officials apply non-violent means before resorting to force and, when force is unavoidable, exercise restraint in proportion to the seriousness of the offence and to objectives pursued with due respect to human lives.

We also recall that States have a positive obligation to ensure that certain human rights - including the absolute and non-derogable rights to life, to be free from torture and other ill-treatment, and not to be arbitrarily detained - continue to apply in all circumstances, including under emergency measures, while the restrictions to other rights need to be necessary, proportionate, non-discriminatory, limited in duration and comprise key safeguards against excesses.

In line with her 2020 country visit Report (A/HRC/43/46/Add.1), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stresses the need for an independent, impartial, effective, and public investigation to determine the legality of the use of force and ensure accountability when lethal force was used by security services, law enforcement or the military. She also reminds your Excellency's government of her recommendations from her country visit, which identified the urgent need to revise domestic counter-terrorism and extremism law in order for it to be compliant with international law, including relevant counter-terrorism treaty obligations and resolutions of the United Nations Security Council.

We would like to raise further concerns over the reported wide-scale arbitrary arrests and detentions of over 9,900 individuals - including civil society representatives, journalists and human rights defenders - some of which were exercising their legitimate rights to freedom of peaceful assembly and of expression. We recall that arrest and detention for the peaceful exercise of rights protected by the ICCPR, such as freedom of expression and freedom of assembly and association, may be arbitrary. We are equally concerned about allegations of enforced disappearance perpetrated against leaders of independent trade unions and possibly other protesters. We wish to recall that protesters, including civil society representatives, journalists and human rights defenders, should not face criminal liability following their participation in peaceful protests, nor for exercising their right rights to freedom of opinion and expression, or merely exercising their profession, in the case of journalists. We are troubled by the use of emergency measures and counter-terrorism charges as reasons for dispersing and arresting protesters. Moreover, we wish to remind your Excellency's Government to ensure the procedural guarantees of persons in custody, as stipulated by article 14 of the ICCPR, notably to be informed of their rights, to access a lawyer, contact their family and other legal and procedural safeguards to ensure that detained individuals are not subjected to ill-treatment or torture.

We are also gravely concerned by the alarming death toll reported as a result of the use of force by security forces in the context of the above-mentioned protests. Although States have the right to retrieve violent individuals from the protests for a legitimate law enforcement purpose, we remain concerned that in this case such use of force was applied excessively, disproportionately and indiscriminately. Law enforcement officials may not use greater force than reasonably necessary. The acts of violent individuals should not be attributed to other participants of the assembly, and such violent conduct does not suffice to declare the whole assembly as non-peaceful. This, and all other allegations of violence, should be investigated in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, with the aim to ensure that those responsible are brought to justice, promote accountability and prevent impunity, avoid denial of justice and repeated violations. Investigations should explore, *inter alia*, the legal responsibility of superior officials with regard to violations of the right to life

committed by their subordinates.

The overly broad use of the designation of “terrorism” in this context against protesters, civil society activists, human rights defenders, journalists and political parties could result in a chilling effect and instill fear amid civil society. Such “terrorism” language should not be utilized to silence dissent or protesters. In this regard, we regret the incendiary comments made by President Tokayev in his speech on 7 January against journalists, the media, human rights defenders and civil society broadly, and are concerned that comments of this nature by the highest office of Government may jeopardize the safety of such groups and their ability to carry out their work, and contribute to a hostile environment. We raise further concern regarding the lack of transparent and available information on the casualties among protesters resulting from the above-mentioned counter-terrorism operations, and the excessive use of force of security forces in the context of the protests.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism reiterates the concerns raised in her 2020 report on Kazakhstan regarding the national legal provisions pertaining to crimes of terrorism. Despite amendments in 2017, she finds that the domestic law regulating offences of terrorism remains overly broad and ambiguously worded, in violation of international law. Vaguely worded expressions, especially when defining terrorism, extend criminalization beyond acts or threats of lethal violence to acts that are protected as the legitimate exercise of fundamental freedoms.

Finally, we are deeply concerned by the internet shutdowns and other communication services disruptions which directly infringe on the right to the freedom of opinion and of expression, and could prevent the prompt, independent and thorough documentation of allegations of human rights violations. We would like to respectfully draw your Excellency’s Government’s attention to the fact that States should not respond to crisis situations by adopting additional restrictions on the freedom of opinion and expression, except as strictly justified by the situation and international human rights law. Any such restriction must be provided for by law, serve to protect a legitimate interest recognized under international law, and be proportional and necessary to protect that interest. Access to information and communication services is particularly crucial at times of protests, as the restriction or blocking of access to Internet services could adversely affect the enjoyment of the rights to freedom of expression and of assembly, as well as severely affect protesters demands’ regarding economic and social rights. We would like to remind your Excellency’s Government, that the complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedoms of expression and of peaceful assembly and of association, as enshrined in article 19(3) of the ICCPR.

We are issuing this appeal in order to safeguard the rights of those detained – as well as those whose fate and whereabouts are currently unknown - from irreparable harm and without prejudicing any eventual legal determination.

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

As 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 comment(s) you may have on the above-mentioned allegations, including on the allegations of the use of indiscriminate force against protesters and the circumstances of the killing and injury of protesters.
2. Please provide the details, and where available, the results, of any investigation and judicial or other inquiry undertaken in relation to the above allegations of unlawful deaths, torture, enforced disappearance and arbitrary detention reported in the context of the protests, including violations against journalists, human rights defenders and civil society activists. Please explain whether they were conducted in compliance with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
3. In this regard, please outline the steps taken with the aim of clarifying the fate and whereabouts of disappeared persons. Please also provide information on the measures taken to guarantee that relatives of persons deprived of their liberty, their representative or their counsel, have access to information on their loved ones and to ensure that the latter are authorized to communicate with and be visited by their family, counsel or any other person of their choice.
4. Please provide information on the legal bases of the above-mentioned arrests and detentions, whether any charges have been brought against the individuals detained, keeping in mind international human rights standards. Please further provide the full list and details of all those arrested at the recent protests, including their whereabouts and, in the event of a transfer between detention facilities, the destination and the authority responsible for the transfer. Please also include information on elements relating to the state of health of these persons deprived of liberty.
5. Please provide information on the steps taken to investigate the allegations of harassment against and the deaths of journalists, as well as information on any necessary protection measures.
6. Please indicate what measures were taken to ensure that any use of force by security forces during the above-mentioned protests would only be used against specific individuals to address an imminent threat of death, or serious injury, keeping in mind international human rights standards and the need to avoid unnecessary harm. Please provide further information on any investigations that have taken place or are planned into these allegations.
7. Please indicate what measures have been taken to ensure that human rights defenders, journalists, civil society and other media workers are

able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment, and prosecution of any sort.

8. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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. With regard to the persons detained during the protests and currently deprived of their liberty, please ensure to take all necessary measures to avoid any irreparable harm to their life or personal integrity.

We may publicly express our concerns in the near future, as we believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Clément Nyasletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Elina Steinerte
Chair-Rapporteur of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
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Irene Khan
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Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case. We would first like to recall article 20 (1) of the Universal Declaration of Human Rights which states that "[e]veryone has the right to freedom of peaceful assembly and association". We would further like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kazakhstan on 24 January 2006, which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively. Article 21 states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

The Human Rights Committee further stated that "[a]rticle 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches" (CCPR/C/GC/37, para. 6). The Human Rights Committee had previously indicated to your Excellency's Government that it "should effectively guarantee and protect the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety" (CCPR/C/THA/CO/2, para. 40).

We would like to remind your Excellency's Government the views expressed by the Human Rights Council noting that States must "refrain from imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in 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" (A/HRC/RES/12/16, para. 5 (p) (i)). Moreover, The Human Rights Committee indicated that "restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government (CCPR/C/MDG/CO/4, para. 51), challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs" (CCPR/C/GC/37, para. 49).

Furthermore, as expressed by the Human Rights Committee in its General Comment no.34, "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights" (para. 13). The Committee also stated that "the penalization of

a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression” (para. 42). Furthermore, and as generally held, attacks against individuals for the exercise of their right to freedom of expression is incompatible with the Covenant, and any such attacks should be subject to independent and impartial investigations (para. 23).

We would further like to recall that the Special Rapporteur on the right to freedom of peaceful assembly and of association has stressed in a report (A/HRC/20/27), that States have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly. The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed. Therefore, acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25) (A/HRC/23/39, para. 49). We therefore remain concerned with regards to the allegations that the violence that occurred during peaceful assemblies was engendered by acts from protesters, as this contravenes international human rights laws and standards.

We would also like to recall that “[t]he principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies (Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary)” (A/HRC/31/66, para. 59). Moreover, “[f]irearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70)” (A/HRC/31/66, para. 60). We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provides that, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”. In its General Comment n°37, the Human Rights Committee stated that wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose, and that, as a general rule, the military should not be used to police assemblies (para. 97). The Committee further noted that only in exceptional cases may an assembly be dispersed (para. 96). This may be the case if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed.

We would further like to recall that in its General Comment n°37, the Human Rights Committee emphasized the importance of the role of journalists, human rights defenders and others involved in monitoring, including the documenting of or reporting on assemblies, and that they may not be prohibited from exercising these functions, also in respect of the actions of law enforcement officials (para. 34).

Although terrorism has yet to be authoritatively defined, States have already agreed on some of its core elements. Since 1963, the international community under the auspices of the United Nations has elaborated 19 international legal instruments to prevent terrorist acts. One gap in these instruments is the lack of a clear and commonly agreed definition of terrorism. Since 1994, Member States have been engaged in addressing the definitional lacunae by reviewing the scope of the existing international legal provisions with the aim of developing a comprehensive legal framework covering all aspects of terrorism. So far, under auspice of the United Nations State has already agreed that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes”, and further held that such acts “are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious, or other nature that may be invoked to justify them” (A/RES/49/60, A/RES/51/210 and A/RES/72/123).

While there is no internationally agreed definition of terrorism, and States thus resort to establishing their own definitions, the Special Rapporteur stresses that the definitions of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly as well as the model definition of terrorism provided by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism. We underline that the “principle of legal certainty” under international law, enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in terrorism as defined under national law.

In relation to the allegations of restrictions on access to justice for protesters, we would like to remind your Excellency’s Government that “[a]ccess to justice, the rights to freedom of peaceful assembly and association, and the strengthening of civic space are inextricably linked” and that “barriers to access to justice should never be placed as deterrence measures undermining the essence of other rights” (A/HRC/47/24, paras. 20 and 22).

In previous reports, the mandate holder has recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association [A/HRC/20/27 and A/HRC/38/34]. Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised [A/HRC/29/25/Add.1, para. 53]. Indeed, such technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces [A/HRC/35/28]. The

mandate holder has called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations [A/HRC/20/27, para. 52] and assemblies [A/HRC/29/25/Add.1, para. 34] are facilitated in accordance with international human rights standards. The Human Rights Council has recognized that although an assembly has generally been understood as a physical gathering of people, human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online [A/HRC/RES/38/11]" (A/HRC/41/41, para. 11).

While these rights are not absolute, the freedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be viewed as the rule, and the limitations as the exception. The general norm should be to permit the open and free use of the Internet and other digital tools [A/HRC/23/39, para. 76]. Resolution 15/21 of the Human Rights Council makes it clear that to be permissible restrictions should be 'prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others' [A/HRC/RES/15/21]. Where such restrictions are made, 'States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right' [General Comment n°31, para. 6]" (A/HRC/41/41, para. 12).

The complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedom of expression. Shutdowns fail to reach the established test for restrictions to the right to freedom of opinion and expression under article 19(3) of the ICCPR, as well as for restrictions on the freedom of peaceful assembly and of association under articles 21 and 22(2) ICCPR. The UN General Assembly (A/RES/73/173) and the Human Rights Council (A/HRC/RES/38/7) have called upon States to refrain from implementing internet shutdowns and to ensure internet is available at all times, including during peaceful protests (A/HRC/RES/44/20). The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that "[t]o ensure effective implementation of the prohibition of shutdowns, the legal system must ensure that victims of shutdowns can obtain redress and exercise an enforceable right to a remedy" (A/HRC/47/24/Add.2, para. 45).

We wish to draw the attention of your Excellency's Government to article 9 of the ICCPR, whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. With reference to the jurisprudence of the Working Group on Arbitrary Detention, we wish to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, as well as assembly and association and participation in public affairs (see also CCPR/C/GC/35, para. 17). We also recall that a deprivation of liberty is considered arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on the status of an individual as a journalist or a human rights defender. We further wish to remind your Excellency's Government that enforced

disappearances violate numerous substantive and procedural provisions of the ICCPR and constitute a particularly aggravated form of arbitrary detention (see CCPR/C/GC/35, para. 17).

Furthermore, we wish to draw the attention of your Excellency's Government to a recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16), where the Working Group reiterated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (Paragraph 50). The right to legal assistance must be ensured from the moment of deprivation of liberty and across all settings of detention, including, inter alia, criminal justice and administrative detention (Paragraph 51). Legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (Paragraph 53).

Finally, we would like to highlight that "neither preventive detention nor preventive identity controls, including stop and search, should be used to create a chilling effect on the right to freedom of peaceful assembly or to criminalize protesters" (A/HRC/47/24, para. 51), and that "necessary law enforcement measures targeted against specific individuals are preferred and, as far as possible, only towards people linked directly to violence, as such arrests might also be considered violations to freedom from arbitrary detention and freedom of movement CCPR/C/GC/37, para. 84)" (A/HRC/47/24, para. 55).

In its General Comment n°37, the Human Rights Committee noted that the preventive detention of targeted individuals, in order to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly (para. 93). It may be done only in exceptional cases and where the authorities have actual knowledge of the intent of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate. Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary.

Furthermore, we draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 9, 10, 11 and 12 relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. Article 13 outlines an obligation of the State to protect all persons involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, against ill-treatment, intimidation or reprisal. We also recall article 17 of the Declaration stipulating that acts constituting enforced disappearance shall be considered a continuing offence as

long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified.

In accordance with their humanitarian obligations, States should ensure that search efforts are promptly initiated to determine the fate and whereabouts of disappeared persons.¹

In its report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3), the Working Group on Enforced or Involuntary Disappearances has recommended that States: define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility; and create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received.

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 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 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- 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 also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human

¹ Guiding principles for the search for disappeared persons:
<https://www.ohchr.org/EN/HRBodies/CED/Pages/Guiding-Principles.aspx>

rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

Furthermore, we would also like to refer your Excellency's Government to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.

We also wish to refer your Excellency's Government to articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Kazakhstan ratified on 22 October 2008, and which stipulate that no exceptional circumstances, including internal political instability or any other public emergency, may be invoked as a justification of torture, and that each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official. Furthermore, we wish to refer to articles 12 and 13, which state that when there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, State parties will conduct a prompt and impartial investigation, and ensure that the same is guaranteed for any individual who alleges he has been subjected to torture. Steps shall also be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The obligations to investigate, identify those responsible for acts of torture and ill-treatment and bring them to justice arise also under articles 7 and 12 of the CAT. In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed".