

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls**

Ref.: AL KAZ 1/2024  
(Please use this reference in your reply)

18 March 2024

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/4, 50/17, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminal charges against the woman human rights defender Ms. Dinara Smailova and her placement on an international wanted list.

Ms. **Dinara Smailova** is the founder of the "NeMolchiKZ" Foundation, an organisation that promotes women's rights and freedoms, and gender equality, and fights against discrimination. It has had a particular focus on domestic and gender-based violence since 2017. The "NeMolchiKZ" Foundation uses social media networks to provide information on cases of violence against women, the alleged inaction of law enforcement agencies, guidance on the protection of human rights, statistics on human rights violations and other information on the human rights situation in Kazakhstan.

According to the information received:

Over the past seven years, there has been a pattern of persecution targeting Dinara Smailova. Criminal cases against her have reportedly been opened, suspended or closed, and then reopened 16 times.

In July 2016, Ms. Smailova posted on her Facebook page that she survived gang rape in her youth, and that she no longer intended to remain silent about it. She called on the women of Kazakhstan not to remain silent about gender-based violence. In the days following this call, the social movement #NeMolchiKZ (#Don'tSilenceKZ, in English) was formed in the country. Those participating in the movement soon began to be smeared and threatened online by representatives of pro-government NGOs and by the authorities.

In December 2016, a public statement was made by a civil activist who later became the country's childrenombudsperson, stating that #NeMolchiKZ was a destructive organization that the National Security Committee of Kazakhstan should be obliged to investigate. This statement caused a wide public outcry and drew the attention of public and government agencies to the activities of #NeMolchiKZ.

On 11 January 2017, the civil activist filed an application addressed to the Prosecutor General of Kazakhstan to prosecute Ms. Smailova under Article 274, Part 2 of the Criminal Code of the Republic of Kazakhstan (Dissemination of knowingly false information). On 3 February 2017, a criminal case was opened, but a number of months later was discontinued due to lack of sufficient evidence that this crime had been committed.

In March 2017, the civil activist continued to write to various authorities, including to the President and the Prosecutor General of Kazakhstan, requesting that they recognize #NeMolchiKZ as a ‘destructive organization’.

In April 2017, Ms. Smailova and her husband, human rights defender Mr. Almat Mukhamedzhanov, founded a hotline for women survivors of domestic violence. In the same month, Ms. Smailova and Mr. Mukhamedzhanov registered the #NeMolchiKZ movement with the justice authorities as a public foundation, “Public Movement Against Violence ‘NeMolchi.KZ’”.

On 21 September 2017, Ms. Smailova spoke at the 72nd Session of the UN General Assembly at the invitation of UN Women and the UN Deputy Secretary-General, where she stated: “We are not the ones to be shamed! Our attackers should be ashamed and prosecuted!”<sup>1</sup> Shortly after her speech, a press conference was organized in Almaty at which she was accused of fraud and of disclosing confidential data of women victims of sexual violence who sought help from “NeMolchi.KZ”.

In September 2019 a former member of the Parliament brought a case against Ms. Smailova under criminal articles 130 part 2 (Slander) and 131 part 2 (Insult) of the Criminal Code of Kazakhstan. She was acquitted in May 2020, however, she continued to be publicly accused by the former member of the Parliament of having committed a crime against them.

In late 2019 and in large part due to the work of “NeMolchi.KZ”, new legislation tightening responsibility for rape and strengthening the prevention of domestic and sexual violence was adopted in Kazakhstan, including the law on the prevention of domestic violence.

In December 2020, based on a report from a police officer in the Turksib district of Almaty, another criminal case was opened against Ms. Smailova under Article 274 Part 2 of Criminal Code of Kazakhstan (Dissemination of knowingly false information). This case was subsequently dismissed.

On 6 April 2021, Ms. Smailova and her husband Mr. Mukhamedzhanov left Kazakhstan for security reasons and relocated to Georgia, from where they continued to help women and children in Kazakhstan.

In July 2022, another criminal case was opened against Ms. Smailova by the Bostandyk district court of Almaty. She was accused of discrediting the

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<sup>1</sup> <https://www.unwomen.org/en/news/stories/2017/8/from-where-i-stand-dina-smailova>

honour and dignity of three defendants on trial for murdering a six-year-old girl. At the time of her post, the three had been publicly named as suspects in the case and as such the court did not have any grounds under Kazakh law to bring such a charge against the woman human rights defender. This case was also dismissed.

On 14 August 2023, Ms. Smailova and her husband Mr. Mukhamedzhanov registered the organisation “Break the Silence Worldwide” with the Georgian justice authorities.

On 27 September 2023, upon returning to Georgia from Türkiye, Ms. Smailova and Mr. Mukhamedzhanov were not permitted to enter the country. Georgian border guards were provided with documents issued by her attending physician stating that Ms. Smailova was preparing for emergency surgery in Georgia, but this document was ignored. Border guards reported that the Georgian Ministry of Internal Affairs had banned Ms. Smailova and Mr. Mukhamedzhanov from entering the country. No reason was provided as to why. The couple travelled to Montenegro following their refused entry to Georgia.

On 16 October 2023, the police of the East Kazakhstan region opened yet another criminal case against Ms. Smailova under Article 190 of the Criminal Code of the Republic of Kazakhstan, accusing Ms. Smailova of embezzling funds voluntarily donated to “NeMolchi.Kz”. Ms. Smailova's lawyer was denied access to the case materials.

Shortly after opening the criminal case against Ms. Smailova, Kazakh police obtained data from 7,053 bank customers who had donated to “NeMolchi.KZ”. Donors were allegedly incorrectly told by police that Ms. Smailova had already been found guilty of committing the crime of fraud and were instructed to write statements accusing the human rights defender of further fraud.

On 27 December 2023, Ms. Smailova was officially declared a suspect in this case. If convicted, Ms. Smailova could face up to ten years in prison. Ms. Smailova and her lawyer have been informed by the Montenegrin authorities that the Kazakh authorities are requesting her deportation.

Since 2020, Ms. Smailova has reportedly not been given access to official documents from the Kazakh police and the Ministry of Internal Affairs of Kazakhstan regarding the criminal cases opened against her. When she was still in Kazakhstan, Ms. Smailova personally appeared on subpoena to answer the charges against her, and after she left the country, her lawyer did so on her behalf. However, neither she nor her lawyer were provided with any documentation regarding the procedural status of the cases against her.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the attempts to criminalise Ms. Smailova which appears to be in retaliation against her work as a woman human rights defender and exercising her rights to freedom of peaceful assembly and association. In addition, we are concerned that the legal proceedings against Ms. Smailova are not being carried out in accordance with due process guarantees, not

allowing her legal representation to access material related to her case.

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.
2. Please provide information as to the legal and factual basis for opening the criminal case against Ms. Smailova, as well as her listing on the wanted list, and explain how these measures are compatible with Kazakhstan's obligations under international human rights law.
3. Please provide explanations for the public censure and accusations against the organization "NeMolchi.KZ", including from government representatives, for their work with victims of rape and gender-based violence.
4. Please provide detailed information on the legal grounds for all cases of initiation of a criminal case, preliminary investigation, and inspections regarding the woman human rights defender Ms. Smailova and the organization "NeMolchi.KZ".
5. Please provide information as to the specific measures put in place to ensure that human rights defenders and civil society actors in Kazakhstan can exercise their rights to freedom of expression, opinion, peaceful assembly and association and carry out their legitimate work in a safe and enabling environment, without fear of harassment and intimidation from the authorities or any other agent acting on their behalf or with their acquiescence.

We would appreciate receiving a response within 60 days. Past 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 note that a copy of this letter will be sent to the Government of Montenegro for their information.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Clement Nyaletsossi Voule

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

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Dorothy Estrada-Tanck

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

## **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:

Concerning the right to freedom of association and assembly, we would like to refer to articles 19, 21 and 22 of the ICCPR ratified by Kazakhstan on 24 January 2006, which guarantees the right to freedom of association, 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.

We would also 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.

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.

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.

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.

Moreover, in its thematic report on sexual and reproductive health rights in crisis (A/HRC/47/38), the Working Group expressed concern that women human rights defenders are targeted for violence and subjected to intimidation and retaliation

because of their efforts to ensure women's sexual and reproductive health rights and for their demanding accountability for pervasive sexual violence and feminicides. Perceived as challenging traditional notions of family and gender roles in society, women human rights defenders are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism, and are likely to be subject to criminal prosecution and imprisonment (A/HRC/41/33). In that regard, the Working Group recommended that States take effective measures to end violence and harassment against human rights defenders advocating for sexual and reproductive health rights, ensure accountability for perpetrators of such acts, and eliminate any laws or policy measures aimed at criminalizing women's public role.

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.

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).