

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

Ref.: AL KAZ 3/2024
(Please use this reference in your reply)

29 August 2024

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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; Special Rapporteur on the situation of human rights defenders and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/10, 52/9, 50/17, 52/4 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 online petition "We Are against Open and Hidden LGBT Propaganda in Kazakhstan!" launched by the head of the "Kazakhstan's Union of Parents" organization, as well as denied requests to hold marches and public peaceful gatherings on the occasion of International Women's Day (8 March) initiated by a feminist organization and police raids on private events and nightclubs in Astana. Such developments infringe on the rights of lesbian, gay, bisexual, and transgender (LGBT) individuals in Kazakhstan and create additional risks for human rights defenders.

According to the information received:

An online petition was published by the special State service on 29 May 2024 "We Are against Open and Hidden LGBT Propaganda in Kazakhstan!" initiated by the head of the "Kazakhstan's Union of Parents" organization. This petition has garnered the necessary number of signatures for formal consideration and is currently being considered by the Government of Kazakhstan in accordance with the Administrative Procedural and Process-related Code (APPC). According to the APPC, the Ministry of Culture and Information is responsible to vet petitions to ensure that they are compliant with human rights standards before they are published. The petition states: "We are against open and hidden propaganda of LGBT in the Republic of Kazakhstan,"¹ and demands "introduction of a law to fully ban open and hidden propaganda of LGBT in Kazakhstan and penalisation of any such actions at the legal level".

According to the Administrative Procedural and Process-related Code, p. 3 art. 90-2 a petition does not pass muster, and cannot be published if it (1) " may lead to violation of the rights and freedoms of an individual" (subparagraph 1), or involves (2) "issues of criminal-executive, criminal-procedural, civil-

¹ <https://epetition.kz/petition/5e633882-3e0e-4bda-8073-44a8528b67f0?commentPage=230>

procedural, administrative procedural, and administrative offenses legislation of the Republic of Kazakhstan" (subparagraph 8). The content and rationale for the petition under consideration do not comply with these provisions.

In June, several media outlets, including Orda.kz, reported that public sector workers, including doctors and teachers in State hospitals and schools, were actively encouraged to sign this petition. It is reported that one of the schoolteachers, who is a member of Amanat, the ruling political party, actively circulated calls for signing the petition in group chats on social networks. In addition, according to reports, some who opposed the petition have been intimidated by authorities. In one of such cases, an individual from Ekibastuz city who posted an appeal on Facebook to the Minister of Culture and Information, Ms. Aida Balayeva, calling on her not to consider the petition that, in his view, contradicted the laws of Kazakhstan, reported that police visited him on 15 June 2024, and warned him to be careful about expressing his views and to beware of instigating enmity.

In February and April 2024, police raided nightclubs and private parties in Astana. As a result, many young people were taken to police stations, asked to explain themselves in writing, including confessions about their sexual orientation and gender identity, and then released. Further, according to reports from mid-April, employees of the Ministry of Internal Affairs broke into a private house in Astana and took about 70 young people to the police station to deliver written explanations. The Astana Police Department reported that the inspection was related to a report of the use of prohibited substances in the house.

In March 2024, on the occasion of International Women's Day (8 March) the local government/ administration office (Akimat) in Almaty denied the requests from feminist and LGBT groups to exercise their right to peaceful assembly by not granting them official permission for public gatherings or demonstrations.

According to information received, women's groups, and feminist organisations, including those focusing on rights violations based on sexual orientation and gender identity in Kazakhstan have faced various restrictions on holding peaceful assemblies, marches, gatherings, or demonstrations that were imposed by the city administration office (Akimat) in Almaty. Since 2017, when groups gathered in central Almaty, feminist and LGBT civil society organisations in Kazakhstan have only once (in 2021) been able to hold a public gathering to commemorate International Women's Day on 8 March. In 2018, one of the organisers was warned in advance not to hold gatherings. In 2019, an assembly was not permitted on 8 March, but was allowed later that year, in August. In 2020, permission to hold a rally in Almaty was denied and an activist was fined for ignoring the prohibition and holding a rally unauthorized. In 2021, a march and assembly were permitted. In 2022 and 2023, marches were not permitted, but assemblies were permitted at authorised venues only. In 2024 civil society groups were again denied the right to commemorate International Women's Day through peacefully assembling in public.

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 any additional information and/or comment(s) you may have on the current status of the petition "We are against open and hidden propaganda of LGBT in the Republic of Kazakhstan" initiated by the head of Kazakhstan's Union of Parents and any plans your Excellency's Government has to respond to it. Please indicate the steps taken to ensure that any legislative initiative adopted on the basis of this petition is in full compliance with international human rights law.
3. Please indicate what steps your Excellency's Government has taken or is considering taking, including policies, legislation, and regulations, to uphold its international obligations to protect against human rights abuses based on sexual orientation and gender identity. Please further indicate the steps taken to guarantee the rights to freedom of expression, association and peaceful assembly of members of the LGBT community or groups advocating for the rights of LGBT persons.
4. Please indicate what measures are available to prevent, remedy, and redress any human rights violations on grounds of sexual orientation and gender identity in Kazakhstan.

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 accept, Excellency, the assurances of our highest consideration.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Laura Nyirinkindi
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 refer your Excellency's Government to the principles of equality and non-discrimination that are part of the foundations of the rule of law and universal human rights. Under articles 1 and 2 of the Universal Declaration of Human Rights ("UDHR"), "all human beings are born free and equal in dignity and rights", and "everyone 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 principle is reaffirmed by other human rights treaties, including article 2(1) of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by Kazakhstan on 24 April 2006 and article 2(2) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), ratified by Kazakhstan on 24 April 2006.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline and protects the freedom of the press as one of its core elements. Any restriction to the right to freedom of expression must be "provided by law" and meet the criteria established by international human rights standards. Under these standards, limitations must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (paragraph 11). The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23).

Articles 21, and 22 of the ICCPR guarantee the rights to freedom of peaceful assembly, and of association with others. Article 21 of the ICCPR states that 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 previously affirmed that States "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). Freedom of association directly reflects the rights of individuals to form and join associations, and the collective right of an association to pursue its activities, without unlawful interference or pressure from the state or state-related agents. As

stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with these rights but also have a positive obligation to facilitate and protect these rights². This means ensuring that freedom of association and freedom of peaceful assembly are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³ As highlighted by the Special Rapporteur on the situation of human rights defenders in her report to the Human Rights Council on 15 March 2023, LGBT human rights defenders frequently encounter attacks due to both their advocacy efforts and their identity as members of the LGBT community (A/HRC/52/29, para. 16). This dual vulnerability increases the risks to their safety and the continuation of their work.

Further, as recommended in the Committee on Economic, Social and Cultural Rights (CESCR) concluding observations on the second periodic report of Kazakhstan, E/C.12/KAZ/CO/2, of 8 March 2019, the government must “take all steps necessary to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, and ensure their equal enjoyment of the rights under the Covenant, and enact tailored legal protections of these persons against attacks and harassment.”⁴ In the same concluding observations, the Committee was concerned that “neither the Constitution nor the domestic legislation of the State party explicitly prohibits some of the existing grounds of discrimination, such as gender identity and sexual orientation, which contributes to the persistence of discrimination on those grounds in access to employment, health care and education. It is also concerned by the lack of tailored legal protection of lesbian, gay, bisexual and transgender persons against attacks and harassment.”⁵

The United Nations High Commissioner marked the International Day against Homophobia, Biphobia, and Transphobia in May 2024 with a [statement](#) reaffirming that “The persistence of gender inequality and a lack of understanding of sexual and gender diversities drive prejudice in culture and discrimination in laws and policies in a range of country contexts. Challenging historic exclusion and more contemporary regressions by breaking stereotypes and ensuring civil society’s access to financial resources, including laws, policies and practices that impede such access is a must for the global human rights agenda. Traditional beliefs and practices must not be invoked to deny equal rights.”

Lastly, 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 Recognised Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realisation 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

² A/HRC/17/27, para 66; and A/HRC/29/25/Add.1.

³ Article 2 (1) of the ICCPR.

⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FKAZ%2FCO%2F2&Lang=en

⁵ tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FKAZ%2FCO%2F2&Lang=en

human rights and fundamental freedoms. Article 5(b) of the UN Declaration on Human Rights Defenders provides for the right to form, join, and participate in non-governmental organisations, associations, or groups, and article 7 provides for the right to develop and discuss new human rights ideas and principles and to advocate for their acceptance.