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For the urgent attention of:

- The UN Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor
- The UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, Fionnuala Ní Aoláin
- The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Alice Edwards
- The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, Irene Khan
- The UN Working Group on Arbitrary Detention

cc. Swedish Immigration authority re Case no 51-151022/1

***BOTAKOZ ISSAYEVA v. SWEDEN***

***URGENT REQUEST RE. IMMINENT DEPORTATION OF HUMAN RIGHTS DEFENDER FACING TORTURE AND ARBITRARY DETENTION IN KAZAKHSTAN***

**Information about the applicant:**

**Family name:** *Issayeva Name (names): Botakoz*

**Citizenship:** *Kazakhstan*

**Date and Place of Birth:** *07 October 1966, Karagandinskaia oblast, Kazakhstan*

**Contact/international legal representative:**

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***A. Introduction and Summary of Request***

1. This is an urgent appeal to the UN Special Rapporteurs and Working Groups indicated above requesting that they take all possible measures to prevent the imminent deportation from Sweden to Kazakhstan of Botakoz Issayeva (the petitioner), a well-known human rights activist and political opponent of the Kazakh authorities. Background information concerning the applicant and her activities is at B.1 below.
2. If returned to Kazakhstan Ms Issayeva will face the most serious and irreparable violations of her rights on the basis of her civil society activities. As demonstrated below (B.2), there is abundant evidence of the situation facing human rights defenders (HRDs) in Kazakhstan today. The risks in this particular case are all the clearer as the petitioner has already been subject to abusive charges under anti-terror legislation, arbitrary detention and ill-treatment, and the authorities have expressed the intent to prosecute and/or to detain her on supposed psychiatric grounds. As set out at B.1 below, before fleeing Kazakhstan Ms Issayeva was detained, interrogated, beaten, subject to spurious criminal charges and ordered to submit for psychiatric treatment, in response to the expression of political opinions and activities in support of human rights. There is no reason to trust that the authorities' attitude towards Ms Issayeva has changed; indeed the threats are heightened by the intensification of the repression of dissent and human rights defence in Kazakhstan today, and the applicants' role and activism since fleeing Kazakhstan in 2015. The fact that the authorities have recently taken similar measures against other opponents and HRDs confirms the risks.
3. The case raises issues of fundamental importance concerning the protection of HRDs against government attempts to repress and silence them. It also raises crucial questions as to the nature of the review obligations incumbent on states in which asylum is sought, which are obliged not to transfer where there are substantial grounds to believe that the individual is at risk of serious violations. States must be rigorous to ensure that they give meaningful effect to these obligations, particularly in contexts where counter-terrorism laws, arbitrary detention and torture or ill-treatment are being systematically used to silence civil society. Yet in this case, as explained below at B.3, the Swedish courts have dismissed Ms Issayeva's claims without rigorous scrutiny and on spurious

grounds, failing to take due account of her personal circumstances, the general context facing HRDs, and the egregious nature of the rights implications.

4. The treatment that she faces if the decision to deport her to Kazakhstan is carried out – including punitive psychiatry, arbitrary pursuit of pending terrorism and extremism charges, detention and interrogation to stifle dissent – amount to the most serious violations of human rights. As set out at Section C, these include torture and inhumane treatment, arbitrary detention, a flagrant denial of justice among others (see C). They therefore fall within the mandates of the special procedures to which this petition is addressed.
5. Ms Issayeva has taken all available steps to seek protection. She has exhausted all remedies before Swedish courts. Her request to appeal to the apex court was refused on 10 August 2022, as was an attempt to engage the European Court of Human Rights through a rule 39 application, which was rejected without explanation on 11 August. She approaches the UN entities as a last resort. In all the circumstances of this case, the Special Rapporteurs and the Working Group are urged to act promptly and to take all possible measures to halt her imminent deportation and avoid irreparable harm.

## ***B. Background Facts***

### ***B.1 The Applicant's Activities and Violations of her Rights in Kazakhstan***

6. Ms Botakoz Issayeva is an outspoken critic of the current government of Kazakhstan. She is a qualified philologist, and taught Russian language and literature since 2001. She has also been engaged in civil society activism since 2013. In this capacity she coordinates the Civil Society Coalition of Kazakhstan ('Dongelek Ystel') which seeks to expose and criticise abuse by the authorities.<sup>1</sup> As part of her activities, she has repeatedly denounced Russian-led attempts to undermine the stability and territorial integrity of Kazakhstan, including through disinformation campaigns, and cooperated with international organisations against corruption in Kazakhstan.<sup>2</sup> She has written

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<sup>1</sup> Dongelek Ystel runs the website Qandy Qantar (<https://qandyqantar.org/>) which publishes cases of torture, killings, corruption and abuse of office by authorities.

<sup>2</sup> See the letter and statement written by Ms Issayeva on behalf of Dongelek Ustel to the European Parliament concerning the deteriorating human rights situation in Kazakhstan, both attached at Annex B.

several articles and provided comments critical of the authorities and President of Kazakhstan to international media and denouncing corruption among several high-ranking officials, sharing those articles on social media.<sup>3</sup> Several examples of her public activities critical of the government, from 2013 to the present, samples of which are included at Annex B to this petition.

7. Ms Issayeva has been subjected to multiple human rights violations and ill-treatment by the authorities of Kazakhstan on the basis of her criticism of the government and civil society work.<sup>4</sup> While some of these facts noted below are supported by evidence in the annexes, by their nature some of them cannot be proved categorically, as is normal in cases of this nature and where any documentary evidence that exists lies in the hands of the authorities of foreign states. However, Ms Issayeva provides the Special Rapporteurs and Working Group with the following testimony in relation to her treatment prior to fleeing Kazakhstan.
8. In July 2015, she was contacted by the intelligence services of Kazakhstan and requested to submit to interrogation, without an official order. She presented herself voluntarily but in the interrogation room discovered that she was in the presence of intelligence officers, including representatives of the Russian intelligence service. Ms Issayeva refused to cooperate or provide answers to their questions. She was physically beaten during interrogation, in the course of which she lost two of her teeth, as dental records confirm.<sup>5</sup> She was pressured into signing a non-disclosure agreement before being released.
9. Ms Issayeva was subsequently charged under Article 174(1) of the Criminal Code of Kazakhstan with disseminating information ‘inciting ethnic discord’.<sup>6</sup> She was not, and still has not to this day, been informed of the factual bases for these charges but understands them to be based on her writings critical of political repression and corruption in Kazakhstan and Russian influence in the country.

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<sup>3</sup> See Annex B.

<sup>4</sup> See also the threats received on social media by Ms Issayeva, attached in Annex C.

<sup>5</sup> An X-ray of the missing teeth, along with a description, can be found in Annex C.

<sup>6</sup> See Annex C, decree identifying Ms Issayeva as a suspect under Article 174(1) and Annex C, a letter from the Kazakhstan Department of Interior confirming the criminal process against Ms Issayeva. See also the interviews conducted by Tengri News, a Kazakhstani media outlet, in annex B and the description of Ms Issayeva’s case by the association Alliance Tirek and by the NGO Freedom for Eurasia in Annex C.

10. Ms Issayeva became aware of the charges against her on 7 December 2015, when her house was raided and searched by the police.<sup>7</sup> The raid was carried out with excessive use of force (for example her son, Samat Zhumanov, who suffers from a disability,<sup>8</sup> was assaulted by a police officer). Ms Issayeva's laptop and several other files were seized. During the search, police officers stated that they were arresting Ms Issayeva, despite not having an arrest warrant. They eventually desisted, apparently due to the presence of a Radio Free Europe journalist who appeared to be filming the events. However, they told Ms Issayeva to appear before the regional police department the same day.
11. At the police station, Ms Issayeva was subjected to further interrogation and denied access to a lawyer. She was detained in solitary confinement for two days without a court order or approval of the prosecutor. During this time she was deprived of food, water, sleep and was given an iron bed frame without a mattress to rest on. Ms Issayeva was repeatedly interrogated throughout this detention. At the end of this period, she was pressured into signing a document affirming that she would not disclose what had happened.
12. Upon her 'release' on 9 December 2015 at 2 o'clock in the morning, Ms Issayeva was told by law enforcement officer of Almaty Department of Interior<sup>9</sup> to bring a change of clothes and hygiene items from home and return at 9:00 o'clock in the morning to the department of interior, as she was to be placed for analysis and treatment in a psychiatric facility.<sup>10</sup> No reasons were given for this decision, and no court order was presented, in breach of Article 46 of the Law on Forensic Activities of the Republic of Kazakhstan. Botakoz fled Kazakhstan 3 hours after her temporary release, at 6 o'clock in the morning on the next available flight, which was to Kiev.

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<sup>7</sup> A decree authorising the house search is at Annex C.

<sup>8</sup> Samat Zhumanov suffers from Wilson disease, which causes malfunction of the liver and affects certain of his psychiatric abilities.

<sup>9</sup> She identifies the officer as Zhaksybai K.H.

<sup>10</sup> As the decision was communicated to Ms Issayeva by telephone and without a court order, she has not been in a position to prove the existence of this decision. However, as will be set out further below, there is strong evidence of the general practice of placing activists and political dissenters in psychiatric detention under Article 174 of the Criminal Code of Kazakhstan.

13. On 10 December 2015, Ms Issayeva therefore fled Kazakhstan with her son and went to Ukraine. In January she continued to Turkey where she hoped she could find international protection. However, Ms Issayeva became concerned for their safety and security in Turkey. Extremely poor conditions in the refugee camp in which Ms Issayeva and her son lived for three months resulted in illness and a deterioration in the physical and mental condition of her son. She travelled on to Kyrgyzstan in April 2016, where she was informed by HRDs that there was a high chance of the Kyrgyz authorities informing Kazakhstan and handing her over were she to apply for asylum in Kyrgyzstan. In September 2017, Ms Issayeva flew to Sweden, where she requested protection upon her arrival. As noted at B.3 below, as of this month such protection has been denied.<sup>11</sup>

B. 2 The Situation facing Human Rights Defenders and Political Activists in Kazakhstan.

14. Multiple reports on the human rights situation in Kazakhstan make clear the grave risks to HRDs, civil society activists and others who protest or dissent.<sup>12</sup> As the Special Rapporteurs and Working Group will be aware, for some time Kazakhstan has been suppressing political opposition and civil society organisations, including by resorting to abusive anti-terrorism and anti-extremism laws.<sup>13</sup> The United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Fionnuala Ni Aoláin, reported such concerns after her visit in Kazakhstan in 2019. In relation to the precise criminal law provisions used against Ms Issayeva, she noted that ‘Article 174 of Kazakhstan’s Criminal Code (...) is the most commonly used article against civil society activists’.<sup>14</sup>

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<sup>11</sup> see B.3. as noted there, this is in part on the dubious ground that she did not arrive directly from Kazakhstan to Sweden but travelled through other states.

<sup>12</sup> See, in Annex D, Human Rights Watch, World Report 2022, p. 383-389.

<sup>13</sup> See Human Rights Committee, Concluding observations on the second periodic report of Kazakhstan UNDOC CCPR/C/KAZ/CO/2 (9 August 2016) para 49. See also 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; et al (18 January 2022) UNDOC AL KAZ 1/2022 (concerning the information received on the targeted harassment of civil society activists, human rights defenders and journalists); and UN General Assembly, Situation of Women Human Rights Defenders, Report of the Special Rapporteur on the Situation of Human Rights Defenders, 10 January 2019, A/HRC/40/60. Para. 54-55.

<sup>14</sup> ‘[Preliminary Findings](#) of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan’ (22 May 2019).

15. The Working Group on Arbitrary detention has also condemned Kazakhstan's abusive criminal processes (based on vague charges and pursuant to unfair trials) and arbitrary detention, urging the country to bring Article 174(1) in conformity with international human rights law.<sup>15</sup>
16. Testimonies and evidence indicate that Kazakhstani authorities also resort to 'punitive psychiatry' and arbitrary psychiatric detention to silence civil society activists, opponents and dissenters, including where linked to Article 174(1) of the Criminal Code.<sup>16</sup> Forced detention in psychiatric institutions, including in recent cases, has led to serious harm to individuals' health.<sup>17</sup> Testimonies of individuals having undergone such practices is annexed to this petition.
17. The situation in Kazakhstan has worsened since the 'bloody January' protests and repression of January 2022, which led to deaths, torture, arbitrary detention and prosecution of hundreds of protesters and political dissenters.<sup>18</sup> The ensuing intensification of repression has been widely criticised, by NGOs,<sup>19</sup> the United Nations High Commissioner for Human Rights,<sup>20</sup> the Special Rapporteurs<sup>21</sup> and the European Parliament,<sup>22</sup> among others.

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<sup>15</sup> See Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, UNDOC A/HRC/WGAD/2020/43 (18 November 2020), para 97.

<sup>16</sup> See the case of Ardak Ashim, charged under Article 174, placed in a psychiatric clinic before leaving Kazakhstan who, like the petitioner, fled to Ukraine: <https://www.amnesty.org/en/documents/eur57/8298/2018/en/> ; <https://rus.azattyq.org/a/ardak-ashim-aktivist-prinuditelnoye-lechenie/29158211.html> . See also annexed an article by Mediazona, a Russian independent media outlet, containing testimonies by activists who were placed in forced psychiatric detention and report having been forced to ingest unknown pills.

<sup>17</sup> <https://en.odfoundation.eu/a/8612,yevgeniy-zhovtis-it-is-likely-that-ardak-ashim-has-become-a-victim-of-punitive-psychiatry/> On the impact and violations, see below section C below.

<sup>18</sup> Eg. 'The calm in Kazakhstan is restored, but the pressing questions on multiple human rights violations remain unanswered', 25 January 2022; Kazakhstan: Killings, Excessive Use of Force in Almaty, Human Rights Watch, 26 January 2022. OHCHR, 'Kazakhstan unrest: Bachelet urges peaceful resolution of grievances' (6 January 2022) < <https://www.ohchr.org/en/press-releases/2022/01/kazakhstan-unrest-bachelet-urges-peaceful-resolution-grievances?LangID=E&NewsID=28016>>.

<sup>19</sup> HRW, *ibid*.

<sup>20</sup> OHCHR, 'Kazakhstan unrest: Bachelet urges peaceful resolution of grievances' (6 January 2022) *supra*.)

<sup>21</sup> 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; et al (18 January 2022) UNDOC AL KAZ 1/2022.

<sup>22</sup> European Parliament resolution of 20 January 2022 on the situation in Kazakhstan ([2022/2505\(RSP\)](https://www.europarl.europa.eu/doceo/document/ava-2022-0001_en.html)).

18. Protests and unrest in Kazakhstan in January 2022 led to the arrest of several activists forming part of Ms Issayeva's organisation, which is indicative of the threats she would face upon return.<sup>23</sup> Her visibility and vulnerability are heightened by the fact that Ms Issayeva herself was interviewed by two foreign media outlets - the independent Russian-language channel Dozhd and the news agency Reuters - in relation to the recent repression by the Kazakh authorities and its supporters, including the Russian Federation among others. Her interview by Reuters has been annexed to this petition.<sup>24</sup>

### B.3 The Swedish Domestic Process, ECHR and Imminent Removal

19. Ms Issayeva's asylum claim in Sweden was rejected by the Swedish Migration Agency (Migrationsverket), and this decision was confirmed by the Swedish Migration Court of appeal (Migrationsdomstolen). The claim was rejected without adequate reasons, but in terms which suggest that Ms Issayeva had provided insufficient proof of the risks in Kazakhstan, and expressing doubts as to credibility based on the fact that she travelled through other countries before seeking asylum in Sweden (see Annex A).<sup>25</sup> The Migrationsdomstolen, affirming the findings of the Migrationsverket stated that there was a lack of evidence of a concrete and personal threat to Ms Issayeva in Kazakhstan, and that her confirmed political activities were insufficient to put her at risk.<sup>26</sup> They summarily concluded there was not a sufficiently serious threat to justify Ms Issayeva, leaving Kazakhstan, or create a risk to her upon return, without addressing the ample evidence to the contrary, as reflected in this petition. It found that her credibility was negatively impacted by having spent time in other countries before migrating to Sweden, without addressing the reasons for this, and vaguely suggested that her explanations were insufficiently precise.<sup>27</sup>

20. Even the cursory reasoning by the immigration authorities suggests immaterial and inappropriate considerations were taken into account, such as her periods spent in other states which are readily explained (as noted above). Conversely, the gravity of the risks

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<sup>23</sup> This article describes fate of victims tortured, ill-treated, facing fabricated charges, Kenzhebek Sultanbekov is a member of Dongelek Ystol.

<sup>24</sup> The Dozhd has been shut down and Ms Issayeva's interview on that channel may no longer be accessed, but the Reuters interview is at Annex B.

<sup>25</sup> Ibid, p. 6.

<sup>26</sup> Decision of the Migrationsdomstolen (Annex A) p. 5.

<sup>27</sup> Ibid, p. 7.



facing critics and human rights defenders in Kazakhstan today were not taken seriously or given due weight. It failed to recognise the grave risks of ill-treatment and of a flagrant denial of justice that face HRDs in Kazakhstan, or to attach any weight to Ms Issayeva's individual circumstances or the special vulnerability of her son.

21. Moreover, inappropriate expectations and burdens were imposed on the petitioner in terms of her ability to 'prove' allegations. The immigration courts' approach to evidence and to credibility, without providing cogent reasons, fails to reflect the realities facing asylum seekers and people in genuine risks in foreign states where concrete proof of violations is non-existent or unavailable. As the ECtHR has affirmed, *'owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies.'*<sup>28</sup> The applicant was given no such 'benefit of the doubt'. There were no 'strong reasons' given nor was she alerted to any 'discrepancies.' In rejecting the applicant's request, the Swedish court therefore took into account irrelevant considerations while failing to provide strong reasons to question the veracity of Ms Issayeva's submissions.

22. Ms Issayeva sought leave to appeal on 1 August 2022, which was denied.<sup>29</sup> No reasons were given and there is no further right to appeal.<sup>30</sup> The ECtHR refused to grant a request for interim measures to halt Ms Issayeva's deportation on 11 August. As is typical in rule 39 procedures before the Court, no reasons were given and there is no right of appeal. Ms Issayeva can now be deported at any time.

**C. Non-refoulement: Transfer to Risk of Violations under ICCPR and UNCAT; prior Interventions of the Special Rapporteurs/Working Group**

23. The transfer of a person to a country where there are substantial grounds for believing them to be at risk of torture or ill-treatment or other serious violations constitutes a clear

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<sup>28</sup> *F.H. v. Sweden* App no 32621/06 (ECtHR, 20 January 2009) para 95.

<sup>29</sup> See the decision of the Migration Court of Appeal dated 10 August 2022 in Annex A.

<sup>30</sup> *Ibid.*

violation of international human rights law (IHRL) as ample treaty provisions, jurisprudence and standards under the UNCAT and ICCPR make clear.<sup>31</sup> According to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Such a prohibition has been interpreted by multiple courts and international human rights mechanisms to apply to other serious human rights violations including cruel, inhuman or degrading treatment, flagrant denial of the right to a fair trial and arbitrary detention,<sup>32</sup> risks of violations to the right to life,<sup>33</sup> among others. A UNHCHR Guide states that the principle of non-refoulement under international human rights law ‘*prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.*’<sup>34</sup> The scope of non-refoulement therefore includes all the key issues arising in this case – transfer to torture and ill-treatment, arbitrary detention or criminal prosecution that amounts to a flagrant denial of justice.<sup>35</sup>

24. The threats facing Ms Issayeva in Kazakhstan include forced psychiatric detention and sham criminal charges,<sup>36</sup> in connection with her status as a human rights defender and outspoken criticism of Kazakhstani authorities. Such treatment would amount to serious human rights violations, including under Articles 7, 9, and 14 of the International Covenant on Civil and Political Rights. It would fly in the face of the

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<sup>31</sup> The principle of non-refoulement is explicitly included in art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); art. 16 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and, between other regional instruments, is found in art. 19 of the Charter of Fundamental Rights of the European Union.

<sup>32</sup> Abu Qatada v UK, EctHR, No. 8139/09, 17 January 2012, para 235, 258.

<sup>33</sup> Human Rights Committee, General Comment No. 31, para 12.

<sup>34</sup>

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

<sup>35</sup> Abu Qatada v UK ECHR (2012) on denial of fair trial; Abu Zubaydah v Lithuania ECHR (2018) on arbitrary detention.

<sup>36</sup> See in Annex C the letter of the Department of Interior of Kazakhstan confirming the criminal prosecution of Ms Issayeva, as well as the article by the association Alliance Tirek and interview by Kazakhstani media outlet Tengri News.

special responsibility to take measures to protect human rights defenders reflected in, among others, the United Nations Declaration on Human Rights Defenders.<sup>37</sup>

25. The Special Rapporteurs and Working Group have previously intervened in comparable situations in an effort to prevent the deportation of activists, human rights defenders and political dissenters to states in which they faced torture or ill-treatment, an unfair trial and arbitrary deprivation of liberty, including to Kazakhstan.

- a. In relation to Kazakhstan specifically, Ukraine has previously been asked to halt the deportation of a journalist and figure of the political opposition to Kazakhstan, where she faced “trumped-up” charges of fraud.<sup>38</sup> The individual in question fled the country when she found out that she faced detention following a sentence that seemed to have been linked, albeit not openly, to her political activities.<sup>39</sup> In that situation, serious concerns were expressed by the Special Rapporteurs about the conditions of detention for women and human rights defenders in Kazakhstan.<sup>40</sup>
- b. In the case of an individual facing deportation from Albania to Turkey who faced risks of detention, prosecution and, potentially, torture or other cruel, inhuman or degrading treatment for his perceived or imputed affiliation to the Hizmet/Gulen movement, the state was urged to ‘halt and review without delay’ the deportation.<sup>41</sup>
- c. Steps were taken to prevent the deportation of a Saudi national from Georgia to Saudi Arabia, where he ran the risk of being subject to arbitrary detention, unfair trial, possibly torture or cruel, inhuman or degrading treatment or punishment, and death penalty for expressing dissenting political views.<sup>42</sup>

26. The UN mandates are urged to take action to protect the fundamental rights of Ms Issayeva, as they have done in prior interventions in comparable circumstances.

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<sup>37</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

<sup>38</sup> UNDOC UA UKR 1/2020 (24 March 2020) p. 2.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25044> >.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid p. 2

<sup>41</sup> UNDOC UA ALB 1/2020 (20 March 2020)

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25127> >.

<sup>42</sup> UNDOC UA GEO 1/2022 (26 May 2022)

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27279> >.

C.I. Risks of Torture or Ill-Treatment under Article 7 ICCPR and the Convention Against Torture

27. The risks facing the petitioner, referred to above, amount to torture and ill-treatment. The forced psychiatric detention faced by Ms Issayeva, and the treatment she would receive in the course of such detention raises particularly profound concerns and would reach the threshold of ill-treatment or torture under Article 7 of the ICCPR and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
28. The United Nations Human Rights Committee decided in 2019 in relation to Kazakhstan that *'illegal and arbitrary committal to a hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment'*.<sup>43</sup> The case concerned another human rights activist in Kazakhstan, Ms. Zinaida Mukhortova, who had been forcibly placed in psychiatric hospital by the authorities on three separate occasions over a course of fifteen months. The Committee concluded that her *'involuntary apprehensions and hospitalisations (...) and the subject (...) to medical treatment despite her opposition, in view of the fact that she posed no risk or harm to herself or others, amounted to inhuman and degrading treatment or punishment'*.<sup>44</sup>
29. The United Nations Special Rapporteur on torture has expressed concerns about the close links between forced psychiatric detention and torture<sup>45</sup> and affirmed that forced psychiatric medication constitutes torture.<sup>46</sup>
30. In assessing the risk of torture or ill-treatment posed by the intent to subject Ms Issayeva to forced psychiatric detention, it is noted that there has been no medical justification provided, there is no suggestion that Ms Issayeva poses any risk of harm to herself or others, but rather the primary goal of the authorities' is to silence and punish those whose beliefs and opinions are not endorsed by the State. Unjustifiable psychiatric

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<sup>43</sup> *Zinaida Mukhortova v. Kazakhstan*, UN Doc [CCPR/C/127/D/2920/2016](#) para 7.15.

<sup>44</sup> *Ibid* para 7.17.

<sup>45</sup> United Nations Special Rapporteur on Torture (2008) Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, UNDOC A/63/175 (28 July 2008) para 62.

<sup>46</sup> *Ibid*, para 115.

detention, labelling and the treatment, including forced medication, would undoubtedly give rise to extreme anguish and suffering sufficient to meet the threshold under Article 7 ICCPR.<sup>47</sup>

31. Other detention conditions including the imposition of solitary confinement,<sup>48</sup> or use of force by state agents absent strict necessity,<sup>49</sup> as faced by the petitioner in the past, can also amount to ill-treatment. The previous treatment of Ms Issayeva during two periods of detention and interrogation in 2015 under their supervision of the Kazakhstani authorities provides strong support for the risk of such violations upon return to Kazakhstan. In conclusion, the imminent risks in question, including abusive detention, interrogation and punitive psychiatry, would amount to violations of Article 7 ICCPR.

### C.2 Risks of Arbitrary Detention and Flagrant Denial of Justice

32. As noted above, states must not deport a person where they run the risk of a flagrantly unfair trial or other flagrant denial of justice in the receiving state.<sup>50</sup> This includes situations where a state ‘removed, or enabled the removal, of an applicant to a State where he or she was at real risk of a flagrant breach of [the right to liberty].’<sup>51</sup>

33. The risk of arbitrary detention by the Kazakhstani authorities is clear from the fact that the petitioner and other HRDs are arbitrarily detained for interrogation related to HRD activities. The authorities’ decision to subject the applicant to psychiatric detention without strong justification and strict safeguards, represents a further extreme form of arbitrary detention contrary to Article 9 of the ICCPR, as well as domestic law.<sup>52</sup> The lack of grounds for detention and absence of safeguards such as prompt judicial review of an individual’s detention are associated with a greater risk of ill-treatment.<sup>53</sup> Arbitrary detention in a psychiatric facility jeopardize physical and psychological

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<sup>47</sup> The health implications, forced medication and impact are noted above in relation to the treatment of others in Kazakhstan.

<sup>48</sup> See for example, *Ilaşcu and Others v. Moldova and Russia* [GC] App no 48787/99 (ECtHR, 8 July 2004) and *Kalashnikov v. Russia* App no 47095/99 (ECtHR, 15 July 2002).

<sup>49</sup> *Bouyid v. Belgium* [GC] App no 23380/09 (ECtHR, 28 September 2015) paras 100-101.

<sup>50</sup> *Othman (Abu Qatada) v the United Kingdom* App no 8139/09 (ECtHR, 17 January 2012); *Abu Zubaydah v Lithuania* (2018)

<sup>51</sup> *Abu Zubaydah v Poland* App no 7511/13 (ECtHR, 14 July 2014) para 452; *Al Nashiri v Romania* App no 33234/12 (ECtHR, 31 May 2018) para 596

<sup>52</sup> Article 46 of the Law on Forensic Activities of the Republic of Kazakhstan requires a court order for psychiatric detention, hence the detention of the applicant would not be prescribed by law.

<sup>53</sup> *ibid* para 76.

integrity, leaving her vulnerable to ill-treatment by Kazakhstani authorities absent scrutiny and accountability.

34. Ms Issayeva has been charged with ‘inciting ethnic discord’ under Article 174(1) of the Criminal Code of Kazakhstan based on the legitimate exercise of her right to freedom of expression and peaceful activism. These charges are inherently vague and unclear, in violation of the principle of legality, and in practice result in ‘inherently arbitrary’ prosecutions including of civil society actors in Kazakhstan today.<sup>54</sup> As highlighted above, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has denounced the abuse of Article 174(1), which is formulated in vague terms that allow the prosecution of a wide range of legitimate activities under the head of incitement of hatred, as a silencing tool against activists and human rights defenders.<sup>55</sup>

35. The existence of a risk of a ‘flagrant denial of justice’ is further supported by information provided by international NGOs such as Amnesty International to the effect that Kazakhstani authorities have previously denied access to lawyers to individuals similarly placed in psychiatric detention for their activism and expression of political dissent.<sup>56</sup> There is a high risk that the applicant would be deprived of basic due process guarantees during a future trial and that she would be denied a meaningful opportunity to challenge the lawfulness of detention.

36. There is no reason to believe the problematic charges levelled against Ms Issayeva and the risk of a flagrant denial of justice have been lifted. Indeed, when Ms Issayeva wrote to the Kazakhstani authorities to ascertain the status of the criminal charges against her and in an effort to have them lifted, the Kazakhstan’s Department of Interior responded that her letter would be attached to the criminal charges (see annex C), implying that they remain in force. This accords with the increased use of such charges against HRDs

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<sup>54</sup> The UNHRC recently recognized that unfounded criminal charges that should never have been brought – in that case against a judge for his interpretations of the law – can themselves amount to a violation of Article 14 on fair trial: *Garzon v Spain* UNHRC (2021). On the vague nature of the laws, see UN Special Rapporteur report on Kazakhstan (2019) supra.

<sup>55</sup> ‘[Preliminary Findings](#) of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan’ (22 May 2019).

<sup>56</sup> The case of Ardak Ashim, charged under Article 174, placed in a psychiatric clinic, left Kazakhstan and is in Ukraine <https://www.amnesty.org/en/documents/eur57/8298/2018/en/> ; <https://rus.azattyq.org/a/ardak-ashim-aktivist-prinuditelnoye-lechenie/29158211.html> ;

in recent years.<sup>57</sup> While it is unconfirmed whether these particular charges are in force today, there is clearly a serious risk that such charges would be pursued or reinstated were she to return to the country.<sup>58</sup>

### C.3 Implications for free expression and human rights defenders

37. While the focus of this petition is on torture and arbitrary detention, the Special Rapporteurs and the Working Group are urged to take into account that the threats in this case have broader implications for the protection of human rights.

38. First, the detention of a writer, journalist and political opponent on these grounds raises crucial freedom of expression issues for the right to freedom of thought under Article 18 and freedom of expression under Article 19 ICCPR. She is targeted for the exercise of her freedom of expression to criticize the government of her country.

39. Second, the petition should be interpreted in light of Ms Issayeva's status as a human rights defender and the legitimate activities for which she is being targeted. The UN standards on HRDs suggest heightened responsibility in this context, given the impact not only on the HRDs but on others whose rights are protected by them.<sup>59</sup> The ECHR for its part reflects these concerns in its emerging case-law on Article 18, underscoring the importance of considering whether there is an 'ulterior purpose behind' the measures.<sup>60</sup> It has thus recognised that the abuse of criminal processes, including vague criminal laws, as a means to silence HRDs and activists may violate Article 18 in a manner that affects '*not merely the applicant alone, or human-rights defenders and NGO activists, but the very essence of democracy as a means of organising society, in which individual freedom may only be limited in the general interest*'.<sup>61</sup>

40. This petition therefore carries particular significance. The applicant's return to Kazakhstan and her prosecution or arbitrary detention and torture therein would affect

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<sup>57</sup> see Special Rapporteur and NGO reports to this effect, above.

<sup>58</sup> In an interview for Radio Free Europe/Radio Liberty an official of the Ministry of Internal Affairs of Kazakhstan suggested to journalists that the charges may have been dropped, but this is unconfirmed, and would in any event be no there is no reason such charges would not be reinstated were she to return to the country <<https://rus.azattyq.org/a/32008581.html>>.

<sup>59</sup> UN Declaration on Human Rights Defenders A/RES/53/144 (1998).

<sup>61</sup> *Kavala v Turkey* App no 28749/18 (ECtHR, 10 December 2019) para 231.

her own rights under Articles 7, 9, and 14 of the ICCPR and her ability to express dissent under Article 19. It would also have a chilling effect on others, on democratic participation and the protection of human rights, which are under siege in Kazakhstan and elsewhere at this time.

#### **D. Conclusion**

41. This request is submitted after all appeals have been exhausted by the applicant. It is therefore urgent and submitted as a matter of last resort, as Ms Issayeva has been requested to leave Sweden by 7 September 2022.<sup>62</sup>
42. This exceptional case involves a clear and imminent risk of irreparable harm. The existence and nature of the risk is amply demonstrated by the annexed evidence of the applicant's treatment to date and criminal charges against her, and would in any event be clear from violations of a similar nature facing other critics and HRDs in Kazakhstan at this time. Ms Issayeva's case is emblematic of the broader crackdown on human rights defenders in the country and around the world and calls for a robust response.
43. Ms Issayeva is in a situation of extreme danger and her transfer risk serious violations of her rights in Kazakhstan. In addition, her return will impede her from continuing important critical civil society work, with a negative chilling effect on others.
44. The Special Rapporteurs and Working Group are therefore respectfully urged to express their concern, to raise the matter with the Swedish government and to take all possible steps to intervene to prevent Ms Issayeva's imminent transfer to Kazakhstan as a matter of the utmost urgency.

Helen Duffy and Nina Keese  
Human Rights *in Practice*,  
The Hague, Netherlands  
30 August 2022  
on behalf of Botakoz Issayeva  
with the support of Freedom for Eurasia

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<sup>62</sup> See the deportation order in Annex A.



## List of Annexes

### **Annex A: Domestic decisions of the Swedish courts**

1. Migrationsverket/Migration Board decision (29/02/2021)
2. Appeal to the Migration Court (29/04/2021)
3. Migrationsdomstolen/Migration Court decision (13/06/22)
4. Appeal to the Migration Court of Appeal (25/05/22)
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### **Annex B: information relevant to Ms Issayeva's HRD activities**

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8. Letter by Dongelek Ystel to MEP Fulvio Martusciello (09/06/21)
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17. Decree concerning Ms Issayeva's prosecution under Article 174(1) (02/12/2015)
18. Threats received on Facebook (05/03/17)
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### **Annex D: Human Rights situation in Kazakhstan**

25. World Report by Human Rights Watch
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### **Annex E: Psychiatric Detention of HRDs in Kazakhstan**

27. Report/Testimonies re forced psychiatric detention

### **Annex F: Power of Attorney/Consent**