

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
UKR 5/2015:

16 October 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the physical assault of human rights defender, **Mr. Nick Carter**.

Mr. Nick Carter is a human rights defender who works to defend the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons and to raise awareness of discrimination against members of the LGBTI community in Ukraine. He has frequently appeared on Ukrainian television to promote those rights, as well as emphasize the challenges faced by members of the LGBTI community. He has also taken part in demonstrations in solidarity with the community members.

According to the information received:

Since May 2015, Mr. Nick Carter has been subjected to repeated threats in connection with his public advocacy on behalf of the rights of the LGBTI community in Ukraine. He has received threats from unknown individuals via phone, text and social media, including messages warning him that his address was known and that he would be beaten to death.

On the night of 14 September 2015, Mr. Carter was attacked by four unidentified men near the Obolon' subway station in Kyiv and severely beaten, resulting in serious facial injuries. In the course of the incident, he was insulted on the basis of his sexual orientation. Mr. Carter called the police immediately after the attack, and upon their arrival at the scene provided them with a written statement about the incident.

On 16 September 2015, Mr. Carter was informed that the written statement which he had supplied to police had been lost, and was requested to present himself at the Department of Internal Affairs of Obolon' District in order to submit a new complaint. Upon re-submitting the complaint, Mr. Carter was allegedly treated in a disrespectful manner by police at the Department of Internal Affairs.

As of the sending of this communication, no developments in regards to the investigation into the alleged assault of Mr. Carter have been reported.

Concern is expressed that the intimidation, harassment and attack suffered by Mr. Carter may be related to his sexual orientation or perceived sexual orientation and his activism on behalf of the LGBTI community in Ukraine, and in particular the public nature of his work in defence of their rights, and the exercise of his legitimate right to freedom of expression and opinion. Concern is also expressed at what appears to be a lack of an investigation on the part of the authorities into the alleged attack on Mr. Carter. Further concern is expressed that, considering the severity of the threats he has received, Mr. Carter may be at risk of further serious physical harm.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details of the steps that have been taken to investigate the complaint made by Mr. Carter in relation to his alleged assault. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please provide information regarding measures taken to ensure the physical and psychological integrity of Mr. Carter given the repeated threats in connection to his work, in particular the recent physical attack.
4. Please indicate what measures have been taken to ensure that the right to develop and discuss human rights ideas and principles, in particular in relation to sexual orientation and gender identity, and to advocate their acceptance, is respected and

protected in Ukraine, and that the physical and psychological integrity of those exercising this right is guaranteed.

5. Please kindly indicate what measures have been taken to ensure that human rights defenders, including those working on promoting and protecting the rights of LGBTI persons, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

6. Please kindly indicate what measures have been taken to protect persons from acts of violence based on sexual orientation or gender identity, including acts of violence against human rights defenders, and to ensure that if such acts occur, they are investigated, prosecuted and punished.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

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:

We would like to refer to the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) and in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Ukraine on 12 November 1973. We wish to remind your Excellency's Government that any restrictions to the exercise of the right freedom of expression, in accordance with article 19(3) ICCPR must be provided by law and necessary and proportionate.

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has urged States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression. The Committee has recognized that those persons who engage in the gathering and analysis of information on the human rights situation and who publish reports are frequently subjected to threats, intimidation and attacks, and has stated that "[a]ll such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims ... be in receipt of appropriate forms of redress" (CCPR/C/GC/34).

Similarly, the Human Rights Council, in paragraphs 3 and 5 of its resolution 12/16, has expressed its concern at the violation of human rights, including intimidation, persecution and harassment, threats of acts of violence and censorship against those who seek to promote their rights, including human rights defenders, and has called upon States to take all necessary measures to put an end to violations of these rights and bring those responsible to justice.

We would also like to recall resolution 27/32 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. In this connection, UN treaty bodies, special procedures of the UN Human Rights Council and the United Nations High Commissioner for Human Rights have issued recommendations to States to, inter alia, protect persons from homophobic and transphobic violence and investigate and prosecute perpetrators of such violence; prevent the torture and cruel, inhuman and degrading treatment of LGBT and intersex persons; ensure that criminal laws are not used to harass or detain people on the basis of their sexual orientation or gender identity; enact comprehensive laws that include sexual orientation and gender identity as prohibited grounds of discrimination; ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety and without discrimination (A/HRC/29/23, paras. 9-19 and 78-79).

We would like to note that in August 2013 the Human Rights Committee in its Concluding Observations expressed concern at reports of hate speech and acts of violence against LGBT persons in Ukraine and called on Ukraine to provide effective protection to

LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity, as well as to take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights (para. 10, CCPR/C/UKR/CO/7).

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 7, which provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance, and

- 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.