

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

REFERENCE:
UA USA 16/2018

7 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of death threats, acts of violence and intimidation, harassment, and discrimination against [REDACTED] human rights defender and transgender rights defender.

[REDACTED] is the Executive Director of [REDACTED], a gender and sexuality civil and human rights organization. The organization is currently challenging the constitutionality of the Transgender Military Ban. Ms. [REDACTED] is among the most visible and prominent transgender leaders [REDACTED]. She has had widespread media exposure over the last several years [REDACTED]
[REDACTED]
[REDACTED]

According to the information received:

Since 17 May 2018, [REDACTED] has received numerous and escalating death threats, hate messages, threats of violence, and "doxing" (i.e. researching and broadcasting on the Web private information such as Ms. [REDACTED] legal name, immigration history, friends/family contacts) from several groups and individuals. In particular, on 17 May 2018, [REDACTED] began receiving emails from a hate speech Internet forum [REDACTED] known to be openly offensive towards transgender persons, among others. These emails contained intimidating comments and threats of violence and of "doxing", as well as information about other groups they intended to contact to harass Ms. [REDACTED] locally.

On 22 May 2018, Ms. [REDACTED] received seven emails in six hours containing hate messages, death threats and threats of sexual violence from a white nationalist/neo-nazi organization named [REDACTED]. These

messages were followed by several menacing phone calls to Gender Justice League.

Between 23 May and 5 June 2018, several attempts were made to take down the website of the organization [REDACTED] (DDOS attacks), break into their secure email service, and attack their database server. Most of the messages included hate language directed against LGBT persons that were spammed into fields of emails. In this context, Ms. [REDACTED] received more than 12,000 emails with the same hateful subject matter and further threats in the body text.

The [REDACTED] in conjunction with [REDACTED] and several other "alternative right" websites began making public posts of [REDACTED]'s photos, including of her vehicle and the license plate, of the location of her mother's nursing home, of her brother's workplace, and of the place where she receives medical care. These groups also published addresses of her mother and brother. Ms. [REDACTED]'s address could not be disclosed as it is protected by the State of Washington's address confidentiality program for similar harassment and threats of violence in the past. The location of the office of the [REDACTED] is also confidential.

According to the information at our disposal, these photographs were taken in person and not generally available online. At the request of Ms. [REDACTED], they have been removed from the Internet by service providers, but they are still available on various "dark web" bulletin boards and websites associated with white supremacists in the Northwestern United States under "Kill List" titles.

On 19 June 2018, [REDACTED] received several threats on its Facebook Event Page for Trans Pride [REDACTED]. These threats included edited images with fascist/neo-nazi and "anonymous" symbols and images superimposed over images of Ms. [REDACTED]'s face.

The latter forwarded these images to the Justice Department Community Relations Service, the FBI Cybercrimes Unit [REDACTED], and the [REDACTED] Police Department, and she made several phone calls to the police captain for her area and the LGBT Liaison officer. Despite reference by Ms. [REDACTED] to the ongoing and escalating threats to her and her family, both officers said that this "did not rise to the level of importance" for them and added that she could "file a police report but nothing would happen". She was then told to "buy a gun and learn how to use it" and to hire a private security firm to protect herself as "the FBI and the Department of Justice are not in the business of personal protection". According to information at our disposal, during the phone conversations, the officers were dismissive and ridiculing and they suggested that Ms. [REDACTED] "tone down" her public work and image.

On 21 June, the day before Trans Pride ██████████ was driving towards a shopping district at around 4p.m. when a large pickup truck began driving extremely close to the back of her vehicle and began bumping her rear bumper while traveling at 50 km/h. Ms. ██████████ could see a shotgun in the pickup. The truck started honking and flashing its lights and the occupants - three young white men with shaved heads began giving Ms. ██████████ the middle finger and one of them is believed to have brandished a handgun. The truck then began to hit the rear driver's side bumper and pushed Ms. ██████████'s vehicle toward the side of the road where she had to stop. The other vehicle followed and the occupants started shouting death threats and transphobic remarks through the open windows. Ms. ██████████ was reportedly terrified and left her vehicle to seek refuge in a nearby private property. The truck then sped off. When ██████████ called the ██████████ Police Dispatch, she was informed that she could report the incident at a police station, which she did not do believing that her report would not be taken seriously or given due consideration.

The next day, during the Trans Pride March and Festival ██████████ which is the second largest transgender-specific cultural event in the United States, an alternative right group - ██████████ - came to "film the fucking freaks" and intimidate the participants. The Pride private security repeatedly asked the ██████████ Police to escort them off the property the organizers had rented from the City of ██████████ but it was allegedly met with hostility and the private security officer was told that "this was not [their] job". Members of the ██████████ were finally escorted across the street upon the instruction of the highest command officer on site.

Following the Pride event, Ms. ██████████ continued to receive threatening emails that included photographs of her entering and leaving her office and her apartment. These incidents, combined with the lack of reaction of FBI and Police Department agents led Ms. ██████████ to believe that the authorities were not taking the threats against her seriously and were not able to comprehend the danger faced by human rights defenders and transgender rights defenders in the country.

Feeling unsafe, ██████████ decided to leave the country to regain a sense of safety and attempted to renew her passport from the US State Department ██████████ Passport Office.

Refusal of passport renewal

On 27 June 2018, ██████████ went to an appointment at the ██████████ Passport Office of the US State Department to renew her passport that had been granted by the same office in September 2007 and had expired on 20 August 2017. Together

with her application, Ms. [REDACTED] provided proof of pending stalking charges and the Washington State Confidential Address form and explained that she was seeking to travel out of the country to flee violence. The officer however insisted that she declares her "true and real physical address" and she was then told that her passport would be ready on 30 June.

On 28 June, the State Department [REDACTED] Passport Office called Ms. [REDACTED] and asked her to provide proof of previous name changes, of final gender change, and of US Citizenship.

Ms. [REDACTED] explained that she had changed her name and gender marker almost 20 years ago in the context of a court proceeding [REDACTED] and that the documents were sealed as part of child welfare proceedings.

In 1999, the [REDACTED] Office of Vital Records had been ordered to seal Ms. [REDACTED]'s original birth certificate and produce a new birth certificate with her new legal name (i.e. [REDACTED]), and to change her gender marker to "female". Ms. [REDACTED] had indeed satisfied the court's expectation of completing gender transition following four years of hormone administration and mental health care. She was not eligible for surgical care as she was a minor. The court decided that the "best interest of the child" was to have her gender regarded as female for her own safety and ability to function in society.

Ms. [REDACTED] further explained that she had provided the only proof of her identity that was available to her and was in the public record, i.e. her birth certificate from the State of Maine. The State Department acknowledged that they had accepted this information in 2007 when issuing her passport, but insisted on the fact that they needed "proof of a completed gender reassignment and all past names" and asked her to travel to Maine to get the court unseal the records. Ms. [REDACTED] highlighted that such requirements were not consistent with the State Department's own policies, but she was told that she was "absolutely wrong" and that she had "fraudulently" acquired her 2007 passport that had never been valid and that she had not "established citizenship". Ms. [REDACTED] perceived the accusation of fraud, which is a federal felony, as a threat. She reached out to her local congresswoman's office and they contacted the [REDACTED] Passport Office and the State Department in Washington DC to unblock the situation.

On Monday 1 July, Ms. [REDACTED] was informed that the State Department [REDACTED] Passport Office had "issued an emergency two-year passport" that could be used to leave the country to "apply for political asylum". Ms. [REDACTED] had however never broached this subject and she clarified that she was traveling "to secure her safety". The officer replied "they can keep you" and hung up the phone. This was seen by Ms. [REDACTED] as additional proof of the fact that her work as human rights

defender and transgender rights defender was not welcome and of the unwillingness of the administration to protect her.

While we do not want to prejudge the accuracy of the information made available to us, we express grave concern over these allegations of **death threats, acts of violence, intimidation and harassment and the lack of State protection** of Ms. [REDACTED] for her legitimate and peaceful activities as human rights defender and in defense of the rights of transgender persons. An equal matter of serious concern is the **discriminatory attitudes and derogatory remarks** made by State officials. Serious concern is also expressed with regard to abusive requirements asked by officers at the [REDACTED] Passport Office of the US State Department for the renewal of Ms. [REDACTED]'s passport that led to the temporary restriction of Ms. [REDACTED]'s ability to seek **international protection**.

The above mentioned allegations appear to be in contravention of the rights of every individual to non-discrimination, liberty and security of person, physical integrity, privacy, identity, and effective recognition before the law, as laid down, inter alia, in articles 2, 3, 6, 7, 8, 12, 13, and 14 of the Universal Declaration of Human Rights, and articles 2, 6, 9, 12, 16, 17, and 26 of the International Covenant on Civil and Political Rights, to which the State is party since 8 June 1992. The right to equal recognition before the law is a central tenet for other rights and freedoms, which all depend on the identification of the individual to be actualized by the State bureaucracy. It is also a basic element in a well-functioning framework for protection and the first guarantee of State accountability. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

The Human Rights Committee found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3). The Human Rights Council, through resolutions 17/19 and 27/32, has expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity. On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, inter alia, protect individuals from violence and discrimination on the basis of their gender identity, including conducting prompt, thorough investigations of incidents of hate-motivated violence and hate speech against LGBT persons, hold perpetrators to account and provide redress to victims, train law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to gender identity; and issue legal identity documents, upon request, that reflect preferred gender, and eliminate abusive preconditions (A/HRC/29/23, para. 78).

We would also like to refer your Excellency's Government to 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 articles 1, 2, 5, 6 and 12. In this connection, we would similarly like to refer to the Human Rights Council resolution 31/32, which in paragraph 10 underlines the legitimate role of human rights defenders in mediation efforts and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 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 the details, and where available the results, of any investigation carried out in relation to the allegations of death threats, acts of violence, intimidation and harassment against Ms. [REDACTED] on the basis of her gender identity and legitimate work in the defense of human rights. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that alleged perpetrator(s) have been identified, please provide full details of any prosecutions undertaken so far.
4. Please provide information about any measures taken to ensure the protection of the rights to physical integrity, liberty, security and privacy of Ms. [REDACTED]. If no specific protection measures have been granted, please explain why.
5. Please explain what measures are being taken to ensure that Ms. [REDACTED] can renew her passport without abusive requirements by State officials.
6. Please outline what measures have been taken to ensure that human rights defenders, including transgender rights defenders, can carry out their peaceful and legitimate work in a safe and secure environment.

While awaiting a reply, we respectfully urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, to protect the physical integrity, security and privacy of Ms. [REDACTED] and to guarantee her right to identity and equal recognition before the law. In the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of them.

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

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Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz

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