

**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 MLT 1/2019

31 May 2019

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 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of acts of intimidation against Ms. **Sarah Clarke**, by Maltese high level officials during a UN High Level event on 10 December 2018, following her statement on the public inquiry into the assassination of the investigative journalist and human rights defender, Ms. Daphne Caruana Galizia.

Ms. Sarah Clarke is a human rights defender and was, until December 2018, the International Policy and Advocacy Manager at the non-governmental organization PEN International.

The assassination of Ms. Daphne Caruana Galizia formed the object of a communication to your Excellency's Government on 18 October 2017 (ref. no MLT 1/2017). We thank your Excellency's Government for the reply received on 20 October 2017. Concerns at allegations of a lack of impartial, thorough and independent investigation into the killing as well as allegations of intimidation of the family of Ms. Caruana Galizia were raised in a communication to your Excellency's Government on 10 August 2018 (ref. no MLT 1/2018). We thank your Excellency's Government for the reply of 4 October 2018, in which it was rejected that there was any form of State sponsored intimidation.

According to the information received:

On 10 December 2018, a UN High Level event marking the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights was held in the UN headquarters in New York.

Following the intervention by Malta which was related to freedom of expression, Ms. Clarke approached the Maltese Minister for Foreign Affairs and Trade Promotion, Mr. Carmelo Abela, about the lack of any mentioning of the assassination of the leading Maltese journalist, Ms. Daphne Caruana Galizia in the intervention. Ms. Clarke stressed that if the Government of Malta sought

legitimacy and credibility in relation to freedom of expression they should immediately conduct a public inquiry into the assassination of Ms. Daphne Caruana Galizia, as has been advocated by a coalition of organizations.

In response, the assistant to the Minister reportedly told Ms. Clarke that she was a “biased asshole”. The Minister himself also repeatedly stated that Ms. Clarke was “biased”, ignorant of the facts and said that she had not spoken to the authorities. Ms. Clarke responded that the international delegation in their mission to Malta had met with the Prime Minister of Malta, the Minister of Justice and the Attorney General.

It has been reported that civil society organizations and individuals advocating for public inquiry into the assassination of Ms. Daphne Caruana Galizia or who otherwise have expressed their support for her, have been subject to harassment and intimidations.

We express serious concern at the statements made on UN Premises by Maltese high level officials against Sarah Clarke, in particular as these acts are reported to be a form of intimidation for Ms. Clarke statement at the margins of the UN High Level event. Furthermore, we express concern at allegations indicating that this case forms part of a broader set of cases concerning acts of intimidation and retaliation in relation to civil society organizations and human rights defenders advocating for justice following the assassination of Ms. Caruana Galizia.

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 or comments you may have on the above-mentioned allegations.
2. Please provide information on the measures your Excellency’s Government has taken to publicly condemn acts of intimidation against human rights defenders and civil society organizations, whether by private and public figures.
3. Please provide information about whether any apology has been provided to Ms. Clarke subsequent to the incident.
4. Please indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work, including documenting and reporting on the assassination of Ms. Daphne Galizia

Caruana in a safe and enabling environment without fear or intimidation or retaliation of any kind.

We would appreciate receiving a response within 60 days. Passed 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.

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**

We would like to refer to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Malta on 13 September 1990, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. They must be provided by law, and be necessary to achieve a legitimate purpose, namely the protection of national security, public order, public health or morals. The restrictions must be proportional in the sense that they must be appropriate to achieve their protective function; and the restriction must be provided by law.

In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

We would also like to refer 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to Article 1, 2, and 6 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, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 7 of the same Declaration provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.