

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

19 April 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 45/3, 42/22 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged abduction and enforced disappearance of Mr. Mykola Mykolaiovych Sydorenko, presumably by members of the Main Directorate of the National Police in the Donetsk region and Security Service of Ukraine, in Bakhmut.**

Mr. Sydorenko is a Ukrainian journalist of the online media "Legal Control" ('Pravovyi control').

According to the information received:

On 27 March 2022, at 16:52 p.m., Mr. Sydorenko was abducted by three unknown persons wearing military uniforms and balaclavas, next to the "Promin" shopping centre and the "Nova Posta" Branch No. 2, in Bakhmut (Chaikovskoho street, no. 39). According to an eyewitness, the men grabbed Mr. Sydorenko by the hair, threw him on the ground, and took away his walking stick, a bag with documents and personal belongings, a phone and a laptop. The men allegedly then dragged him behind a fence and took him to an undisclosed location. Since then, there has been no information on Mr. Sydorenko's fate or whereabouts.

It is believed that the three men were acting on behalf of the Bakhmut district police department of the Main Directorate of the National Police in the Donetsk region, Security Service of Ukraine.

On the day of his abduction and subsequent enforced disappearance, a relative of Mr. Sydorenko lodged a complaint with the Bakhmut District Police Department, which was registered under number 4482. However, no search or investigative measures have reportedly been carried out by the police. Relatives of Mr. Sydorenko also applied to the Military Commandant's Office in Bakhmut, the Prosecutor's Office of Bakhmut, the State Bureau of Investigations in Donetsk region and the city council duty service (service "05") in Bakhmut.

On 28 March 2022, the family was informed by the Military Commandant's Office in Bakhmut that no active search and investigative measures were being carried out on the territory of Bakhmut. The counterintelligence and the Security Service of Ukraine did not possess either any information about his fate or whereabouts.

This is the second case of abduction of Mr. Sydorenko by the police. On 21 April 2017, he was subjected to enforced disappearance when he was detained, held incommunicado in an unknown location for three days and beaten up in order to force him to testify about his alleged involvement in the armed groups of the self-proclaimed "Donetsk people's republic". As a result of torture, Mr. Sydorenko sustained bodily injuries which were documented by medical doctors and proved by medical certificates. He was left with a permanent disability of third degree.

Since 2017, Mr. Sydorenko has been on trial on conflict-related charges, however until today the verdict has not been passed and the charges have not been proved. It is reported that the Territorial Department of the State Bureau of Investigation, located in the city of Kramatorsk, is currently pursuing criminal proceedings (no. 42017050000001017) initiated on 18 December 2017), on the grounds of a criminal offence under article 365 (part 2) and article 371 (part 1) of the Criminal Code of Ukraine. These proceedings were initiated on the basis of Mr. Sydorenko's complaint about his enforced disappearance and torture by police officers in April 2017. The second set of pending criminal proceedings (no. 62020050000000336), were initiated on 20 February 2020 under the Investigation Department of the General Directorate of the National Police of Ukraine in Donetsk region.

The UN Human Rights Monitoring Mission in Ukraine has also been monitoring the case of Mr. Sydorenko since 2017.

Without prejudging the accuracy of the information received, we are deeply concerned about the alleged abduction and enforced disappearance of Mr. Nikolai Sydorenko, presumably by the Security Service of Ukraine, and about his current physical and psychological integrity. Additionally, we express our concern that Mr. Sydorenko had been reportedly abducted and forcibly disappeared already, and held in incommunicado detention in similar circumstances in 2017, suffering physical injuries which led to his permanent physical disability.

Should these allegations be confirmed, they would raise concerns regarding violations of articles 6, 7, 9, 16 and 19, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine in 1973, as well as articles 3, 5, 9 and 19 of the Universal Declaration of Human Rights (UDHR). The ICCPR and UDHR guarantee the rights to life, to liberty and to personal security, to freedom from arbitrary detention, to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and freedom of expression, association and assembly. We would also like to recall that according to the jurisprudence of the Working Group on Arbitrary Detention and the Human Rights Committee's General Comment n° 35, enforced disappearances constitute a

particularly aggravated form of arbitrary detention. We would also like to remind your Excellency's Government of the absolute prohibition of torture and other forms of ill-treatment, and its obligation to promptly investigate allegations of torture, take effective measures to prevent acts of torture within its jurisdiction, under articles 1, 2, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Ukraine ratified in 1987. The right to life and freedom from torture and other ill-treatment are non-derogable under international law and must be protected and respected under all circumstances, even in times of emergency. We also wish to refer your Excellency's Government to articles 1, 2, 12, 17-21 and 24 of the International Convention for the Protection of All Persons from Enforced Disappearance, which Ukraine ratified in 2015. Moreover, enforced disappearance is prohibited under customary international humanitarian law.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out necessary protection by the State. In particular, articles 2 and 3 state that no State shall practice, permit or tolerate enforced disappearances and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. Pursuant to article 7, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Moreover, article 10 underscores that accurate information on the detention of individuals and their place or places of detention, including transfers, shall be made promptly available to their family members and counsel, and that article 14 states that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance.

We also wish to draw the attention of your Excellency's Government to article 9 of the ICCPR, which enshrines the right to liberty and security of person and provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article (2) specifically guarantees the right of anyone arrested to be informed, at the time of arrest, of the reasons for his or her arrest and to be promptly informed of any charges against him or her. Further, article 9(3) of the ICCPR requires that anyone arrested or detained on a criminal charge be brought promptly before a judge authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances. Finally, article 9(4) of the ICCPR guarantees the right of anyone deprived of liberty by arrest or detention to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order his or her release if the detention is not lawful. Principle 4 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court provides that the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to obtain without delay appropriate and accessible remedies is not derogable under international law.

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

We are issuing this appeal in order to safeguard the rights of Mr. Sydorenko from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

In view of the urgency of the matter, we would appreciate a prompt response on the steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the fate and whereabouts of Mr. Mykola Mykolaiovych Sydorenko and on the actions undertaken to search for him. Please explain why his whereabouts were not promptly made available following his arrest. Please provide information on the state of health of Mr. Sydorenko.
3. Please provide information on the factual and legal basis for the detention of Mr. Mykola Mykolaiovych Sydorenko, and how these are compatible with the international human rights norms binding on Ukraine under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please provide information and, where available, the results of any investigations into the disappearance of Mr. Mykola Mykolaiovych Sydorenko, and steps taken to hold those responsible accountable and to prevent similar enforced disappearances from occurring in the future. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is compatible with the Ukraine's international human rights obligations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Miriam Estrada-Castillo
Chair-Rapporteur of the Working Group on Arbitrary Detention

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