



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**List of issues prior to the submission of the sixth periodic report of
UKRAINE (CAT/C/UKR/6) * ****

**Specific information on the implementation of articles 1 to 16 of the Convention, including
with regard to the previous recommendations of the Committee**

Articles 1 and 4

1. Please provide information on steps taken to fully bring into conformity the definition of torture contained in article 127 of the Criminal Code with article 1 of the Convention, in particular to ensure that all public officials can be prosecuted under article 127 of the Criminal Code, and that discrimination is an element of the definition.

Article 2

2. In light of the Committee's previous concluding observations (para. 9), please:

(a) Provide information on measures taken to ensure that a person is not subject to de facto unacknowledged detention, without court warrants, and that all detained suspects are registered from the actual moment of deprivation of liberty;

* The present list of issues was adopted by the Committee at its forty-third session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

** Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/UKR/CO/5.

(b) Describe steps taken to ensure that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention, including the right to access to a lawyer and a medical doctor of their own choice as well as the right to inform a relative and to be informed of their rights at the time of detention, including as to the charges laid against them;

(c) Indicate steps taken to ensure that all detained suspects are promptly presented to a judge within the maximum 72-hour detention period. In this respect, please elaborate on steps taken to ensure, in practice, that the actual time of apprehension is recorded, that the 72 hours are calculated from the actual moment of deprivation of liberty, as set out in article 29 of the Constitution, and that the 72-hour rule is construed as providing for a maximum period, only fully used when strictly necessary.

3. Please provide information on steps taken to implement an effective legal aid system and to provide this system with adequate resources for ensuring effective legal support to detainees as well as to all victims of acts of torture.

4. Please elaborate on the content and implementation of the Criminal Justice and Law Enforcement Authorities reform, adopted in 2008, as well as on its impact on, inter alia, detainees' and victims' rights, and detention conditions.

5. The Committee and the Working Group on Arbitrary Detention expressed their concern at the use of administrative detention for the purpose of criminal investigation, during which the detainee is deprived of procedural guarantees, including the right to appeal against such detention (para. 9 (e) and A/HRC/10/21/Add.4, paras. 59-61 and 98(r)). Please provide details about steps taken by the State party to address this concern and to ensure, inter alia, the right to appeal against such deprivation of liberty.

6. In light of the report of the Working Group on its visit to Ukraine in October-November 2008, please provide information on steps taken to address the concern that vagrants can be held in administrative detention for up to 30 days without the involvement of a court of law (A/HRC/10/21/Add.4, paras. 62-64). In this respect, please provide further information on the status of the bill aimed at making it a legal requirement in all cases to have a court decision authorizing detention no later than 72 hours after the arrest.

7. Please provide information on measures taken:

(a) To adopt asylum procedures in accordance with international standards, including the draft laws regarding refugees and asylum, as recommended by the Committee in its previous concluding observations (para. 20);

(b) To address the concern about unnecessary detention of asylum-seekers due to, inter alia, the backlog of asylum cases before the administrative courts;

(c) To ensure fundamental legal safeguards to asylum-seekers, including the right to inform a relative or a third party, to access a lawyer and an independent doctor, and to receive the assistance of a qualified interpreter, as well as the right to be fully informed of their rights;

(d) To extend the system of legal aid to detained foreign nationals.

8. Please clarify the so-called “Operation Migrants” that was supposed to have been carried out in Uzhhorod in the summer of 2008, including the methods used as well as the purpose and the results of the operation (A/HRC/10/21/Add.4, para. 77).

Article 3

9. Please describe steps taken to address the concern about the potentially indefinite detention of detainees subject to an extradition request, who have been granted refugee status because of the situation prevailing in the country of origin, to which an extradition, if carried out, would amount to a violation of the principle of non-refoulement and can therefore not be effected.

10. In its previous concluding observations, the Committee expressed its concern about reports of the return of persons by the State party to States where there are substantial grounds for believing that the person would be in danger of being subjected to torture (para. 19). Please provide information on steps taken to address this concern. In this respect, please indicate that when determining the applicability of its obligations under article 3 of the Convention, the State party takes following steps:

- (a) Examines thoroughly the merits of each individual case;
- (b) Ensures that adequate judicial mechanisms for reviewing the decision are in place;
- (c) Ensures that sufficient legal defence is available for each person subject to extradition;
- (d) Establishes effective post-return monitoring arrangements.

11. As requested by the Committee in its previous concluding observations, please provide detailed information on all cases of extradition, return or removal that have taken place during the reporting period, including on the minimum contents of assurances, if any (para. 19). Please indicate how many extradition requests have been received as well as their outcome. In this respect, please elaborate on the forced return by the State party of a group of 11 ethnic Tamil asylum-seekers to Sri Lanka in March 2008. Furthermore, please provide detailed information on the readmission agreements that the State party has signed with the European Union and the Russian Federation, in particular on any safeguards included to ensure that article 3 of the Convention will not be violated, especially concerning Chechen refugees. In addition, please provide information on measures taken by the State party to remedy any cases where article 3 safeguards have not been given effect.

Articles 5 and 7

12. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

13. With regard to training and education, please:

(a) Include information on further steps taken by the State party to reinforce its training programmes for law enforcement personnel, border guard staff, medical personnel and military personnel, as well as for all members of the judiciary and prosecutors on the State party's obligations under the Convention;

(b) Describe steps taken to ensure adequate training for all medical personnel involved with detainees, in the detection of signs of torture and ill-treatment in accordance with international standards, as outlined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol;

(c) Indicate if the State party has developed and implemented a methodology to evaluate the implementation of its training/educational programmes and its effectiveness and impact on the reduction of cases of torture and ill-treatment. If so, please provide information on the content and implementation of such methodology as well as on the results of the implemented measures.

Article 11

14. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to prevent any cases of torture or ill-treatment.

Articles 12 and 13

15. In light of the Committee's previous concluding observations, please provide detailed information on steps taken to establish an effective system to compile statistical data relevant to monitoring the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, and domestic, sexual and ethnically motivated violence and discrimination, as well as on compensation and rehabilitation provided to the victims (para. 26).

16. In its previous concluding observations, the Committee expressed its concern at allegations of acts of torture and other forms of ill-treatment by law enforcement personnel, and the apparent impunity of the perpetrators (para. 13). Such concerns have also been voiced by the Working Group on Arbitrary Detention and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (A/HRC/10/21/Add.4, paras. 26-30 and 98(c) and CPT/Inf (2009) 15, para. 15). In this regard, please describe steps taken:

(a) To address this concern and ensure a policy of zero-tolerance. In this respect, please elaborate on the proposal to create an agency to coordinate the State's policy preventing torture. Please also describe steps taken to ensure that the anti-terrorist unit is not used inside prisons;

(b) To ensure that all allegations of torture and ill-treatment are promptly, effectively and impartially investigated and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts. Are all suspects in prima facie cases of torture and ill-treatment as a rule suspended or reassigned during the process of investigation?

(c) To ensure that detainees who have complained about allegations of torture are protected from reprisals.

Data should also be provided on the implementation of these measures, as well as on their impact and effectiveness in reducing cases of torture and ill-treatment by law enforcement personnel.

17. Please provide information on efforts undertaken to reform the General Prosecutor's office and separate the function of criminal prosecution from the function of supervision of investigations into all allegations of torture and ill-treatment during criminal investigations, as recommended by the Committee in its previous concluding observations (para. 10). Has the State party established an effective and independent oversight mechanism to ensure prompt, impartial and effective investigations into allegations of torture and ill-treatment during criminal investigations? Furthermore, statistical data should be provided on the work of the General Prosecutor's office, such as statistics on complaints received, crime investigations, prosecutions and convictions.

18. With reference to the Committee's previous concluding observations, please provide updated information on steps taken to establish a formal status for the "mobile groups", provide them with a strong mandate, guarantee their independence and provide them with adequate resources (para. 12). Please also provide details about measures taken to set up a national preventive mechanism as foreseen by the Optional Protocol to the Convention.

19. Please provide information on efforts undertaken to complete the transfer of the Department for the Execution of Punishments to the Ministry of Justice. Furthermore, please provide the Committee detailed information on the penitentiary system, including deaths in custody, and the results of any investigation into them or prosecutions relating to them, as well as on the medical situation of detainees.

Article 14

20. Please indicate steps taken to ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes, including medical and psychological assistance, are provided to victims of torture and ill-treatment, trafficking, and domestic and other sexual violence, as recommended by the Committee in its previous concluding observations (para. 24). Please provide data on the number of victims who have received compensation and the amounts awarded in such cases, as well as on the number of victims who have received other forms of assistance and specify which forms of assistance they received.

Article 15

21. In light of the Committee's previous concluding observations (para. 11), please:

(a) Provide updated information on steps taken to eliminate any adverse effects the current investigation system in which confessions are used as a principal form of evidence may have on the treatment of suspects. In this respect, please also elaborate on the allegations that quotas for solving cases exist;

(b) Furthermore, please describe measures taken to ensure that statements which have been made under torture shall not be invoked as evidence in any proceedings, in accordance with article 15 of the Convention. Has the Criminal Procedure Code been changed to this effect?

Article 16

22. With reference to the Committee's previous concluding observations, please provide information on measures taken by the State party to eradicate the prevalent problem of hazing in the armed forces, reinforce the measures of prevention, and ensure prompt, impartial and effective investigation, prosecution and conviction of the perpetrators of such abuses, as well as to report publicly on the results of any such prosecutions (para. 16). Furthermore, please provide information on the results of the implemented measures.

23. In light of the Committee's previous concluding observations, please provide detailed information on steps taken to improve conditions in all detention facilities, including places of detention for asylum-seekers and to reduce the current overcrowding, as well as meet the needs of all those deprived of their liberty, in particular regarding health care, in conformity with international standards (paras. 20 and 25). In this respect, please provide further information on the progress of the plan to create additional detention facilities for foreign nationals and the use of alternative measures, as well as on the impact of these measures on the detention conditions.

24. With regard to violence against women and children, including trafficking:

(a) In accordance with the Committee's previous concluding observations, please provide information on further measures taken to prevent and combat violence against women, including trafficking in persons and domestic violence, as well as to provide protection for victims and their access to medical, social and rehabilitative and legal services, including counselling services, as appropriate (para. 14);

(b) Please include information on measures taken to create adequate conditions for victims in such cases to exercise their right to complain and have each case promptly, impartially and effectively investigated, as well as measures to ensure that perpetrators are brought to justice and are punished with penalties appropriate to the gravity of their acts (para. 14);

(c) Please provide information on complaints, investigations, prosecutions and convictions of such acts as well as on compensation provided to victims in these cases;

(d) Please provide updated information on the implementation of the 2007-2010 National Anti-trafficking Plan and its impact on reducing cases of trafficking, as well as on the funding of this plan;

(e) Please provide information on steps taken to criminalize domestic violence and adopt a State policy to combat domestic violence, as well as on the impact and outcome of these measures.

25. In light of the previous concluding observations of the Committee on the Rights of the Child, please include information on steps taken to adopt an action plan to prevent crimes against children and to implement a separate juvenile justice system in compliance with international human rights norms and standards (CRC/C/OPSC/UKR/CO/1, paras. 8 and 22). Furthermore, please describe steps taken to ensure that minors are not held in the same vicinity as adult detainees.
26. The Committee and the Office of the United Nations High Commissioner for Refugees (UNHCR) have expressed their concern about incitement and the increasing trend in acts of violence against persons belonging to ethnic and national minorities (para. 15), including by law enforcement authorities (UNHCR, 8 June 2007). Please provide detailed information on measures taken by the State party to address these concerns. Do these measures include, inter alia, investigations into all ethnically motivated violence and discrimination, and prosecuting and punishing perpetrators with penalties appropriate to the nature of their acts? In this respect, please provide information on the status of the investigations into the murder of a 19-year-old Congolese asylum-seeker in January 2008, a 39-year-old asylum-seeker from Sierra Leone in March 2008 and a 40-year-old Nigerian in May 2008, all in Kyiv. Please describe steps taken to compile statistics on the frequency of hate crimes.
27. Please provide examples of how the State party has publicly condemned hate speech, hate crimes and other violent acts of racial discrimination, xenophobia and related violence, as recommended by the Committee in its previous concluding observations (para. 15). Please also provide information on further steps taken to eradicate incitement and any role public officials or law enforcement personnel might have in such violence, as well as to ensure that officials are held accountable for actions or failures to act which breach the Convention. Data should also be provided on the outcome of these measures.
28. With reference to the Committee's previous concluding observations, please provide detailed information on measures taken to develop and adopt a comprehensive governmental programme addressing the human rights situation of national minorities, especially the Roma (para. 15). In this respect, please elaborate on the status and the work of the interagency working group to combat racism, xenophobia and discrimination.
29. Please indicate steps taken to expand the recruitment into law enforcement of persons belonging to ethnic and national minorities, as recommended by the Committee in its previous concluding observations (para. 15).
30. In light of the Committee's previous concluding observations, please provide information on steps taken to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities, as well as the prompt, impartial and effective investigation of such acts (para. 17). In this respect, please provide updated information on the progress made in the investigations into the officials who ordered the murder of Georgiy Gongadze and into the attack against the journalist Artem Skoropadsky in August 2007.

Other issues

31. With reference to the Committee's previous concluding observations, please provide information on measures taken to ensure that the Ukrainian Parliament Commissioner for Human Rights (UPCHR) functions effectively as an independent national human rights institution, in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles), and independently of political activities (para. 21). In this respect, please provide the Committee with detailed information on the independence, mandate, resources, procedures and effective results of the UPCHR. Please also provide details about steps taken to ensure that complaints received by the UPCHR remain confidential.

32. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of convictions under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

33. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

34. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

35. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations, since the consideration of the previous periodic report in 2007, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.
