

UKRAINE

**Human rights violations by law
enforcement officials**

*Amnesty International
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**AMNESTY
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INTRODUCTION

In this submission prepared for the UN Universal Periodic Review of Ukraine, in October-November 2012, Amnesty International comments on the implementation of recommendations that the government supported during its previous UPR in April 2008, concerning ratification of the Rome Statute, the status of refugees/asylum seekers, investigation into reports of torture and ill-treatment, and lack of independence of the judiciary.

With regard to Ukraine's human rights framework, Amnesty International welcomes the adoption of the new Criminal Procedural Code, but remains concerned about the role of the Public Prosecutor in maintaining the climate of impunity for crimes of torture by law enforcement officials.

Amnesty International also sets out its concerns about the human rights situation on the ground, including in relation to the alarmingly high number of cases of torture and ill-treatment in custody by police officers and the authorities' failure to effectively investigate complaints about such violations. Deaths in custody continue to be a concern, as does impunity for human rights violations.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review in 2008, Ukraine supported recommendations to sign and ratify the Rome Statute;¹ to improve the process for refugee/asylum applicants, to carry out repatriations in line with the principle of *non-refoulement*, and to bring legislation on the determination of the status of refugees and stateless persons in line with international standards;² to set up an independent oversight mechanism to investigate torture;³ to address prison conditions and the treatment of detainees;⁴ and to address issues relating to the independence of the judiciary and corruption in the judiciary and the executive.⁵

While Ukraine has made some progress in implementing a number of these recommendations, significant challenges remain as detailed below.

Ukraine signed the Rome Statute of the International Criminal Court on 20 January 2000, but has yet to make the necessary constitutional changes for its ratification. It acceded to the Agreement on Privileges and Immunities on 29 January 2007. However, Ukraine has not yet drafted legislation to implement these treaties.

Amnesty International is concerned about the continued failure of the Ukrainian authorities to observe the principle of *non-refoulement* in line with UNHCR guidelines, or to provide full and fair refugee status determination procedures. In March 2011, a group of 10 Afghan citizens, including one child, were returned to Afghanistan without being given the opportunity to appeal against the refusal of their asylum application or their deportation. The group claimed they had no access to interpretation while applying for asylum and had to sign documents in a language they did not understand. On 17 March, the State Border Guard Service told regional media that force had been used against some of the men in the group, because they had resisted deportation.

On 8 July 2011, Ukraine adopted a new law on "refugees and persons in need of complementary protection". This law improves the status of refugees, simplifies documentation for asylum-seekers, and introduces the concept of complementary protection for those who do not fall strictly within the definition of a refugee under the UN Convention Relating to the Status of

Refugees. However, it falls short of international standards by not offering complementary protection for reasons of international or internal armed conflict.

Ukraine has failed to set up an independent body to investigate torture, and has also failed to establish an oversight mechanism to prevent torture. The creation of an investigative body has been discussed in Parliament as part of the new Criminal Procedure Code (see below), but only in very general terms. Despite being among the first countries to ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in September 2006, Ukraine has not yet established a National Preventive Mechanism. At the time of writing, a proposal is under discussion to establish such a mechanism in co-operation with the Ombudsperson's office. Ukraine has made little progress in combating torture and ill-treatment in police detention.

The independence of the judiciary is threatened by the fact that the General Prosecutor's Office retains the power to prosecute judges. On 7 June 2011, the Deputy General Prosecutor requested the dismissal of three judges from Kyiv Appeal Court because they had refused a prosecutor's request to detain a suspect on the basis that there were no grounds to hold him. In October 2011, amendments were passed to the 2010 Law on the Judiciary and the Status of Judges in response to criticism that this law, along with other reforms, had seriously reduced the role of the Supreme Court. The amendments, however, only partially reinstated the Supreme Court's role. In Amnesty International's view, the criminal justice system is in need of wider reform, as discussed below.

NATIONAL HUMAN RIGHTS FRAMEWORK

REFORM OF THE CRIMINAL JUSTICE SYSTEM

A new Criminal Procedural Code was adopted by Parliament on 13 April 2012 and is yet to be signed off by the President. The new Code is a significant improvement to the previous one, and brings criminal procedures much closer to Council of Europe standards. The new Code improves safeguards for detainees: it clarifies that detention starts from the moment of apprehension by the police, that detainees have access to a lawyer and to an independent medical expert from that moment, and that pre-trial detention should only be applied in exceptional circumstances. It includes a provision that judges must react to complaints of torture, and also provides for automatic review of the reasons for pre-trial detention at two-month intervals. Concerns remain that provisions allowing a suspect to waive their right to a lawyer may be misused in practice. The new Code also foresees changes to the investigation of allegations of torture and other crimes by law-enforcement officers and allows five years for the establishment of a new State Anti-Corruption Investigation Bureau to investigate such crimes in place of the General Prosecutor's Office.

Amnesty International considers that the prevalence of impunity -- fostered by the lack of independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with allegations of torture and ill-treatment -- is partly due to the role of the Public Prosecutor, who plays a central role in the investigation of allegations of torture and other ill-treatment. By its very nature, however, the institution of the Public Prosecutor is neither independent nor impartial. In addition, through their work on criminal investigations, prosecutors often have very close personal links with police officers, and may be reluctant to pursue complaints. It remains to be seen whether the proposal for a new State Anti-Corruption Investigation Bureau will be able to ensure independent, impartial and effective investigations of crimes by law-enforcement officials.

HUMAN RIGHTS SITUATION ON THE GROUND

TORTURE AND ILL-TREATMENT IN POLICE CUSTODY

Torture and ill-treatment remain widespread. The Ombudsperson's office told Amnesty International in April 2011 that it received 5,000 complaints of torture and other ill-treatment in 2010. In July 2011, the Prosecutor General's Office told Amnesty International that it had received 6,817 complaints against police officers in 2010. Local NGOs and lawyers continue to report cases of torture and ill-treatment and other human rights violations by the police. A contributing factor is the frequent failure to inform suspects and detainees of their right to a lawyer during questioning, a tendency to resort to pre-trial detention rather than non-custodial measures, and misuse of the Administrative Code. In some cases, the police detain individuals under the Administrative Code in order to gain time or forcibly extract statements purportedly confessing to more serious offences, or to gather information for a criminal prosecution. The Administrative Code covers misdemeanours such as "Failing to obey the lawful instructions of a police officer" (Article 185), "Public calls to disobey a policeman or other official" (Article 185.7), "Prostitution" (Article 181-1), and "Possession of small quantities of narcotics" (Article 44). There is a lower standard of proof in administrative cases, and there is no requirement for the detainees to be provided with legal defence.

Yakov Strogan was detained by police officers from Kievskiy police station in Kharkiv on 16 August 2010 after an argument with a neighbour. He alleged that he was taken to a wood where police officers beat him and subjected him to torture and other ill-treatment. He said that the police electrocuted him and then poured smelling salts, containing ammonium carbonate, down his nose and throat. He was subsequently held incommunicado for four days in a flat. His wife, Anna Strogan, told Amnesty International that when she went to locate her husband, the head of Kievskiy District police station introduced her to a lawyer who offered to secure his release in exchange for \$10,000.

Yakov Strogan was released after four days, and lodged a complaint about the torture and ill-treatment. When the regional prosecutor refused to open a criminal investigation into his allegations, Yakov Strogan publicized his complaint widely and was then detained again on 9 December 2010, beaten by the police and charged with attempted murder. The Kharkiv Human Rights Group believes that his re-arrest was in retaliation for his complaint about police ill-treatment. He was finally released on bail at the end of March 2012. At the time of writing no investigation had been initiated into his allegations of torture.

Video cameras have been installed and are now used in police stations, in the reception areas and some cells, in all regions. However, these video cameras are often switched off. The Ministry of Internal Affairs has shown increased willingness to acknowledge the problem of torture and other ill-treatment. On 31 March 2011, the Minister of Internal Affairs issued a regulation "On additional measures to prevent torture and ill-treatment by police" which stated that "shameful acts of cruel or ill treatment and torture by Militia officers have not been eradicated up to now". The regulation provides for the inspection of all detention facilities by Ministry staff, the installation of video recording in all interrogation rooms, and the issuing of a leaflet to all detainees explaining their rights. It is yet to be seen whether these measures will have any impact.

DEATHS IN CUSTODY

There are no official statistics on the number of deaths in custody, but in July 2011 the Ministry of Internal Affairs stated in a letter to Amnesty International that 40 cases concerning deaths in custody had been considered by prosecutors in 2010. Of these, 16 had resulted in prosecutions. According to an NGO, the Ukrainian Helsinki Union, 51 people died in custody in 2010.

Nineteen-year-old student Ihor Indylo died in Shevchenkivsky police station on 17 May 2010, allegedly after falling from a bench in the cell. The autopsy report, however, revealed that Indylo died as a result of a fractured skull and internal bleeding, and that the injuries were the result of contact with a blunt object. The authorities have yet to provide an adequate explanation for his death.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

According to the Prosecutor General's Office, in 2010, 6,817 complaints were made against the police. Of these, only 167 complaints resulted in criminal investigations, and 21 were subsequently closed for lack of evidence. These figures indicate that 6,650 complaints were rejected at the first instance as unfounded.

While the General Prosecutor's office is responsible for investigating alleged violations by law enforcement officers, the close links between prosecutors and the police mean that it is often difficult for prosecutors to impartially investigate crimes allegedly committed by police officers. This circumstance was acknowledged by the General Prosecutor's Office in a letter to Amnesty International dated 15 July 2011, which said that "there are situations when procuracy officials show bias and a lack of objectivity when checking complaints and statements (against police officers)". The letter further stated that "it is strictly forbidden to replace co-operation with law enforcement officials on a strictly legal basis, with mutual agreements to suppress evidence of torture and other acts of cruelty".

Article 127 of the Criminal Code covers the crime of torture which carries a maximum sentence of 10 years. However, it refers to torture as a general crime that can be committed by anyone and does not specifically refer to state actors as possible perpetrators. The definition of torture in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that torture can be committed by, at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In 2009, the reference to torture committed by public officials as an aggravating factor was removed from the Criminal Code and replaced with torture committed "for reasons of race, national or religious intolerance".

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Ukraine:

Follow up to the previous review:

- To make the necessary constitutional changes to ratify the Rome Statute of the International Criminal Court, and to draft legislation to implement Rome Statute and the Agreement on Privileges and Immunities;
- To amend the law on refugees and persons in need of complementary protection to provide complementary protection in the context of international or internal armed conflict, in line with international standards;
- To abide by its obligations under international human rights and refugee law not to send individuals to countries where they face a real risk of grave human rights abuses, including torture or other ill-treatment;
- To provide full and fair refugee determination procedures by ensuring that offices of the Migration Services are fully functional and able to accept applications, that asylum-seekers are

provided with interpretation, and that no asylum-seekers are detained for having entered the country illegally;

- To set up an independent body to monitor places of detention in accordance with Ukraine's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- To undertake further work regarding the independence of the judiciary and corruption in the judiciary and across the executive, in line with the recommendation made to and supported by Ukraine during its first Universal Periodic Review.

Reform of the criminal justice system:

- To enact the new Criminal Procedural Code as soon as possible and consider bringing it further into line with the Council of Europe standards;
- To establish, as a matter of priority, a fully-resourced independent agency to investigate all allegations of human rights violations by law enforcement officers, including the police, as recommended by the Commissioner for Human Rights of the Council of Europe.

Torture and ill-treatment in police custody:

- To ensure that any police officer or other law enforcement official reasonably suspected of responsibility for torture or other ill-treatment is prosecuted for an appropriate offence and, if proved guilty, that the sentence imposed is commensurate with the gravity of the offence;
- To ensure that a lawyer is always present during police interrogations unless a detainee waives the right to a lawyer, and that all interrogations are accurately recorded, preferably with the use of video/audio equipment;
- To enable victims of torture to obtain redress and adequate reparation, including compensation and the means for the fullest possible rehabilitation, and protection from reprisals;
- To review the provisions of the Administrative Code to ensure that all detainees have immediate access to a lawyer in accordance with international standards.

Deaths in custody:

- To ensure that all people deprived of their liberty are held in conditions that meet international standards, and to implement fully the recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding conditions in pre-trial detention.

Impunity for human rights violations:

- To amend Article 127 of the Criminal Code to ensure that it accurately reflects all elements of the definition of torture as set out in Article 1 of the Convention against Torture;
- To ensure that allegations of crimes committed by police officers are investigated impartially, in particular by reforming the role and functions of the Prosecutor's Office so that such investigations are unbiased and objective.

ENDNOTES

¹ Report of the Working Group of the Universal Periodic Review on Ukraine, 3 June 2008, A/HRC/8/45, recommendation 57.1 (Austria, Mexico, Portugal).

² A/HRC/8/45, recommendations 57.29 (United States) and 57.30 (Mexico).

³ A/HRC/8/45, recommendation 57.20 (United Kingdom).

⁴ A/HRC/8/45, recommendations 57.17 (Canada), 57.18 (Netherlands), 57.21 (USA) and 58.4 (Italy).

⁵ A/HRC/8/45, recommendation 57.23 (United Kingdom).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Ukraine: First-ever Kyiv pride cancelled in face of ultra-right threat (Index: PRE 01/259/2012).

Ukraine must stop police criminality or Euro 2012 fans risk abuse (Index: PRE 01/230/2012).

Ukraine: Amnesty International urges parliament to strengthen safeguards against torture in draft Criminal Procedural Code (Index: EUR 50/003/2012).

Ukraine: Asylum-seekers detained and ill-treated (Index: EUR 50/001/2012).

Ukraine: Blunt force: Torture and police impunity in Ukraine (Index: EUR 50/010/2011).

Ukraine: 'No evidence of a crime': Paying the price for police impunity in Ukraine (Index: EUR 50/009/2011).

Ukraine: 'Put deeds before words': Deliver human rights for Ukraine (Index: EUR 50/004/2010).

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/ukraine>.