



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

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COMMITTEE AGAINST TORTURE

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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

UKRAINE

1. The Committee considered the fifth periodic report of Ukraine (CAT/C/81/Add.1) at its 765th and 768th meetings, held on 8 and 9 May 2007 (CAT/C/SR.765 and CAT/C/SR.768), and adopted, at its 779th meeting on 18 May 2007 (CAT/C/SR.779), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fifth periodic report of Ukraine, which follows the Committee's guidelines for reporting, and expresses its appreciation for the extensive written response provided to the list of issues (CAT/C/UKR/Q/5/Rev.1/Add.1). The Committee also appreciates the expertise, size and high level of the State party delegation and the extensive dialogue conducted, as well as the additional oral information provided by the representatives of the State party to questions raised and concerns expressed during consideration of the report.

B. Positive Aspects

3. The Committee welcomes the entry into force, on 1 September 2001, of a new Criminal Code, which, inter alia, makes torture a punishable offence, as well as the adoption, in 2004, of a new Penal Corrections Code.

4. With regard specifically to the prevention of torture, the Committee welcomes the declaration made, in September 2003, under articles 21 and 22 of the Convention, that the State party recognizes the competence of the Committee to receive and consider State and individual communications, as well as the withdrawal of its reservation to article 20 of the Convention and the ratification of the Optional Protocol to the Convention in September 2006.

5. The Committee also welcomes the ratification of the following instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in July 2003;
- (b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in July 2005;
- (c) The Convention relating to the Status of Refugees and its 1967 Protocol, in June and April 2002 respectively;
- (d) The United Nations Convention against Transnational Organized Crime, in May 2004.

6. The Committee notes with satisfaction the adoption of a National Plan of Action (2001 – 2005) to “Improve the Status of Women and Promote Gender Equality in Society” aimed at preventing violence against women and children and trafficking, and the State party’s efforts to combat such trafficking.

7. The Committee welcomes the efforts of the State party to cooperate with non-governmental organizations on human rights issues, and encourages it to further strengthen this trend with regard to the implementation of the provisions of the Convention.

C. Subjects of concern and recommendations

Definition of torture

8. While noting that the State party amended its Criminal Code in 2005 in order to bring the definition of torture into conformity with the provisions of the Convention, the Committee regrets that the definition contained in article 127 of the Criminal Code does not fully reflect all elements contained in article 1 of the Convention, notably with respect to discrimination.

The State party should bring its definition of torture fully into conformity 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.

Insufficient safeguards governing initial period of detention

9. The Committee is deeply concerned at allegations of torture and ill-treatment of suspects during detention, as well as reported abuses during the period between apprehension and the formal presentation of a detainee to a judge, thus providing insufficient legal safeguards to detainees. These allegations include:

- (a) Detentions taking place without court warrants despite constitutional provisions to the contrary;
- (b) Failure to bring detainees promptly before a judge within the prescribed 72-hour period, as well as unnecessarily delaying this for the maximum length of the prescribed period;

(c) Failure to acknowledge and record the actual time of apprehension of a detainee, as well as unrecorded periods of pre-trial detention and investigation;

(d) Restricted access to lawyers and independent doctors and failure to notify detainees fully of their rights at the time of detention;

(e) Misuse of so-called administrative detention, for a period of up to 15 days for the purpose of criminal investigation, during which the detainee is deprived of procedural guarantees, including difficulties in appealing against such detention.

The State party should promptly implement effective measures to ensure that a person is not subject to de facto unacknowledged detention and that all detained suspects are afforded, in practice, fundamental legal safeguards during their detention. These include, in particular, the right to access a lawyer, an independent medical examination, informing a relative, being informed of their rights at the time of detention, including as to the charges laid against them, as well as being promptly presented to a judge within the maximum 72-hour detention period, calculated from the actual moment of deprivation of liberty, as set out in article 29 of the Constitution.

The State party should also ensure, in practice, that the actual time of apprehension is recorded, that suspects in criminal investigations are not deprived of liberty under administrative detention and that all persons detained have the right to appeal against such deprivation of liberty.

Lack of effective investigation into reports of torture and the role of the General Prosecutor's office

10. The Committee is concerned by the failure to initiate and conduct prompt, impartial and effective investigations into complaints of torture and ill-treatment, in particular due to the problems posed by the dual nature and responsibilities of the General Prosecutor's office, (a) for prosecution and (b) for oversight of the proper conduct of investigations. The Committee notes the conflict of interest between these two responsibilities, resulting in a lack of independent oversight of cases where the General Prosecutor's office fails to initiate an investigation. Furthermore, there is an absence of data on the work of the General Prosecutor's office, such as statistics on crime investigations, prosecutions and convictions, and the apparent absence of a mechanism for data collection.

The State party should pursue efforts to reform the General Prosecutor's office, in order to ensure its independence and impartiality, and separate the function of criminal prosecution from the function of supervision of investigations into allegations of torture and ill-treatment.

The State party should establish an effective and independent oversight mechanism to ensure prompt, impartial and effective investigations into all allegations of torture and ill-treatment during criminal investigations.

The State party should ensure that detainees who have complained about allegations of torture are protected from reprisal.

The State party should also provide the Committee with disaggregated statistical data on the work of the General Prosecutor's office, including investigations into the numbers of prosecutions and cases in which confessions were obtained, as well as the numbers of convictions and acquittals.

Evidence obtained by coercion

11. The Committee is concerned at the current investigation system in which confessions are used as a principal form of evidence for prosecution, thus creating conditions that may encourage the use of torture and ill-treatment of suspects. The Committee regrets that the State party did not sufficiently clarify the legal provisions ensuring that any statements which have been made under torture shall not be invoked as evidence in any proceedings, as stipulated in the Convention.

The State party should take all appropriate measures to eliminate any adverse effects the current investigation system of promoting confessions may have on the treatment of suspects.

The State party should also take the necessary measures to establish that statements which have been made under torture shall not be invoked as evidence in any proceedings, in accordance with the provisions of the Convention.

Monitoring detention facilities

12. While the establishment throughout the State party of "mobile groups", composed of representatives of civil society and staff of the Ministry of Interior with the mandate to visit police detention facilities, monitor the situation of detainees and prevent acts of torture, is a positive development, the Committee remains concerned at their dependency on the goodwill of local authorities, their lack of formal status and the lack of adequate resources.

The State party should establish a formal status for the "mobile groups", provide them with a strong mandate, guarantee their independence and provide them with adequate resources. The State party should also inform the Committee on the measures it has taken to set up a national preventive mechanism in accordance with the Optional Protocol to the Convention.

Law enforcement personnel

13. The Committee is concerned at allegations of acts in breach of the Convention committed by law enforcement personnel, especially with regard to persons detained by the militia and in pre-trial detention facilities (SIZO), and at the apparent impunity of the perpetrators. The Committee is also concerned at the reported use of masks by the anti-terrorist unit inside prisons (e.g. in the Izyaslav Correctional Colony, in January 2007), resulting in the intimidation and ill-treatment of inmates.

The State party should 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.

The State party should also ensure that the anti-terrorist unit is not used inside prisons so as to prevent the mistreatment and intimidation of inmates.

Violence against women and children, including trafficking

14. While noting the measures adopted by the State party to combat trafficking, the Committee remains concerned about the persistence of trafficking in women and children for sexual exploitation. It also notes the extremely low level of cases of domestic violence brought to justice, despite the high reported incidence of domestic violence.

The State party should strengthen measures to prevent and combat trafficking and domestic violence, provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate.

The State party should create adequate conditions for victims to exercise their right to complain and have each case promptly, impartially and effectively investigated. Perpetrators must be brought to justice and punished with penalties appropriate to the gravity of their acts.

Violence against members of minorities and others

15. The Committee expresses concern about incitement and acts of violence against persons belonging to ethnic and national minorities, including acts against Roma, anti-Semitic attacks, and violence against persons of African and Asian origin and non-citizens, as well as with persistent allegations of failure to investigate and reluctance on the part of the police and authorities to provide adequate protection to the victims or to conduct prompt, impartial and effective investigations of such reports.

The State party should ensure prompt, impartial and effective investigations into all ethnically motivated violence and discrimination, including that directed against Roma, Jews, persons of African and Asian origin and non-citizens, and prosecute and punish perpetrators with penalties appropriate to the nature of their acts.

The State party should also publicly condemn hate crimes and other violent acts of racial discrimination, xenophobia and related violence and should work to eradicate incitement and any role public officials or law enforcement personnel might have in such violence. It should ensure that officials are held accountable for actions or failures to act which breach the Convention.

The State party should give prompt consideration to expanding the recruitment into law enforcement of persons belonging to ethnic and national minorities.

The State party should also develop and adopt a comprehensive governmental programme addressing the human rights situation of national minorities, especially the Roma.

Violence in the armed forces

16. While welcoming the decrease in the number of cases of hazing in the armed forces (*dedovshchina*) and the measures taken to prevent such phenomena, including the establishment of a "hotline", the Committee remains concerned at the persistence of cases of torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, as well as with the lack of investigation of all reported cases.

The State party should take effective measures to eradicate the prevalent problem of hazing in the armed forces (*dedovshchina*), reinforce the measures of prevention and

ensure prompt, impartial and effective investigation, prosecution and conviction of the perpetrators of such abuses, and report publicly on the results of any such prosecutions.

Harassment and violence against members of civil society

17. The Committee expresses its concern at information it has received on harassment and violence against journalists, including murders (e.g. the case of Mr. Georgiy Gongadze), and against human rights defenders, which severely hamper the role of the mass media and freedom of opinion and expression, as well as the monitoring activities of civil society with regard to human rights.

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities, and ensure the prompt, impartial and effective investigation of such acts.

Penitentiary system

18. The Committee notes with concern the delay in transferring the Department for the Execution of Punishments to the authority of the Ministry of Justice.

The State party should complete the transfer of the Department for the Execution of Punishments to the Ministry of Justice as soon as possible, with the aim of institutionalizing oversight and accountability for executive decisions in the judicial branch of government.

The State party should also provide the Committee with detailed information on the penitentiary system, including deaths in custody (including suicides), and the results of any investigation into them or prosecutions relating to them, as well as on the medical situation of detainees.

Risk of return to torture

19. The Committee is concerned by the return of persons by the State party to States where there are substantial grounds for believing that they would be in danger of being subjected to torture, e.g. the recent case of 11 Uzbek nationals who were returned to Uzbekistan.

Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. When determining the applicability of its obligations under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case, ensure that adequate judicial mechanisms for reviewing the decision are in place, sufficient legal defence is available for each person subject to extradition, and that effective post-return monitoring arrangements are established.

The State party should provide detailed information to the Committee on any cases of extradition, return or removal that have taken place during the reporting period, including on the minimum contents of assurances, if any. In addition, the Committee requests information on measures taken by the State party to remedy any cases where article 3 safeguards have not been given effect.

Asylum-seekers

20. The Committee is concerned about the discrimination that asylum-seekers face on grounds of nationality and the absence of proper asylum procedures, leading to the reported refoulement of asylum-seekers without appropriate consideration of their individual cases. It also notes with concern the poor and overcrowded conditions of detention for asylum-seekers.

The State party should adopt the draft laws “On Refugees, Persons Eligible for Complementary and Temporary Protection” and “On Introduction of Amendments to the Law of Ukraine on the Legal Status of Foreign and Stateless Persons”. The State party should also adopt asylum procedures in accordance with international standards as well as improve detention conditions, including by the use of alternative measures.

Ukrainian Parliament Commissioner for Human Rights

21. While appreciating the presence of representatives from the Ukrainian Parliament Commissioner for Human Rights during the dialogue with the State party delegation, the Committee regrets the absence of detailed information regarding its compliance with the Paris Principles related to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134) as well as on its independence, activities and results with regard to the Convention.

The State party should ensure that the Ukrainian Parliament Commissioner for Human Rights functions effectively as an independent national human rights institution, in accordance with the Paris Principles, and independently of political activities, as specified in the “Law on the Ukrainian Parliament Commissioner for Human Rights” of 1997.

The State party should provide the Committee with detailed information on the independence, mandate, resources, procedures and effective results of the Ukrainian Parliament Commissioner for Human Rights and ensure that the complaints received by the institution remain confidential so that complainants are not subjected to any reprisals.

Training and education

22. The Committee regrets the insufficient training regarding the provisions of the Convention for law enforcement personnel, including penitentiary and border control staff, judges, prosecutors and the personnel of the armed forces. The Committee also notes with concern the lack of specific training for medical personnel acting in detention facilities in the detection of signs of torture and ill-treatment.

The State party should reinforce its training programmes on the absolute prohibition of torture for all law enforcement and military personnel, as well as for all members of the judiciary and prosecutors on the State party’s obligations under the Convention.

The State party should also 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 Istanbul Protocol.

Legal aid

23. The Committee expresses its concern about the difficulties persons or groups experience in their efforts to exercise the right to complain, and to obtain redress and fair and adequate compensation as victims of acts of torture.

The State party should provide an effective free legal aid system for persons at risk or belonging to groups made vulnerable. It should provide this system with adequate resources for ensuring that all victims of acts of torture may exercise their rights under the Convention.

Compensation and rehabilitation

24. The Committee also expresses its concern at the lack of compensation for victims of torture and other cruel, inhuman or degrading treatment, as well as the absence of appropriate measures for rehabilitation of victims of torture, ill-treatment, trafficking, domestic and other sexual violence.

The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are also provided to all victims of torture, ill-treatment, trafficking, domestic and other sexual violence, including medical and psychological assistance.

Conditions of detention

25. The Committee is concerned at the poor conditions of detention, such as overcrowding, and at the prevalence of HIV/AIDS and tuberculosis amongst detainees. The detention conditions of pre-trial detainees in police custody are inappropriate for long periods and place detainees in a situation of great vulnerability. The Committee also expresses its concern at the absence of alternative measures to pre-trial detention.

The State party should adopt effective measures to improve conditions in all detention facilities, reduce the current overcrowding and meet the needs of all those deprived of their liberty, in particular regarding health care, in conformity with international standards.

Data collection

26. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and penitentiary personnel and in the armed forces, as well as on trafficking and domestic and sexual violence.

The State party should 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.

27. The State party should widely disseminate its report, its replies to the list of issues, and the conclusions and recommendations of the Committee, through official websites and the media, in particular to groups made vulnerable.

28. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 9, 10, 12, 15, 17 and 19 above.

29. The Committee invites the State party to submit its core document in accordance with the requirements of the common core document on the harmonized guidelines on reporting, recently recommended by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

30. The State party is invited to submit its next periodic report, which will be the sixth report, by 30 June 2011.
