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REFERENCE: jmn/mm/fg/follow-up/CAT

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Mr. Ambassador,

In my capacity as Rapporteur for follow-up on Conclusions and Recommendations of the United Nations Committee against Torture, allow me to refer to the examination of the fifth periodic report of Ukraine (CAT/C/81/Add.1) by this Committee at its 38th session, from 30 April to 18 May 2007. At the end of that session, the Committee's Conclusions and Recommendations (CAT/C/UKR/CO/5) were transmitted to your permanent mission in Geneva. In paragraph 28 of those Conclusions and Recommendations, the Committee asked, pursuant to its rules of procedures, that Ukraine provide, within one year (by May 2008) further information regarding areas of particular concern identified by the Committee in paragraphs 9, 10, 12, 15, 17 and 19 (see extracts annexed).

The Committee has adopted a follow-up procedure to pursue issues that are serious, that can be accomplished by the State party in a one year period, and that are protective.

The information sought by the Committee has not been provided yet, although more than one year has elapsed from the transmittal of the Committee's Conclusions and Recommendations. Accordingly, I would be grateful for clarification as to the current status of your Government's responses on the matters, and as to when the information requested will be forthcoming. Upon receipt of this information, the Committee will be able to assess whether further action is needed.

The Committee looks forward to pursuing the constructive dialogue it started with the authorities of Ukraine on the implementation of the Convention. In this context, the Committee looks forward to receiving your response to this enquiry.

Accept, Mr. Ambassador, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Felice D. Gaer".

Felice D. Gaer
Rapporteur for Follow-up on Conclusions and Recommendations
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
(Extracts for follow-up)

UKRAINE

(...)

C. Subjects of concerns and recommendations

(...)

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.

(...)

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.

(...)

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.

(...)

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.

(...)

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.

(...)

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.

(...)
