



# UKRAINE

## **Follow-Up Report to the review under the Convention Against Torture**

Submitted by the Human Rights House Foundation  
(as of May 2016)

**This report is submitted by the Human Rights House Foundation (HRHF) in cooperation with the Centre for Civil and Political Rights (ICCPR).**

The report is endorsed by the following organisations:

Members of the Human Rights House Chernihiv:

- Humanistic Technologies Center “AHALAR”, Chernihiv;
- “MART”, Chernihiv;
- Transcarpathian Public Center, Uzhhorod;
- Chernihiv public committee for human rights protection, Chernihiv.

Members of the Human Rights House Kiev:

- Centre for Civil Liberties;
- Human Rights Information Center.

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## Timeframe and Relevant Documents

- December 2014: Adoption of the Concluding Observations: <http://goo.gl/pWLQbL>
- December 2015: Follow-up State party's report: <http://goo.gl/MZKUhl>
- Current Status (May 2016): State Follow-up Replies under review.

## General Observations

In 2015, Ukraine developed a National Strategy for Human Rights, approved by Presidential Decree No.501/2015,<sup>1</sup> with human rights organisations involved in the development. This is the first time such a document has been approved at the state level. This strategy stipulates the following goals and outcomes with regard to protection from torture.

Strategic goals:

- Create an efficient system to prevent torture and cruel, inhuman, or degrading treatment or punishment.
- Shape conditions to prevent improper treatment.
- Promote zero tolerance to all manifestations of improper treatment in society.

Expected outcomes:

- An efficient system to investigate crimes related to torture and cruel, inhuman, or degrading treatment or punishment, including enforced disappearances.
- Efficient legal protection from improper treatment.
- Victims receive efficient remedy and rehabilitation for crimes related to torture and cruel, inhuman, or degrading treatment or punishment, in accordance with international standards.
- Detention conditions and treatment of detainees conform to international standards, in instances in which they are detained based on a court or administrative decision pursuant to the law.
- The national preventive mechanism operates efficiently.
- Observance of the principle of prohibition from expulsion of aliens and stateless persons to states where they could suffer improper treatment.

On 23 November 2015, the Ukrainian Government approved a plan to implement the National Strategy for Human Rights covering the period until 2020.<sup>2</sup> Representatives of civil society were involved in the development of this plan.

**This report is provided in compliance with the new procedure of the Committee Against Torture.**

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<sup>1</sup> Ukrainian National strategy for human rights, available in English at <http://hrstrategy.com.ua/documents/versions/4>

<sup>2</sup> Order of the Cabinet of Ministers of Ukraine No.1393-p issued on 23 November 2015; available in Ukrainian: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>.

Recommendation	Grade <sup>3</sup>	Action taken by the State <sup>4</sup>	Overview
<p><b>Fundamental legal safeguards</b></p> <p>The Committee encourages the State party to take further effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the very outset of deprivation of liberty, in accordance with international standards, including:</p> <p>(a) Ensuring that all persons deprived of their liberty are informed about their rights and provided with prompt access to a lawyer, in line with the legislation in force, and providing adequate financial</p>	1	B2	<p>The classification of “torture” remains a problem in Ukraine. In the majority of cases, the conduct of law enforcement personnel is not classified as “torture.” Rather, it is classified as abuse of power or official position (Article 364 of the Criminal Code of Ukraine - CCU), abuse of power or authority by a law enforcement officer (Article 365 of the CCU), or coercion to testify (Article 373 of the CCU).</p> <p>This makes it impossible to provide clear statistics on torture cases, as well as on the number of law enforcement officers convicted for torture. Clarity is not helped by other crimes not related to torture being concealed behind these three CCU articles.</p> <p>By avoiding clear classification of torture and the imposition of strict liability, the Ukrainian State maintains tolerance to torture. It is also striking that the sanction for a “torture crime” is quite soft – up to five years in prison, which in practice turns into two to three years or often a conditional sentence. This “soft” sanction is due to torture remaining a crime of medium gravity rather than a grave crime, which influences the severity of punishment.</p> <p>Within a project of the Kharkiv Human Rights Protection Group, Kharkiv Institute for Social Research conducted research<sup>5</sup> into the illegal use of force in five regions of Ukraine not affected by the military conflict. It showed a considerable decrease in the illegal use of force by law</p>

<sup>3</sup> The information provided will be assessed, by follow-up recommendation, using the following classification:

- (a) The information is thorough and extensive, and relates directly to the recommendations (satisfactory - 3);
- (b) The information is thorough and extensive, but fails to respond fully to the recommendations (partly satisfactory - 2);
- (c) The information is vague and incomplete and/or fails to address the recommendations (unsatisfactory - 1);
- (d) The State party has not addressed the concern or recommendations in the response (no response - 0).

<sup>4</sup> Implementation will be assessed, by follow-up recommendation, using the following categories:

- (a) The recommendation has largely been implemented (the State party has provided evidence that sufficient action has been taken towards the full or almost full implementation of the recommendation - A);
- (b) The recommendation has been partially implemented (the State party has taken substantive steps towards the implementation of the recommendation but further action is needed - B1);
- (c) The recommendation has been partially implemented (the State party has taken initial steps towards implementation but further action is needed - B2);
- (d) The recommendation has not been implemented (the State party has taken no action to implement the recommendation or the action taken has not addressed the situation - C);
- (e) The information provided is insufficient to assess implementation (the State party has not provided enough information on the measures taken to implement the recommendation - D);
- (f) The recommendation has been counteracted (the State party adopted measures that are contrary or have results contrary to the recommendations of the Committee - E).

<sup>5</sup> Monitoring of the illegal use of force in the Internal Affairs bodies of Ukraine (2004–2015):

<http://library.khpg.org/index.php?id=1451541160>.

<p>resources for the effective functioning of the free legal aid system;</p> <p>(b) Providing detained persons with access to a medical examination by an independent doctor and, if requested, a doctor of their own choice, and ensuring that all health-related tasks in police stations are performed by qualified medical personnel; c) Ensuring that detained persons are able to notify a member of their family or another appropriate person of their own choice.</p> <p>The State party should also establish a single national register of detention that includes factual details about detention, including transfers, and ensure that it contains the exact date, time and place of detention from the outset of deprivation of liberty and not from the time of writing of the protocol of detention.</p>			<p>enforcement personnel compared to 2011, when similar research was last conducted. The estimated number of violations per year has more than halved, from 980,000 (604,400 in the process of detention) to 409,000 (157,300 in the process of detention). The estimated number of victims of torture has decreased from 113,000 to almost 63,000 per year. Despite the reduction, these numbers remain extremely high.</p> <p>The decrease in torture cases should not be seen as an achievement of the Ministry of Internal Affairs (MIA), as it has so far not made any systematic changes in the criminal sector of law enforcement bodies. The reduction in police violence should instead be seen as a result institutional changes, such as the introduction of the new Criminal Procedure Code of Ukraine (CPC) and the development of a free legal aid system.</p> <p>Under the new CPC, law enforcement must now seek permission from an investigating judge to detain a person. This has significantly reduced the number of detentions and consequently the number of illegal actions in the process of detention. A provision rejecting evidence collected by unlawful means has further reduced the number of detentions.</p> <p>Detainees now have the possibility to address a free legal aid center and involve a defense lawyer in the interrogation process. This has become a significant provision in preventing torture.</p> <p>Post-Maidan fears that unlawful actions can receive resonance also play an important role. Factors that became a certain counterweight to the illegal use of force include: public attention to the actions of the militia (police); development of social networks; conflict in the east; and emergence of persons with combat experience.</p> <p>Torture and ill-treatment remain a problem in penitentiary facilities. This has been documented, thanks to the possibility to visit these facilities and through cooperation with the Ombudsperson. The situation was found to be particularly bad in Berdychivska Correctional Colony No.70, Berdianska Correctional Colony No.77, Correctional Colonies No.25 and No.100 located in Kharkiv, and Iziaslavska Correctional Colony No.58.</p> <p>Despite this documentation, appeals to the prosecutor's office do not bring any results. As before, the prosecution bodies still perform poorly in their supervisory functions regarding adherence to law in penitentiary facilities. This further increases the impunity of personnel of the correctional colonies. This situation vividly demonstrates</p>
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			<p>the necessity to reform prosecution authorities and the penitentiary system.</p> <p>The National Preventive Mechanism (“Ombudsman” model) established under the OPCAT has developed quite successfully. It has enabled representatives of the Ombudsperson and human rights organisations to inspect detention/imprisonment facilities and document violations.</p>
<b>Excessive use of force and killings</b>			
<p>While noting that different measures are currently being taken, the Committee encourages the State party to take further effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the very outset of deprivation of liberty, in accordance with international standards, including:</p>	1	B1	<p>The Government’s report does not provide any specific information about measures taken to address the issues raised. Instead, it only mentions legal documents establishing respective rights, which is clearly not enough.</p> <p>In its follow up report to the Committee<sup>6</sup>, the Government affirms that no complaints regarding failure to provide medical care, or violations of other rights in detention were registered. However, the Government lacks a system for collecting such information, and the police do not maintain records of such violations. This makes it difficult to estimate the scale of these violations. Human rights organisations periodically receive complaints regarding human rights violations committed in detention, and the European Court of Human Rights has found such violations to be systematic in a number of cases against Ukraine<sup>7</sup>.</p>
<p><b>(a)</b> Ensuring that all persons deprived of their liberty are informed about their rights and provided with prompt access to a lawyer, in line with the legislation in force, and providing adequate financial resources for the effective functioning of the free legal aid</p>	1	B1	<p><b>(a)</b> The Legal Aid system in Ukraine was launched on 1 January 2013. At this time, 27 regional free Legal Aid Centers were established, providing early access to legal aid for all detainees, and defense in criminal proceedings as defined in the Code of Criminal Procedures of Ukraine.</p> <p>On 1 July 2015, 100 local free secondary Legal Aid Centers were set up across the country, except in occupied territories. In 2016, the Legal Aid system in Ukraine is expanding its network of access points to legal aid. More than 400 Legal Aid Bureaus will be created, providing legal aid service to local communities, such as legal consultations, access to the Ministry of Justice online</p>

<sup>6</sup> The State report is available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUKR%2fCO%2f6%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUKR%2fCO%2f6%2fAdd.1&Lang=en)

<sup>7</sup> See more information at: Right to life and freedom from torture, Human Rights in Ukraine – 2015,

<http://helsinki.org.ua/en/right-to-life-and-freedom-from-torture/>

system;			<p>services, and secondary legal aid)<sup>8</sup>.</p> <p>The free legal aid system has developed quite successfully, and the new CPC largely meets international standards. However, many problems remain in the practice of law enforcement authorities. These shortcomings can be illustrated by research conducted by human rights activists in 2014–2015.<sup>9</sup> This showed that 100% of detention protocols did not indicate the real place, date, and time of detention. On average, each detention lasts 4–18 hours longer than is indicated in the official documents. Actual interrogation of the detainees is often conducted not by investigating officers, but by operational police officers who do not inform detainees about their rights. They also rarely explain the grounds for detention. It is a problem that detainees’ rights are neither explained nor read out loud: the detainees usually get to read a “memo on rights” and are offered to ask if something is unclear for them. The detainees are often asked just to sign the papers in a certain box. It is often deliberate when officers do not properly explain the individual’s right to legal counsel, and the cases in which a person can use this right at public expense.</p> <p>Article 261 of the Code on Administrative Offences does not contain any provisions that entitle detainees to receive legal aid or to use other rights provided to detainees in the criminal proceedings. Despite the fact that administrative detention is short term, it is an actual deprivation of liberty. It should therefore be subject to applicable safeguards.</p>
<b>(b)</b> Providing detained persons with access to a medical examination by an independent doctor and, if requested, a doctor of their own choice, and ensuring that all health-related tasks in police stations are performed by	1	B1	<p><b>(b)</b> An effective mechanism for providing detainees with medical care does not exist in Ukraine, as shown in the aforementioned research conducted in 2014-2015 and multiple reports by human rights organisations<sup>10</sup>. According to this research, medical assistance is only provided in 9% of cases. In fact, it is only granted in cases of direct threat to life or serious injury. Ukraine does not have a clear legal regulation to identify the police officers responsible for providing medical support to a detainee, or a mechanism for provision of this support. Existing legal regulations are too general and give broad authority to a</p>

<sup>8</sup> See more on legal aid system in Ukraine on Coordinating Center for Legal Aid Providing` webpage at <http://legalaid.gov.ua/en/>.

<sup>9</sup> See Procedural Safeguards for Apprehended Persons», STUDY REPORT, [http://www.irf.ua/knowledgebase/publications/procedural\\_safeguards\\_for\\_apprehended\\_persons\\_study\\_report/](http://www.irf.ua/knowledgebase/publications/procedural_safeguards_for_apprehended_persons_study_report/).

<sup>10</sup> See, for instance: Right to life and freedom from torture, Human Rights in Ukraine – 2015, <http://helsinki.org.ua/en/right-to-life-and-freedom-from-torture/>

qualified medical personnel;			<p>police officer to act at their own discretion without effective independent control.</p> <p>The ECHR has received several complaints for failing to provide proper medical assistance to individuals in places of detention<sup>11</sup>. For instance, in the case <i>Lunev v. Ukraine</i><sup>12</sup> (# 4725/13, 22 October, 2015), the applicant complained that he had been diagnosed with HIV and had not received medical care for a year. He also suffered from other infections caused by weakening of the immune system. However, no treatment was provided until his state became critical. To prevent him from filing a law suit and to force him to confess to a crime, the claimant was beaten by militia officers. The facts of this case have not been properly investigated by the State.</p> <p>The equipment of the medical units in penitentiary facilities is obsolete and does not meet national and international standards. The wards themselves require major repairs and renovation. They also lack medicines and medical personnel.</p>
<p>(c) Ensuring that detained persons are able to notify a member of their family or another appropriate person of their own choice.</p> <p>The State party should also establish a single national register of detention that includes factual details about detention, including transfers, and ensure that it contains the exact date, time and place of detention from the outset of deprivation of liberty and not from the time of writing of the protocol of detention.</p>	1	B1	<p>(c) In some cases, relatives of a detainee are not notified about the fact and place of detention.</p> <p>A national register of detainees has not been created. The creation of a national police force in which each staff member has completed appropriate training is a positive aspect. It reduces the total number of police detentions as well as the number of complaints regarding unlawful police detention.</p>
<b>Use of excessive force</b>			

<sup>11</sup> See, *Savinov v. Ukraine*, № 5212/13, 22 October, 2015, *Sokil v. Ukraine*, № 9414/13, 22 October 2015, *Sergey Antonov v. Ukraine*, № 40512/13, 22 October 2015.

<sup>12</sup> <http://hudoc.echr.coe.int/eng/?i=001-157967>



<b>and grave violations of the Convention in the context of recent events in the east.</b>			
<p>(a) Carry out and complete prompt, impartial, thorough and effective investigations into all allegations of the use of violence, including torture and ill-treatment, by law enforcement officials, and prosecute and punish those responsible, including for the incidents on the Maidan and in Odessa and Mariupol and thereby combat impunity;</p>	2	B1	<p>(a) In 2013-2014, Ukraine made no significant progress in investigating Maidan incidents. Only at the end of 2014 did public pressure result in the creation of a special department of the General Prosecutor's Office aimed at investigating crimes committed during Maidan events. The Department has merged investigations of multiple cases together and achieved certain progress, which is noted in the Government's follow up report. However, this investigation has numerous shortcomings.<sup>13</sup> For example, few human and financial recourses are provided for the investigation, which causes the prosecution to work extremely slowly. The Department is only supplied with 20% of its required assets, and sometimes even lacks facilities for interrogations.</p> <p>Events in Odessa in May of 2014 are not being investigated properly. Law enforcement authorities operate slowly, and their work has received some justified criticism<sup>14</sup>. As part of the investigation into the conduct of the police on 2 May 2014, only one person, the former Head of the Ministry of Interior Office in the Odessa Region, is likely to stand trial in the near future. Another key suspect, the former Deputy Head of the same office, has absconded and the proceedings concerning him have since been suspended. After 20 months of investigation the authorities are still not able to determine conclusively what role the police played in the violent events in Odessa on 2 May 2014, and whether there was any collusion between police officers and pro-federalist activists, as some of the available video footage appears to suggest.</p> <p>While it is possible to mention certain progress in investigations into Maidan cases, investigations into other crimes such as in Odessa demonstrate extremely poor results.</p>
<p>(b) Establish an independent monitoring and oversight mechanism to ensure such criminal investigations are prompt, effective</p>	1	C	<p>A mechanism of this kind has not been established.</p>

<sup>13</sup> See for example: Report on Maidan Investigations, International advisory panel of the Council of Europe, 31 March 2015, <http://www.coe.int/en/web/kyiv/report-on-maidan-investigations>.

<sup>14</sup> See for example: Report of the International Advisory Panel on its Review of the Investigations into the Events in Odesa on 2 May 2014, International advisory panel of the Council of Europe, <http://www.coe.int/en/web/kyiv/report-on-investigations-of-odesa-events>.

and impartial;			
<b>(c)</b> Amend the Code of Criminal Procedure to provide for mandatory video recording of interrogations and strengthen efforts to equip all places of deprivation of liberty with video recording devices;	0	C	<b>(c)</b> The new CPC has only established a possibility rather than an obligation to record interrogation on video. Moreover, the person interrogated is not entitled to request a copy. <sup>15</sup> The aforementioned Action Plan on Implementation of the National Strategy for Human Rights for the period until 2020 provides for the development and approval of a legal act on the use of technical means of surveillance and control in facilities for convicted and detained persons, while ensuring appropriate guarantees against unreasonable restrictions of the right to privacy. However, until now no actions have been taken to implement this provision. Prison or detention facilities are mainly not equipped with video surveillance systems.
<b>(d)</b> Establish a genuinely independent complaints mechanism to deal with cases of alleged torture and ill-treatment, and ensure that persons who have complained about allegations of torture and ill-treatment are protected from reprisal;	0	B2	<b>(d)</b> Such a mechanism has not been established. The prosecutor's office ("prokuratura") keeps showing poor results while investigating claims of ill-treatment committed by the police or staff of the colonies. According to the Government's statistics, 1021 criminal cases were opened based on complaints of torture; 994 of them were closed and only 24 made it to court. According to court statistics <sup>16</sup> , as submitted by the Government in its report to the Committee, 20 cases were received, and one third of them were returned to the prosecutor. These government statistics suggest that only 2% out of the total number of complaints are substantiated. This is enhanced by the fact that victims of torture are often afraid to complain about this, as they are not provided with any procedural means of protection from the torturer. Thus conviction for torture remains rare.
<b>(e)</b> Provide the Committee with information as to how many cases of violence by law enforcement officials have been investigated and the perpetrators prosecuted for acts of torture and ill-treatment, and the penalties applied for	1	B2	<b>(e)</b> The definition of the "torture crime" is imperfect and requires correction. For example, this crime also includes the actions of individuals against other individuals, but not exclusively crimes committed by law enforcement representatives. Due to this imperfection, the conduct of the law enforcement personnel is often classified as abuse of power or official position (Article 364 of the CCU), abuse of power or authority by a law enforcement officer (Article 365 of the CCU), or coercion to testify (Article 373 of the CCU). However, statistics for these crimes also include cases that do not constitute torture or ill-treatment

<sup>15</sup> Article 224 of the Criminal Proceeding Code of Ukraine. Available in English at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f6016>.

<sup>16</sup> Available only in Ukrainian here: [http://court.gov.ua/sudova\\_statystyka/](http://court.gov.ua/sudova_statystyka/).

those found guilty.			<p>as per UNCAT definition. Due to this, there is no accurate nationwide data regarding the number of law enforcement employees convicted for torture or ill-treatment, and even less regarding the severity of individual punishments. All data provided by the Government in its report is therefore questionable. There is an urgent need to bring the definition of the crime of “torture” in line with the UNCAT definition, as well as to introduce statistics that clearly show the number of complaints of ill-treatment, the number of convicted persons, and the sentences given to convicts.</p> <p>Eastern Ukraine is caught in a war and Crimea is occupied by Russia. This situation creates two major problems. The first is beyond Ukrainian control; it consists of the activities of the Russian Federation and the rebels in Eastern Ukraine. This has been partially described in the follow up report by the Government and by human rights organisations.<sup>17</sup></p> <p>The second is much more complicated; it deals with ensuring crimes taking place in Eastern Ukraine are investigated by Ukrainian law enforcement authorities regardless of whether the territory is Government-controlled or not. Ukrainian authorities often imply that as they do not control the territory, they do not have any investigation obligations. For this reason, even if those investigations are conducted they are haphazard and chaotic. The authorities have not created an agency responsible for systematic investigation of all crimes committed in the occupied territories. Another problem is the violation of the freedom from torture by Ukrainian Army and law enforcement bodies in the ATO (antiterrorist operation) zone. The Government has not provided any information about investigations of such cases, though there are quite some complaints about these violations.</p> <p>Human rights organisations, including the UN Ukrainian Monitoring Mission in Ukraine, are highly concerned about the extremely broad authority granted to the Security Service of Ukraine (SSU) in the ATO zone. Many violations are committed by law enforcement officers (primarily SSU staff) while they are detaining persons on suspicion of committing criminal acts, as</p>
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<sup>17</sup> See also :

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fUKR%2f22349&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fUKR%2f22349&Lang=en)

			<p>provided for in the first section of the special part of the CCU and/or in the ninth section "Crimes against public safety" (Article 258-3 "Establishment of a terrorist group or a terrorist organization", Article 260 "Creation of unlawful paramilitary or armed formations " etc.). The majority of such detentions occur in the ATO zone.</p> <p>The CPC of Ukraine provides for pre-emptive detention for up to 30 days without a court judgement, but the above-noted persons are illegally held in places that are not adjusted for this purpose. Unpermitted methods of investigation (tortures) are applied to the persons detained in above-noted places (such as basements, derelict building, or pits), which results in their self-incrimination. Persons are also deprived of their right to protection, right to notifying relatives or others appropriate persons of their detention, and right to medical assistance, etc.</p> <p>To investigate crimes committed by the Ukrainian military, the Military Prosecutor's Office has been specifically created as part of the General Prosecutor's Office. However, it does not meet the criteria to carry out independent investigations torture allegations. The results of its activities are not known to public, although individual reports on investigations into individual cases have appeared in the media.</p> <p>Crimes committed by Russian military and combatants in Ukraine are not being documented properly either. The Ukrainian authorities have not established a unified center for investigation of such crimes; they neither maintain procedural supervision over investigation, nor do they conduct the necessary examination and interrogation of individuals released from captivity or who moved out of the ATO zone.</p>
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