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Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee against Torture (CAT), I refer to the examination of the fifth periodic report of Ukraine (CAT/C/81/Add.1) at the Committee's 38th Session on 8 and 9 May 2007. The Committee adopted its Concluding Observations (CAT/C/UKR/CO/5), in which it requested further comments by the Government of Ukraine in relation to concerns listed in paragraphs 9, 10, 12, 15, 17 and 19.

On behalf of the Committee, thank you for your response of 21 April 2009 (CAT/C/UKR/CO/5/Add.1) providing comments by Your Excellency's Government on those paragraphs. This information has been reviewed with care and I am writing to seek further clarification. We would be grateful for a reply as soon as possible. This follow-up procedure focuses on serious, protective and achievable measures.

Legal safeguards to prevent torture (paragraph 9)

The Committee appreciates the information provided in paragraphs 1-6 of the reply on legal safeguards for preventing torture. However, paragraph 23 of the reply rejects the Committee's finding that the State party provides insufficient legal safeguards to detainees. The Committee continues to receive credible and persistent reports that those safeguards that are codified in the State party's laws are often not respected in practice. The Committee strongly reiterates its recommendation that the Government of Ukraine take immediate and effective measures to ensure that that all detained suspects are afforded, in practice, all fundamental legal safeguards against torture and ill-treatment.

Additionally, with regard to the measures taken by law enforcement officers, as mentioned in paragraph 2 of the response, to prevent persons under arrest from waiving their right to legal counsel, please provide the number of complaints that have been made alleging denial of the right to legal counsel through the law enforcement agency hotlines referenced in the response and include information on the actions taken by law enforcement personnel in response to such complaints. Please also comment on information before the Committee that persons deprived of their liberty are frequently denied the right to consult a lawyer in private and indicate what measures have been taken to ensure that this right is respected in practice. Information on the number of persons who have benefited from legal aid each year since 2007, and the number of attorney hours provided to each, would also be appreciated. With regard to the pilot legal assistance project discussed in paragraph 22 of the response, please clarify whether persons outside the geographic areas covered by the pilot project are able to access any other legal aid programs.

.../...

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Paragraph 4 of the reply states that the Code of Criminal Procedure "does not limit the length of interrogation or require breaks during interrogations." The Committee reminds the State party that unreasonably long interrogations may breach article 16 of the Convention. Please clarify steps the State party is taking to prohibit unreasonably long interrogations and to monitor the length of interrogations.

The Committee appreciates the information provided regarding access to medical assistance for detainees. Please clarify whether persons deprived of their liberty may request a medical examination by an independent physician, and if so, how persons deprived of their liberty are made aware of this right. Please also indicate the number of such requests made since 2007 and how many of these requests were granted. In addition, please clarify the process for dealing with detainees in need of specialized medical care not available in prison medical units. The Committee would appreciate information regarding the following case: Tamaz Kardava, a Georgian citizen and refugee detained in the Ukraine, who died of liver failure on April 7, 2010, allegedly after being denied vital medical treatment for hepatitis C.

The Committee appreciates the information provided on the use of administrative detention in paragraphs 7 to 15 of the Government's response. The Committee is pleased to note that the Ukrainian Constitutional Court appears to have approved amendments to legislation restricting the period of administrative detention to a maximum of 72 hours. Please indicate what steps the State party is taking to ensure that this limitation is enforced in practice. The Committee also appreciates the information provided regarding the legal regime in place to prohibit unlawful detention. Please elaborate on the information provided in paragraph 9 of the reply and indicate how the Procurator-General's Office monitors the enforcement of applicable regulations. Please also elaborate on the information provided in paragraph 18, indicating how frequently the Ministry of Internal Affairs reviews municipal and district department compliance with the laws prohibiting illegal detention, detention beyond authorized time limits, and the use of physical force during preliminary investigations and how these reviews are conducted.

The Committee regrets to learn, in paragraph 26 of your response, that procuratorial agencies "do not keep separate statistics for criminal acts and for torture." The Committee requests that the State party consider disaggregating its statistics on "criminal acts" so that the State party will be able to identify the number of cases in which conduct constituting torture has been alleged, particularly given the State party's statement, in paragraph 29, that the experience gained from procuratorial oversight of compliance with the law at detention facilities "is compiled and analyzed so that it can be used in the day-to-day work of the relevant bodies and so that the causes and conditions underlying violations of the rights and lawful interests of citizens can be duly addressed." Please provide information to the Committee regarding any steps that the State party is taking to ensure that prosecutors' data on "criminal acts" is disaggregated.

Effective investigations (paragraph 10)

The Committee appreciates the statistical information provided in paragraph 10 of the reply regarding the number of cases in 2006 in which criminal investigations were opened into allegations of illegal detention. Please provide updated information on such cases from 2007 to the present, including information on the outcomes in these cases. In this regard, please also comment in particular on the judgment of the European Court of Human Rights in the case of *Nechiporuk and Yonkalo v. Ukraine*, in which the Court found that the applicant had been denied an effective investigation by the police into his complaint of ill-treatment, and indicate the steps the State party has taken to bring the perpetrators in that case to justice. Please also indicate whether the State party is taking steps to reopen the investigation into the death of Ihor Indilo, a student who died of a fractured skull and internal bleeding after being detained and interrogated by police officers in Kiev in May 2010. The Committee understands that in August 2011, a Kiev appeals court concluded that no further investigation was required into the case.

With regard to the statistical information provided regarding the number of cases involving alleged crimes committed by law enforcement provided in paragraphs 16 to 18 of the response, the Committee would appreciate receiving updated information regarding wrongful conduct found in these complaints. The Committee notes with concern that of 771 complaints made as of 31 December 2008, only 188 had resulted in any pre-trial proceedings against the accused. Please clarify the status of the remaining claims, and also provide information on the outcomes of the 188 cases that resulted in pre-trial proceedings. Paragraph 18 of the response indicates that 10,442 complaints were filed with the Ministry of Internal Affairs in 2008, of which 2,669 alleged excessive use of force by the military. Please provide the Committee with updated information on such claims and cases, including the outcome of any trials. The Committee appreciates the information

provided in paragraph 25 on the fact that 161 criminal cases have been brought against officials for violations of constitutional rights. Please clarify the difference between the 'officials' mentioned in this paragraph and internal affairs staff mentioned in paragraphs 16 to 18.

Please provide information on measures taken to reform the Procurator's office, as requested by the Committee in paragraph 10 of its conclusions and recommendations. The Committee remains concerned that the Procurator's office continues to perform the dual functions of prosecution and investigation, and reiterates its recommendation that reform of the Procurator's office should ensure its independence and impartiality, and specifically separate the functions of criminal prosecution from those of investigating alleged abuse. The Committee would also be grateful to receive further information on actions taken by the procuratorial services when they have determined, in the course of the monitoring activities described in paragraph 27, that there has been a failure to comply with the laws and regulations in place.

Please also provide information on measures taken by the State party to ensure that individuals who make complaints of torture are protected from reprisal, as requested by the Committee in paragraph 10 of its conclusions and recommendations. Please provide information on the case of Oleg Melnik, an individual who alleged that his arm was broken by police officers during interrogation in April 2011, and into whose case a criminal investigation was subsequently initiated. The Committee understands that after Mr. Melnik refused to withdraw his complaint in exchange for compensation from the alleged perpetrator's family, the criminal investigation into the alleged perpetrator was closed and Mr. Melnik was instead criminally charged with attacking a policeman.

Monitoring Detention Facilities (paragraph 12)

The Committee appreciates the information provided on the status of the mobile units for monitoring places of detention and is pleased to welcome several developments including Order No. 389 of 11 August 2008, which, according to paragraph 32 of your response, allows the mobile units to conduct unannounced visits to military lock-ups. The Committee would be grateful to receive further information on the number of such visits that have taken place since the adoption of the new law, and with what outcomes. Please also update the Committee on the status of the legislation which at the time of your response was being prepared by the Ministry of Justice which would provide the mobile units with an official and independent status.

Violence against members of minorities (paragraph 15)

The Committee is pleased to note the many initiatives aimed at promoting tolerance and combating hate crimes undertaken by the State party, as described in paragraphs 36 to 41 of the reply. The Committee also welcomes the information that following the adoption of the plan of urgent measures to combat hate crimes in May 2008, the number of crimes against foreign nationals appears to have decreased. Was a similar decrease also noted for crimes against national minorities? Your reply states that in 2008, there were 1,054 reports of crimes against foreign nationals and 543 perpetrators were arrested in these cases. How many of the alleged perpetrators were tried and convicted, and with what punishments? Please comment on the case of Ismail Abdi Ahmed and Ibrahim Muhammad Abdi, two Somali men who were allegedly subject to illegal search and seizure and ill-treatment by police on January 29, 2011 and further harassed by them in February 2011. Please also comment on the case of Firdovsi Safarov, a Ukrainian citizen of Azeri ethnic origin, who was beaten by six police officers from Mohiliov Podilsky police station on March 26, 2011 in what is alleged to have been a racist attack.

Harassment of and violence against members of the media and civil society (paragraph 17)

The Committee thanks you for providing information on crimes committed against members of the media and welcomes the news that the number of such crimes has declined in recent years. We would be grateful to receive updated statistics to determine if this trend has continued to decline, particularly in light of recent reports that attacks on the media and crackdown on freedom of expression are on the rise in the Ukraine. The Committee regrets that no information was provided on the number of attacks on human rights defenders or on measures to protect members of civil society, and looks forward to receiving this. We would also be grateful for additional information on the reported arrests in November 2010 of six persons, Ihor Koktysh, Iryna Tyutyunnyk, Tatyana and Vitaliy Tishchenko, Artsyom Dubski and Aleksei Zakshevskiy, who were reportedly held for 3 days in incommunicado detention and subjected to beatings before being released. Please indicate whether the State party has investigated allegations that these individuals were subjected to ill-treatment in

detention and whether any law enforcement personnel have been charged with a crime or otherwise disciplined in connection with this case. Regarding the case of Georgiy Gongadze, mentioned in paragraph 17 of the Committee's conclusions, the Committee understands that former General Aleksei Pukach is presently on trial for Mr. Gongadze's murder, but the proceedings have not been open to the public and the indictment has been sealed on grounds of state secrets. Please provide updated information on this case, including any confirmation of the status of the trial of Aleksei Pukach and whether the State party is taking steps to make the proceedings and indictment accessible to the public; the status of the March 2011 indictment issued against former president Leonid Kuchma in connection with the murder; and whether the authorities have initiated additional investigations of other individuals implicated in the case, including Vladimir Litvin and Nikolai Dzhiga.

Risk of return to torture (paragraph 19)

The Committee regrets to learn that its recommendations in paragraph 19 have not been implemented by the State party. The Committee reminds the Government of the Ukraine that under article 3 of the Convention, States parties are absolutely prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee would be grateful to receive information on the assurances obtained from the Government of Uzbekistan, if any, to ensure that the 11 Uzbeks discussed in the reply will be protected from torture or ill treatment, and what measures the State party has taken to monitor the conditions and treatment of the returnees. What procedures have been put in place to ensure that the risk of torture will be evaluated in each such case in the future? Please provide information on the number of individuals that have been deported, removed, or extradited each year since 2008 and the countries to which those persons were returned. Please also comment on the case of 14 Afghan citizens who were detained at a detention centre in Volyn and later transported to Boryspil airport in Kyiv in March 2011. The Committee has received information that the asylum applications of at least eight members of the group were rejected and that these individuals allegedly were not given the opportunity to appeal this decision or their deportation and were required to sign documents in a language they did not understand.

Upon receipt of the requested information, the Committee will assess whether further information is required. The Committee looks forward to continuing a constructive dialogue with Ukraine on the implementation of the Convention and looks forward to receiving clarification on these matters.

Accept, Excellency, the assurances of my highest consideration.

Felice D. Gaer
Rapporteur for Follow-Up on Conclusions and Recommendations
Committee against Torture