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ПООЩРЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ, ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ

Доклад Рабочей группы по произвольным задержаниям*

Добавление

МИССИЯ НА УКРАИНУ**

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Резюме

Рабочая группа по произвольным задержаниям по приглашению правительства Украины посетила Украину с официальной миссией с 22 октября по 5 ноября 2008 года. Делегация встретилась с представителями государственных органов, гражданского общества, родственниками лиц, содержащихся под стражей, сотрудниками внутренних механизмов мониторинга и представителями международных и региональных организаций в Киеве, Донецке, Симферополе, Севастополе, Львове, Ужгороде, Мукачево и Чопе. Она провела личные конфиденциальные беседы со 138 содержащимися под стражей лицами и примерно 100 коллективных бесед в 21 посещенном учреждении, в котором содержатся лица, лишенные свободы.

В настоящем докладе представляется краткий обзор институционально-правовых рамок, связанных с лишением свободы, и описывается существующее на Украине положение в области содержания под стражей в связи с уголовными преступлениями, включая содержание под стражей в органах государственной безопасности и военной юстиции и в ожидании высылки, а также в области лишения свободы за административные правонарушения, задержания за бродяжничество и в рамках иммиграционного режима, в системе правосудия для несовершеннолетних и в области лишения свободы в связи с состоянием психического здоровья.

Рабочая группа подчеркивает сотрудничество со стороны правительства и обращает внимание на различные реформы в системе отправления правосудия, проведенные со времени провозглашения страной независимости в 1991 году. Она также выражает удовлетворение в связи с существованием ряда механизмов мониторинга, таких, как Омбудсмен, мобильные группы по мониторингу и общественные советы, выступающие в качестве инструментов борьбы с произвольным задержанием, хотя и существует потребность в дальнейшем укреплении этих механизмов. Рабочая группа считает хорошей практикой ограничение военной юрисдикции, нормы которой в значительной степени напоминают гражданские нормы уголовного и уголовно-процессуального права, исключительно делами призывного контингента военнослужащих. Она призывает правительство быстро внедрить отдельную систему правосудия по делам несовершеннолетних. Кроме того, Рабочая группа установила, что режим, применяемый к лицам, лишенным свободы на основании состояния их психического здоровья, профессионально осуществляется персоналом по уходу.

Одним из основных вопросов, вызывающих озабоченность, является поступление из различных источников, включая пострадавших и среди них даже несовершеннолетних, многочисленных, постоянных и зачастую правдоподобных утверждений о получении

сотрудниками милиции (украинских органов внутренних дел) признательных показаний задержанных под пытками. Согласно законам, касающимся административных правонарушений и бродяжничества, милиция облечена полномочиями по взятию лиц под стражу, которыми иногда злоупотребляют для получения признательных показаний под принуждением.

Помимо этого, из оценки статистических данных и другой полученной информации явствовало, что утверждения о применении пыток не пользуются надлежащим вниманием Генеральной прокуратуры в ходе расследования и производства по уголовному преследованию и, как правило, не исключаются как доказательства на судебном разбирательстве. Тот факт, что в 2008 году до посещения Рабочей группы Генеральная прокуратура из общего количества в 100 000 жалоб, включая утверждения о применении пыток, сочла обоснованными утверждения о 30 процедурных нарушениях, допущенных в ходе уголовно-процессуальных действий, красноречиво свидетельствует об их объемах, как свидетельствует также доля оправдательных приговоров, устойчиво сохраняющаяся на уровне менее 1%. Рабочая группа считает, что в отношении нарушителей, ответственных за жестокое обращение, в основном преобладает безнаказанность.

В качестве одной из коренных причин произвольных задержаний на Украине, Рабочая группа считает сосредоточение полномочий в Генеральной прокуратуре, которая обладает полномочиями как в области уголовного преследования, так и в области надзора, отвечает на запросы о выдаче и в тоже время может оспорить в суде статус беженца лица, в отношении которого поступает запрос о выдаче. Еще одной коренной причиной является различимая нехватка независимой судебной власти и неэффективная система защиты по уголовным делам и правовой помощи. Общая ситуация усугубляется безудержной коррупцией, пронизывающей всю правоохранительную систему.

Что касается лишения свободы в целом, то Рабочая группа обеспокоена большим количеством задержаний, производимых в стране, многие из которых не регистрируются и количество которых, по оценке некоторых источников, ежегодно составляет приблизительно 1 млн. задержаний. Она также полагает, что досудебное содержание под стражей и ограничения, применяемые во время предварительного заключения, используются слишком часто, причем суды не осуществляют подлинного контроля, санкционируя досудебное содержание под стражей.

Исходя из своих выводов, Рабочая группа представляет правительству Украины 24 рекомендации, в том числе касающиеся утверждений о применении пыток для

получения признательных показаний; различных правоохранительных учреждений, регламентирующих лишение свободы; досудебного содержания под стражей и правовой помощи; тюремного заключения, административных правонарушений и помещения под стражу в связи с иммиграционными делами; содержания под стражей в ожидании высылки; и правосудия по делам несовершеннолетних и механизмов мониторинга.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS MISSION TO UKRAINE (22 OCTOBER-5 NOVEMBER 2008)

CONTENTS

CONTENTS *(continued)*

I. INTRODUCTION

1. The Working Group on Arbitrary Detention, established pursuant to Commission on Human Rights resolution 1991/42, whose mandate was clarified and extended by Commission resolution 1997/50, and extended for a further three-year period by Human Rights Council resolution 6/4 of 28 September 2007, at the invitation of the Government conducted a country mission to Ukraine from 22 October to 5 November 2008. The delegation was comprised of Mr. El Hadji Malick Sow, Vice-Chair of the Working Group, and Ms. Shaheen Sardar Ali, member of the Working Group, the Head of the Civil and Political Rights Unit of OHCHR's Special Procedures Division and another officer of the same Unit, and was supported by interpreters.

2. In June 2006, the Government of Ukraine extended a standing invitation to all United Nations special procedures mandates and promptly agreed to receive the Working Group on official mission when it requested an invitation. It would like to thank the Government to having swiftly agreed on new dates for the visit, after it had been postponed at the Government's request due to difficulties of an organisational character.

3. During the entire visit and in all respects, the Working Group enjoyed the fullest cooperation of the Government and of all authorities it dealt with, and expresses its gratitude for their transparency and collaboration. The representatives of the authorities met were willing to discuss openly all matters raised by the Working Group, were interested in its preliminary observations and strived to provide the delegation with all information, and to arrange meetings with all Government authorities, requested. The delegation was able to visit all detention facilities and interview in confidence all detainees requested.

4. It would also like to thank the representatives of civil society it met, as well as representatives of international organisations, including the United Nations Development Programme in Kyiv for its support of the mission.

II. PROGRAMME OF THE VISIT

5. The Working Group travelled to Kyiv, Donetsk, Simferopol, Sevastopol, Lviv, Uzhhorod, Mukachevo and Chop.

6. It visited 21 detention facilities, including prisons with remand detainees and convicts (CIZOs), temporary holding facilities of the Ministry of the Interior (ITTs), police stations, immigration detention centres, a State Security Service (SBU) holding facility, a centre for the reception and distribution of minors, two military detention facilities, and a psychiatric hospital (see appendix I). Three unannounced visits to two police stations and to an ITT also formed part of the programme. Due to flight cancellations and time constraints, the Working Group was unable to visit the CIZO in Donetsk and a detention centre for the reception and distribution of vagrants, on which it was, however, able to gather information from State officials and civil society. The Working Group was also seized of a number of cases within the Donetsk CIZO which were raised with the relevant authorities. A complete list of the establishments visited is annexed to this report.

7. The Working Group interviewed in private 138 detainees in the respective detention facilities. It also conducted approximately 100 collective interviews at the different immigration detention facilities under the authority of the State Border Guard Service (SBGS).

8. At CIZO #13 in Kyiv, the first detention facility to visit, the focal point of the State Department for the Execution of Sentences who accompanied the Working Group during its mission to provide technical support, facilitated a common understanding of the Working Group's right to speak to all detainees, pre-trial and convicted. The Working Group appreciates this support but would like to reiterate the importance that it have unfettered and unsupervised access to all detainees immediately. The Working Group notes that such access through the mission was a good practice and calls on other countries to which it would visit in the future to follow such a practice. Concerning the actual interviews the Working Group would like to request the Government to reconsider caging detainees during the interviews. The Working Group's members were informed that security regulations require such precautions.

9. At CIZO #13 the Working Group interviewed a woman who appeared to have mental health difficulties. The Working Group was presented with a co-inmate who was proposed by the authorities to provide information concerning this particular individual. The Working Group would like to reiterate that it is important for it to have the sole right of selection of those persons detained with whom it would like to speak.

10. At the CIZO in Uzhhorod, which also housed an ITT facility, despite queries about the facilities which existed in the compound, the Working Group was surprised to learn from a credible source that this CIZO allegedly contains a secret detention wing run by the SBU. The Working Group stresses that the use of secret detention sites without any legal control is in total disregard of human rights. Such sites increase the risk of torture and other cruel, inhuman or degrading treatment for the detainee, especially when under interrogation. The Working Group would like to be fully informed about this possible facility by the Government and if it does exist why the authorities in Uzhhorod withheld this important information from the Working Group.

11. The Working Group noted the positive and constructive environment for detainees in the ITT in Podil whereby the management ensured that detainees were made aware of their rights and that the internal rules of conduct were also well known through their posting in the cells.

12. During its mission the Working Group held meetings with the following Government authorities: two Deputy-Ministers of Justice, representatives of the Ministry of Justice, including of its regional department in Donetsk and its Chief Department in Sevastopol; of the Ministry of Foreign Affairs; of the Ministry of the Interior, including of its regional department in Donetsk and of the Chief Department in the Autonomous Republic of Crimea; of the Ministry of Defence; of the Ministry for Health Protection; of the Ministry of Family, Youth and Sports; of the Ministry of Education and Science; of the Prosecutor General's Office, including civilian and military prosecutors; of the State Department for the Execution of Sentences; of the State Security Service, including its Deputy Head and Head of the Investigation Department in Kyiv; of the State Border Guard Service, including of its regional departments in Donetsk; Justices from Criminal Chambers of the Supreme Court; the Deputy Head of the Constitutional Court; all criminal judges from the Court of Appeal in Sevastopol and the Deputy Head of the Criminal Chamber of the Court of Appeal in Lviv; the Head of the Bilotserkva Municipal District Court; representatives of the State Court Administration of Ukraine; of the High Council of Justice; the Parliament's Commissioner for Human Rights (Ombudsperson); and the First Lady. It also met

with Human Rights Advisers to the Ministry of the Interior. The Working Group was unable, due to internal challenges in Ukraine, to meet with members of the Parliamentary Committee on Human Rights, National Minorities and International Relations.

13. The Working Group further conducted meetings with representatives of civil society in Kyiv and the regions, including human rights and defence lawyers and members of mobile monitoring clinics; members of the Ukrainian Lawyers' Association; members of Public Councils; relatives of detainees; religious leaders of different faiths working in prisons in Ukraine; and representatives of international and regional organisations.

14. The mission concluded with a de-briefing with the Ukrainian Government on the initial findings of the Working Group and a press conference.

III. OVERVIEW OF INSTITUTIONAL AND LEGAL FRAMEWORK

A. Political system

15. The Republic of Ukraine became independent on 25 December 1991. The Constitution, adopted in 1996 and significantly amended in 2004, provides for a semi-presidential system. The executive is comprised of the President, who is the Head of State and elected by popular vote; the Prime Minister, who is the Head of Government and appointed by the 450 seat unicameral Parliament (*Verkhovna Rada*); and the Council of Ministers (cabinet).

16. Ukraine is divided into 24 *oblasts* (regions) and further sub-divided into 494 *raions* (districts). Kyiv and Sevastopol have a special legal status and the Autonomous Republic of Crimea enjoys an autonomous status within Ukraine.

B. International human rights obligations

17. Ukraine is a party to the majority of international human rights treaties and, in particular, to the two principal United Nations human rights covenants and four conventions and related Optional Protocols (see appendix II).

18. It is important that all those dealing with detention are aware of international and regional human rights standards which exist for the promotion of the rights persons in relation to detention and their supremacy over any ordinary national legislation.

C. Constitutional guarantees

19. The Constitution affords several basic rights. According to its article 29, every person has the right to liberty and personal inviolability. Articles 28, 40, 55, 56, 59, 61, 62 and 63 contain other basic rights pertaining to the mandate of the Working Group (see appendix III).

20. Awareness should be raised of the detainees' right as entrenched in the Constitution to resort to proper international and regional human rights mechanisms for submission of complaints.

IV. FINDINGS

A. Criminal and criminal procedure detention

1. The Militsia and Militsia investigators

21. According to the Law on Militsia, Ukraine's single national police force is directly subordinate to the Minister of the Interior. The Militsia consist of several subdivisions. The Law of Ukraine on Combating Organised Crime created special divisions, such as regional agencies to combat organised crime.

22. Under the Law on Militsia, it is entitled, on its own authority, to arrest a person suspected of a criminal offence and to hold that person for up to three hours for the purpose of identification. Militsia investigators may keep that person in custody for up to 72 hours at a police station during which a pre-trial investigation may be carried out. Within these 72 hours of detention, the investigating bodies must, if they wish to remand in custody, bring the suspect before a judge. A judge may order such custody for up to 10 days, and thereafter grant extensions for a maximum total period of 18 months.

23. A person remanded in custody is in principle transferred to a CIZO for "investigation isolation". The person may nevertheless be detained at an ITT for a maximum period of 10 days if the transfer to the CIZO cannot be affected owing to the distance or the absence of appropriate means of communication.

24. The Working Group was informed by the Ombudsperson that each year about 1 million arrests are carried out in Ukraine, which is an unacceptably high number in a country with a population of approximately 46 million. It also received information from reliable sources that often persons are arrested and held by the Militsia for a short period of time without the arrests being registered, and at times release secured only by bribes.

25. The Working Group also noted during its mission that Militsia officials often use the entire 72 hours prior to producing a criminal suspect before a judge. The Working Group wishes to recall that the 72 hours rule should be construed as providing for a maximum period on a needs basis. If the suspect is not brought promptly before a judge, the legal framework and practice is inconsistent with the requirements of article 9, paragraph 3, clause 1, of the International Covenant on Civil and Political Rights. The Working Group is also concerned about information received from detainees about instances where the 72 hours rule was not observed.

26. The Working Group wishes to highlight the repetitive and often convincing reports of torture and other forms of ill-treatment by the Militsia throughout the country to extract confessions. The Working Group has received numerous reports about such practices from victims, whom they could interview in detention facilities and who sometimes showed signs of ill-treatment, from civil society representatives, and from other sources.

27. These sources have also pointed at aggravating situations in which suspects are rejected by ITT personnel following a medical examination upon admission (which is not always carried out), that established signs of torture and ill-treatment, and sent back to the perpetrators. Victims do not report ill-treatments for fear of reprisals which consequently results in a high level of impunity.

28. The Working Group considers these reports credible as no Government authority from any tier or level met with denied the existence of this problem. Different Government authorities, however, varied regarding the extent of cases in which the Militsia resorts to torture and ill-treatment to extract confessions, the manner in which the problem is addressed at various levels and spheres of Government, and how it is redressed, notably during the continuation of the criminal investigation and the trial stage (see *infra*). According to two surveys conducted by a non-governmental organisation, in 2000, 78% of confessions were coerced ones according to those detainees asked, and in 2006 the rate was 81%.

29. The issue of the use of torture to extract confessions falls directly within the mandate of the Working Group as such practices make such confessions inadmissible and therefore the detention of such a person arbitrary.

30. There is no excuse to permit torture. Such practice is explicitly prohibited under international human rights and constitutional law and its prohibition is absolute and non-derogable. Any use of torture in extracting confessions should immediately lead to dismissal of any deposition and at any time should lead to criminal action against the perpetrator(s). With respect to law enforcement officials who denounce their supervisors, in relation to torture or other abuses of law by their superiors, they should not be penalised including through prolonged periods of detention. Any abuse in this regard should be properly investigated and those responsible should be held accountable. Similarly, training curricula of the Ministry of Interior officials, including the Militsia, should explicitly provide against such practices noting that there will be zero-tolerance. The manual on prevention of torture, compiled by the Ministry of the Interior, the Ombudsperson and human rights organisation with the support of the Danish Government, which was distributed to all Government educational institutions in 2003, is a welcomed initiative, but the Working Group considers that further progress needs to be made.

31. The investigator in any case under review also has important responsibilities and must first ensure that the person detained is fully aware of his/her rights and is able to realise them, which is often not the case according to consistent allegations from interviewed detainees and lawyers the Working Group met with. There should be a presumption of innocence until proven guilty and not the inverse. Where there are allegations or evidence of torture this should be noted and included in the case file of the alleged perpetrator. The investigator has a responsibility to bring this to the attention of the Prosecutor General, who should follow up with an immediate yet thorough investigation given the gravity of the allegation, and any presiding judge, especially since the Militsia investigators do not enjoy oversight powers over the Militsia.

32. The Working Group was informed that quotas in relation to the need to make a certain number of arrests in a given period may exist within the Militsia departments under the Ministry of Interior. If this is true this could lead to a use of force by officials to ensure confessions of a criminal nature. The Working Group requests confirmation from the Government that such a system of indicators does not exist. If it does it should be discontinued.

33. The Working Group further received information by detainees that Militsia officers, as other competent law enforcement officials involved, do not always inform the next-of-kin of the detainees about their arrests and detention although required by law. This omission was confirmed by the Ombudsperson and must be ceased.

2. Office of the Prosecutor-Prosecutor General and prosecution

34. According to Chapter VII of the Constitution (articles 121-123), and legislation, the Prosecutor General prosecutes, and exercises oversight related to the observance of domestic legislation by law enforcement agencies in the conduct of criminal investigations. The prosecutors open and conduct criminal procedures after evaluation of criminal case files received from the Militsia, request detention on remand from courts, accuse and indict the defendant and represent the State in trial. The Prosecutor General has the power to release a person prior to the expiry of the period of pre-trial detention sanctioned by court, but not to overturn a court order for release.

35. According to officials met in the Prosecutor General's Office, in 2008 it opened 363,000 criminal cases. In 100,000 of these cases suspects complained about procedural rights violations, but also those of a criminal nature including torture and ill-treatment to extract enforced confessions. The Prosecutor General's Office noted it found violations in 30 of them. Further, in 2008 five law enforcement officials remained in custody on grounds of violations of constitutional rights of detainees, two of whom are already convicted.

36. The Working Group stresses the key role of the Prosecutor General's Office in the entire detention process. It very much regrets that its various requests to meet with the Prosecutor General himself were not entertained as a dialogue with him was therefore not possible. The Prosecutor General's Office must be the institution which upholds the law in all circumstances. Respect for the decisions of the courts is absolute. The individuals representing the institution must be impartial, professional and rely on the law. They should not make subjective decisions nor be seen as an impediment to the execution of justice. Complaints received on treatment or other matters which may lead to arbitrary detention should be followed up by the Prosecutor General's Office in all instances.

37. In matters requiring oversight and ensuring that due process is followed also having an enforcement capacity can lead to a potential conflict of interest and reduce confidence in the key institution of the Prosecutor General. The Working Group therefore suggests that the Government revisit this dual role, which was sustained by other Governmental authorities with special criminal investigation powers. Indeed, given the number of arrests highlighted by the Ombudsperson and the number of cases noted by the Prosecutor General's Office the Working Group questions the effectiveness of the Office's oversight given the very few cases actually noted as being in violation.

3. The judiciary

38. The court system in Ukraine, according to the Law on Judicial System of Ukraine, comprises courts of general jurisdiction and the Constitutional Court. According to Art. 147 *et seq*. of the Constitution, the Constitutional Court is the sole organ of constitutional jurisdiction in Ukraine. The Constitution of Ukraine does not know an individual constitutional complaint mechanism, so that the upholding of constitutional rights is vested with courts of general jurisdiction.

39. The three levels of courts in criminal matters are *raion* courts, *oblast* Appeals Courts, and the Supreme Court as the highest judicial body.

40. The Working Group noted the perceived lack of effective control by the judiciary over the detention process, which often leads to unnecessary and prolonged detention on remand in difficult conditions. Although the number of instances of resort to pre-trial detention, also for less grave crimes, are reportedly decreasing each year the Working Group noted that it still remains at an overall high level, whereby the rate of 21,5% detainees on remand in relation to the total prison population as of 1 January 2008[1] is acceptable. In 2002, courts in 60,708 cases authorised that the suspect be remanded in custody. In 2007, the courts sanctioned 38,607 pre-trial detentions out of 44,000 requests by the prosecution. What struck the Working Group was that reportedly only 3,200 court decisions have been appealed against and that only 532 appeals were granted. This reaffirms the findings of the Working Group regarding the lack of an efficient legal aid system, of access to lawyers as noted below, and the effectiveness of the oversight function of the Prosecutor General's Office and judiciary as to the legal necessity of pre-trial detention. A Government representative with competences in oversight over the judiciary reported of a case where a judge spent six minutes to process a nine page application for pre-trial detention and issue a decision granting remand in custody.

41. Another pre-occupation of the Working Group regarding prolonged pre-trial detention is the fact that the accused whose case is referred back to a court of lower instance for a re-trial must by law remain in pre-trial detention. Unlike for the first trial until a final court instance there is no maximum time limit established by law for the duration of the re-trial and accordingly for the admissible period of pre-trial detention. Such a regime is not conducive to the adherence to the realisation of the right to a trial within reasonable time or alternatively to release as stipulated by article 9, paragraph 3, clause 1 of the International Covenant on Civil and Political Rights.

42. Given the persistent allegations received by the Working Group throughout its mission on confessions obtained under torture and the overall failure to redress such violations during the criminal investigation and prosecution proceedings, an unnaturally low number of acquittals in trials further adds to the perception that the judiciary does not exercise effective control over law enforcement authorities. According to an Ukrainian non-governmental organisation, which conducts annual surveys in the field of criminal punishment and analyses Government data, the rate of acquittals remained stable between 0,26 and 0,78% since 1991.

43. Concerning the independence of the judiciary, the Working Group was reported several shortcomings: It was alleged that in some cases judges take a loan to be able to purchase a judge's certificate, which then even needs to be amortised. Presidents of courts are not elected by their peers, but appointed, and have the competence to allocate cases to the bench. It was asserted that judges showing a strong commitment to the rule of law receive too many cases to settle and are then faced with disciplinary consequences. Judges are under pressure by law enforcement authorities and the general public not to reject applications for detention on remand or to order the release of detainees in general. The President of the Supreme Court addressed a letter to the President of Ukraine in 2008, raising concerns about the undue influence perceived to have been exercised by the executive upon the judiciary. An administrative court, of which a judge had nullified the President's decision to dissolve Parliament and call for new elections, was re-structured and this judge was facing criminal prosecution. The Working Group noted that

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[1] See world prison brief for Ukraine at the King's College website at www.kcl.ac.uk.

judicial decisions were often taken without the presence and even knowledge of the accused person, also due to convoy schedules.

44. It is clear that the judiciary itself does not receive the requisite support to ably execute justice. This would include that justices are recruited through a process which guarantees their independence, integrity and professional qualifications. In addition, training of justices is a continual process if one wishes to ensure that national, international and regional human rights norms form the foundation for judicial decisions. Consideration also needs to be given to empowering judges in certain instances to be able to exercise judicial review where there is doubt as to the manner in which, or veracity of, certain cases. For example, the Working Group was made aware of instances where continued requests for detention by the Prosecutor General's Office were made, even though there was strong suspicion of torture having been undertaken to ensure a confession.

45. The Working Group met with Justices at the Supreme Court, Constitutional Court and Appeal Court levels. It also had the opportunity to follow a brief appeal hearing before the Appeal Court in Sevastopol, where it observed that the defendant was not present. It regrets that it was unable to meet with judges of the first instance - except for a brief thematic discussion focussing on juvenile justice with one judge - given their central role in the administration of justice and in particular in relation to authorising and extending periods of pre-trial.

46. The Working Group was informed that court hearings on eligibility of a prisoner for early release or for easening the detention regime are conducted on prison premises. The same goes, in some instances, for trials concerning new crimes committed during the serving of a prison term, which are conducted in the presence of the accused, their lawyers, and family members. The Working Group was informed that the ratio behind the former is that prisoners hope for a positive outcome of the hearing to gain immediate release following the ruling. While the Working Group has some sympathy for this underlying purpose in relation to a swift release it does not see how minor delays of release, if any, can outbalance the concerns it has regarding the lack of transparency in the hearings. Trials for crimes must be open to the general public; this important element of a fair trial cannot be guaranteed at all times if the trial is conducted on prison premises.

47. Apart from this, the law does not provide for judges to visit prisons.

4. Legal defence and legal aid

48. The right to defence is not properly implemented in Ukraine and the legal aid system is ineffective. The Working Group gathered consistent information from numerous interviews with criminal suspects in detention, as well as convicts, from civil society representatives, and the Ukrainian Lawyers' Association, that detainees are often not aware of their right to defence from the moment of arrest and to the appointment of a public defender from the moment of the commencement of the criminal investigation, but no later than 72 hours after the arrest, should they lack financial means. If they are aware of their right, they often refuse to assure themselves of the assistance of a lawyer out of mistrust or futility concerns, or worse, are sometimes deliberately withheld access to a lawyer by Militsia officers, investigators, prosecutors, or detention facility staff, during the crucial period of preliminary and pre-trial investigations. This situation is aggravated by the fact that the equivalent of approximately 3 USD per day for the service of a public defence lawyer does not provide the lawyers' profession with an incentive to

criminally defend. It was further reported that until the Working Group's visit only 20% of the legal aid budget for 2008 had been exhausted.

49. The Working Group wishes to point out that the right to a lawyer is an important right which individuals need to be made aware of at the time of initial arrest and throughout the judicial process including the opportunity to appeal decisions relating to detention. An individual's exercise of this right must not be obstructed by those holding the detainee in custody.

50. It is often investigators who propose a lawyer to criminal suspects. Such lawyers must be independent and at arms length from the investigator and law enforcement officials. The Working Group heard from numerous detainees of their lack of confidence of those legal counsel proposed by investigators as they were seen as complicit in the investigator's approach either through association or because they themselves were previous law enforcement officials. Following a decision from the Constitutional Court of Ukraine it is not a requirement to be a professional lawyer to perform the function of defence counsel. While the Working Group recognises the good intentions behind this decision in that it is aimed at reinforcing the right to freely choose counsel and at redressing the difficulties for defendants to find a good defender, it would like to express its concern as regards to the quality of defence and potential conflicts of interests that may exist.

51. The legal profession and remuneration when acting as public defenders must be strengthened. Without such reforms the highly prevalent practice of corruption throughout the judicial process will remain. The Working Group notes that there is no overall bar association in Ukraine. A strong and effective bar association can help ensuring effective legal support to all detainees. The professionalization of the legal profession is a necessity if confidence is to be built in the legal system. Legislative initiatives to establish such an association and ensure the legal protection of lawyers are hence welcomed by the Working Group.

5. Imprisonment

52. Criminal sentences are executed by the State Department for the Execution of Sentences, the governing authority of the CIZOs and the Ukrainian prison colonies. The percentage of accused receiving prison sentences has welcomingly been gradually decreasing during the past years and has reached a level of around 25%.

53. The Working Group welcomes that the Government of Ukraine has transferred supervisory powers over the State Department for the Execution of Sentences from the Ministry of the Interior to the Council of Ministers through the Ministry of Justice.

54. The Working Group was regrettably not able to ascertain how often disciplinary measures, including solitary confinement for up to 10 days, in the case of a minor for not more than five days, for the infringement of prison rules of a grave nature are resorted to at the CIZO in Uzhhorod. It welcomes the fact that such measures can be challenged in court, however, has reservations as to the fact that this can be done only after having served the disciplinary measure. The Working Group has further concerns regarding the conditions in the punishment cell at CIZO #13 in Kyiv, and about the failure of the prison authorities to have a record about the use of such a disciplinary measure. It was also made aware of a case of such detention where the

individual was not aware of his right to seek legal counsel concerning such measures and was placed in such detention for an offence which could not be considered of a grave nature.

B. Detention under State security powers

55. The SBU of Ukraine is responsible for national security. All personnel of the SBU hold military ranks, but are not part of the Ministry of Defence. The SBU is, inter alia, competent to fight corruption; organised crime, such as trafficking in persons, drug trafficking, and money laundering; as well as terrorist activities and is entitled to conduct pre-trial investigations also when the suspect is a minor, although cases are rare.

56. During its criminal investigations the investigators of the SBU apply the same procedural rules as in other criminal proceedings. The Office of the Prosecutor General exercises oversight over SBU investigators in criminal cases without formal subordination.

57. In 2008, 453 persons were held under the authority of SBU investigators for less than three days and in 177 cases a court sanctioned pre-trial detention (2007: 268/185).

58. The Working Group is pleased to note that, following a decision of the Supreme Court of Ukraine, the former CIZO of the SBU in Kyiv has ceased to operate as an SBU detention facility, and was being refurbished to be re-opened as the national ITT of the SBU. The Working Group, however, remains concerned about allegations of a secret detention wing run by the SBU at Uzhhorod CIZO.

C. Detention under administrative offences powers

59. The Working Group positively notes that, since 1991, only courts shall be competent to sanction pre-trial detention no later than 72 hours after arrest. It has, however, received credible information that law enforcement authorities have a tendency to circumvent this requirement. For example, they are reported to resort to detention regarding administrative offences - involving a restricted right to defence and reduced court control since hearings are based solely on Militsia reports - providing time to extract coerced confessions related to criminal offences.

60. According to the Law on Administrative Offences the Militsia is competent to arrest a person and hold him or her in custody for up to 72 hours on suspicion of having committed an administrative offence such as “hooliganism”. A court is then entitled to sentence such a suspect to up to 15 days of administrative detention. As the Working Group could observe during interviews with detainees, whose allegations were supported by credible information received from civil society and defence lawyers, that situations occur in which Militsia officers stop a person on the street and then falsely charge him or her with resistance to arrest, which amounts to an administrative offence. The person is then sent to an ITT by the court for up to 15 days during which criminal charges are fabricated under duress.

61. The use of administrative detention must clearly be regulated by law and not abused for purposes of criminal prosecution. Since it amounts to a form of punishment the concerned person must also have the right to appeal to a higher court, which is currently not the case.

D. Detention of vagrants

62. Ukraine has special detention facilities for vagrants. The term “vagrant” is not defined by law and may in practice apply to anyone who cannot produce an identity document when stopped on the street by Militsia officers, although the purpose of law is to combat socially inadequate behaviour. Such persons can then, at the request of a Militsia officer and sanctioned by a prosecutor, be held in administrative detention for up to 30 days (for the main purpose of establishing the identity of the detainee) without any involvement of a court of law.

63. Not only that such a practice violates article 9, paragraph 4 of the International Covenant on Civil and Political Rights in that the detainee shall be entitled to challenge the legality of detention in court or released, this period of detention is also used by law enforcement officials to extract coerced confessions on criminal charges. This latter information was received by the Working Group from reliable sources. It was however unable to verify it for reasons of a lack of a visit to a detention centre for vagrants due to time constraints.

64. The Working Group was informed by Ministry of Justice officials that the Government has tabled a Bill in Parliament, inter alia, aiming at making it a legal requirement to have a court decision authorising detention no later than 72 hours after the arrest. The Prosecutor General has requested such legislative amendments be enacted after a study conducted by his Office revealed the shortcomings of the present system and also the inhumane conditions in vagrants’ detention facilities. It welcomes such an initiative though has not yet seen the draft legislation to be able to comment on it substantively.

E. Detention under military jurisdiction

65. The Working Group promotes the gradual development from military jurisdiction to an entirely civilian one. In Ukraine the military jurisdiction only covers conscripts, which means that, for example, criminal offences committed by civilians against military personnel or installations, are exclusively tried by civilian courts. The Working Group sees this as a good practice.

66. Military law enforcement officers are entrusted with fighting crime within the military service. Military officers can be arrested under article 106 of the Criminal Procedure Code on suspicion of having committed a crime and held for no longer than two hours to establish identity. No later than 72 hours after the arrest the suspect has to be brought before a judge. Upon court order military servicemen may be detained for up to six months at a guardhouse.

67. After initial interrogations and investigations the case is handed over to the military prosecutor. Military prosecutors, although military servicemen, form organisationally part of the Office of the Prosecutor General. The same provisions of the Criminal Procedure Code are applied and defendants enjoy the same procedural rights during the proceedings as civilian accused.

68. Garrison tribunals form the military courts of first instance, and two regional military tribunals the appeals court. The court of review for criminal cases falling under military jurisdiction is the Supreme Court, which has military Chambers. All military judges, albeit military servicemen, are selected by the President of Ukraine to ensure their independence. Trials are, as a rule, conducted on the premises of the military courts, however, in exceptional

circumstances they are arranged for on premises of the military unit of the accused to stress the educational effect of deterrence of the trial vis-à-vis other military staff of the unit. Trials are generally open; only in cases involving national security or for the protection of the privacy of the accused or the victim are closed trials permitted under the Criminal Procedure Code.

69. The Working Group observed that many pre-trial detainees and convicts interviewed waived their right to access to a defence lawyer, pleaded guilty in court, and did not appeal their sentence, at times at the advice of the defence counsel as the courts of appeal can extend the sentence handed down by the court *a quo*. The Working Group commends the fact that the detention of persons under military detention is tied to the civilian structure, including the fact that the prosecutors dealing with military cases are also under the jurisdiction of the civilian Prosecutor General's Office.

70. All members of the armed forces of Ukraine sentenced to a prison term between six months and two years are being imprisoned at the barracks of the Disciplinary Battalion in Kyiv where they are locked up in their cells only in the evening. They can receive visitors without restrictions. Their criminal record does not appear in their personal service files. None of the prisoners interviewed raised any complaints as regards to their treatment throughout the entire proceedings.

71. Military Commanders of the Disciplinary Battalion can discipline military staff, including those in detention. Any decision to that effect can be contested in court by the concerned military officer.

F. Detention pursuant to immigration powers

72. The laws of Ukraine governing detention of irregular immigrants are scattered and complex. Pursuant to the various laws, a person suspected of having infringed the alien legislation may be detained for up to 72 hours by the State Border Guard Service (SBGS) or the Militia, provided that the public prosecutor has been notified within 24 hours after the arrest (article 263 of the Code of Administrative Offences). For persons who cannot produce an identity document the period of detention may be extended for up to 10 days with prior authorisation by the public prosecutor. Following an amendment, in 2003, of article 32 of the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, the maximum period allowed for the preparation of documentation for expulsion at a temporary holding facility is six months, whereas previously the period could have been indefinite. Upon expiry of the period of six months, the detainees must be released and are equipped with a temporary stay permit should their cases not have been processed by then.

73. The Working Group appreciates that a maximum time limit has been established. However, article 32 of the Law is silent regarding the authority sanctioning the detention. The Working Group has received varying accounts from Government representatives as to whether such detention must be ordered by a court as a clear requirement of the law.

74. According to the Law of Ukraine on Refugees decisions about the granting (loss and deprivation) of refugee status are taken by the specially authorised central executive agency for migration (the State Committee on Nationalities and Religion).

75. The Working Group took note with appreciation that a separate holding facility for families, women and minors in Mukachevo has been in operation. However, the Working Group, as a matter of principle, questions the appropriateness of detention of minors, especially unaccompanied minors, and its compliance with the provisions of the Convention on the Rights of the Child, notably article 37, lit. (b), clause 2, given the availability of alternatives to detention. It also met a few individuals at the Pavshino facility for men who claimed to be under age.

76. Moreover, there appears to be a lacuna in the laws which results in asylum seekers not being automatically released as soon as they have submitted their asylum application if a court sanctioned detention for a period of time exceeding this moment. Neither the asylum authority nor the administrative courts, in the event of a challenge to the granting of refugee status to an individual, have jurisdiction to order the release. Reports about difficulties to obtain access to lawyers and lack of awareness of detainees of their rights, also caused by insufficient interpretation, have been received. It was also reported that summary detention hearings are conducted or that a detainee is not presented before a court at all. At times the maximum periods of detention are exceeded, and the backlog of asylum cases before the administrative courts leads to unnecessary prolongation of detention. A legal aid system does not apply to irregular immigrants in detention. The Working Group would, however, expressly acknowledge the progress that has already been made by the Government of Ukraine with respect to the detention regime of irregular immigrants as was confirmed by several interlocutors, and encourages it to proceed on that path.

77. One major concern relates to information received independently from different sources from the civil society and from the international community about a so-called “Operation Migrants” that was supposed to have been carried out in Uzhhorod in summer 2008: At the instigation of higher authorities, foreigners were stopped randomly on the streets and detained invoking immigration powers to reduce the number foreigners visible in the street. At times their irregular status was fabricated by tearing apart their documents, which permitted their stay in Ukraine. The Working Group would like to receive information from the Government to clarify the situation, which would violate human rights on a number of levels.

G. Detention pending extradition

78. On 19 November 2008, the Working Group received a letter by a member of the Ukrainian Lawyers’ Association, channelled through the Government and accompanied by its comments, concerning a man for whom authorities from a neighbouring country of his citizenship had requested extradition. He has been detained since 13 October 2007 at the CIZO #5 in Donetsk and his lawyer, with whom the Working Group met personally during its mission, had requested that it meets with his client during its stay in Donetsk. The Working Group is concerned about the information it has received that this person remains in detention despite a decision by the Voroshylovskiy District court in Donetsk ordering his release on 29 August 2008. This followed a decision on acquittal by the same court concerning criminal charges brought against him on a separate account dated 21 August 2008. It is alleged that the Head of CIZO #5 refused to comply with the court order.

79. According to the Government the decision of this court of 29 August 2008 was overturned by the Appeals Court on 8 September 2008, authorising the continuation of detention, and that no further challenges of the detention order have been made. The appeal of the prosecution

against the decision of 21 August 2008 is still pending. The Working Group would like to understand whether it was the Head of the Donetsk CIZO who refused to comply with the release order, which would amount to a criminal offence, or whether detention followed the appeal. It asks the Government to provide further information.

80. The Working Group has interviewed two individuals detained pursuant to extradition requests from a neighbouring country. One woman has been detained for one year and two months at CIZO #13. Criminal charges in her country of origin were brought against her when she applied for citizenship in Ukraine. She and her family had received threats from authorities of her country of citizenship and was granted refugee status in Ukraine. A legal challenge to her refugee status by the Prosecutor General was granted by an administrative court of appeal on 23 December 2008. The administrative court does not have jurisdiction over detention matters, which a different competent court had ordered until a decision on extradition is taken.

81. In another case a foreigner detained at CIZO #13 was interviewed, who had been charged for financially supporting the political opposition in a neighbouring country which has sought his extradition on these grounds. Despite him being granted refugee status in April 2008 and a court hearing in July 2008 where the administrative court supported his release, he remained in detention until 28 November 2008 when the Prosecutor General decided to reject the extradition request and released him. The Working Group has also received information that the Prosecutor General in a recent case had effected the extradition of a person to a neighbouring country giving rise to concern about a violation of the principle of *non-refoulement* despite a decision by a national court rejecting the Prosecutor General's application to invalidate his refugee status.

82. The Working Group is concerned about the potentially indefinite detention of detainees subject to an extradition request. It is also concerned yet again about the culmination of powers within the Office of the Prosecutor General which has to answer extradition requests and has at the same time the authority to challenge the granting of a refugee status, which could bar extradition on the grounds of *non-refoulement*.

H. Juvenile justice

83. In Ukraine the general age of criminal liability is 16, for grave crimes, mainly committed against the life or physical integrity of a person, at the age of 14.

84. Once a minor suspected of having committed a crime is arrested and detained the same provisions are applied as for adults. In Ukraine no separate juvenile justice system tailored to juveniles' specific needs exists. This impacts on rehabilitation where the Working Group notes that the relapse rate of minors to crimes is exceptionally high. The Working Group has been informed by the Government that draft legislation is under discussion to provide for a special regime for minors in conflict with the law and therefore supports this initiative. Several justices throughout Ukraine have already undergone training to empower them to take the juveniles' special needs into account during the judicial process. The Working Group was able to briefly meet with one such justice.

85. The Working Group observed several issues of concern regarding minors in conflict with the law. It interviewed a number of juveniles who were detained on remand in connection with relatively minor crimes such as theft of a mobile phone. This practice runs counter to article 37,

lit. (b), clause 2, of the Convention on the Rights of the Child that "[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

86. The Working Group notes with grave concern that juveniles are allegedly being tortured and ill-treated while in the hands of Militsia officers to extract confessions. Although mandatory by law, minors interviewed reported a lack of information of their right to defence counsel and access to a lawyer. Minors face the same restrictions in pre-trial detention, including prohibited contact to their families until their trial commences in court, as for adults. Such measures are particularly severe where juveniles are detained in the same vicinity as adults including convicts.

87. The Working Group observed at the CIZO in Uzhhorod that five male adults were detained in a cell in a wing reportedly dedicated solely for the detention of women and minors and highlights the applicable international human rights law requirements which support the separation of men from women and juveniles in detention.

I. Deprivation of liberty on grounds of mental health

88. The rights of individuals with mental impairments are an important component in any human rights regime. The Working Group draws the attention to the State of the International Convention on the Rights of Persons with Disabilities and calls for Ukraine to become a party to this Convention. The Working Group appreciated the head of State Municipal Psychiatric hospital's supporting its visit despite the personal loss he experienced the day of the Members' visit. They commended the facilities' approach to those detained within its facility which was reaffirmed by speaking with a family member of a person (voluntarily) admitted there. There was no evidence of any arbitrariness of deprivation of liberty.

89. However, in relation to persons detained in either ITTs or CIZO the Working Group expresses concern that persons should not be detained to assess the psychiatric nature of an individual. Such detention without legal cause can be constituted as arbitrary and the persons affected should be treated in an appropriate mental health facility. At the CIZO in Uzhhorod the Working Group was concerned that persons may be detained while undergoing psychiatric assessment. It was also, regrettably, unable to find a record of these assessments in the detention facility despite the person undergoing weeks of assessment in another facility.

J. Detention registries

90. To protect the rights of detained persons it is critical that their whereabouts, especially to their relatives, are known at all times in a clear and transparent manner. The registers maintained in institutions under the authority of the Ministry of Interior and Ministry of Defence were generally of a good quality and permitted the Working Group the ability to determine in a speedy manner the process concerning a given detainee. Those however maintained in the institutions under the Department on the Execution of Sentences, namely the CIZO, were often opaque and required reference to a variety of sources. The Working Group would like to stress the importance of ensuring that all persons detained, for whatever period and in whatever detention facility, be properly registered. The Working Group was made aware of detention which had not been registered, and found one detainee at the Main Watch Guardhouse of the Crimean Territorial Law-Enforcement Administration who had not been registered after three days.

K. Monitoring mechanisms

91. A strong judicial process which can combat arbitrariness of detention requires independent monitoring and oversight over procedures and practices, which should include the participation of civil society. The initiatives of the Ministry of Interior in relation to the 53 mobile monitoring clinics throughout the country composed of representatives of civil society and staff of the Ministry of Interior and other Government bodies, with a mandate to visit Militsia detention facilities, monitor the situation of detainees, and prevent acts of torture, at each *oblast* level as well as the involvement of various stakeholders through the Public Councils, are positive steps. Drawing on information gathered during its mission, the Working Group however shares the concerns expressed by the Committee against Torture, noted in its recent Conclusions and Recommendations on Ukraine's State report, regarding the mobile clinics' dependency on the goodwill of local authorities, their lack of formal status, and a lack of adequate resources.[2]

92. The Office of the Ombudsperson was established in 1998 with a constitutional mandate to deal with individual complaints of human rights violations; advise on relevant legislative developments; oversee governance in compliance with human rights standards; and undertake human rights promotional activities. The mandate includes unannounced visits to detention facilities. The Ombudsperson is elected by Parliament and financed directly from the national budget to ensure the Office's independence. The number of staff employed (100 professional and general staff) is modest for a country the size of Ukraine and with the breadth of mandate bestowed on it. The Working Group noted varied perceptions concerning the effectiveness of the institution of the Ombudsperson. Civil society informed the Working Group on cases which had merely been referred by the Ombudsperson, for investigation, to the state institution complained against. The Ombudsperson, however, rejected these assertions. The Working Group welcomes the stated commitment of the Ombudsperson to take up the cases reported to it by the Working Group and to inform it accordingly of the results.

93. The Working Group welcomes the fact that Ukraine has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes discussions and possible legislative initiatives which will provide for a structure in relation to national preventive mechanisms as an important tool also to combat arbitrary detention.

V. CONCLUSIONS

94. The Working Group expresses its appreciation to the Government of Ukraine for the invitation and for its cooperation throughout the mission.

95. Institutionally, the Working Group noted a number of areas of cooperation between those Governmental bodies that deal with detention. However, the Working Group also found that there exists a number of overlapping departmental regimes which could be contributing factors to the existence of arbitrary detention. The Working Group noted that with respect to criminal cases the Ministry of Interior including the Militsia, as well as specialised authorities such as the State Security Services and the military, and the Department of the Execution of Sentences can deal with detainees during the various phases of the pre-trial period.

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[2] CAT/C/UKR/CO/5, para. 12.

96. There were throughout the Working Group's visit to Ukraine consistent references to a lack of confidence in key institutions relating to the protection of an individual's rights. These would in particular include the judiciary; the Militsia; the Prosecutor General's Office, and lawyers. While some of this may also relate to very low and indeed unacceptable salaries for these professions as well as high levels of corruption, some also relates to a sense of collusion among individuals to make the principle of pre-trial detention as the norm rather than the exception. Confessions obtained under torture must be addressed by the Government as a matter of priority.

97. Recently, a number of legislative initiatives which have been launched are worthy of support: the revised Criminal Code and efforts to amend the Criminal Procedural Code. These would help reduce the burden on the penitentiary system. Overcrowding of detention facilities would be addressed by reducing sentences for less severe crimes, further exploring the possibility of early releases on probation, or finding alternatives to detention.

VI. RECOMMENDATIONS

98. **On the basis of its findings, the Working Group makes the following recommendations to the Government:**

Concerning access to detention facilities

(a) Continue to provide free and unfettered access to persons in detention to international, regional and national human rights mechanisms.

Concerning allegations of torture to extract confessions

(b) Establish a National Preventive Mechanism as foreseen by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the required capabilities, professional knowledge and appropriate resources to enable such a mechanism to function independently and effectively.

(c) Ensure a policy of zero-tolerance of torture and ensure that any related allegation is promptly and properly investigated and if founded redressed, including compensation. The proposal by the President of Ukraine, made at the opening of the meeting of the National Commission on Reinforcement of Democracy and the Rule of Law, to create an agency to coordinate the State's policy preventing torture is an initiative supported by the Working Group.

(d) Amend the Criminal Procedure Code to the effect that convictions exclusively based on confessions are inadmissible.

Concerning the Militsia

(e) Support the Militsia and other enforcement officials in their policies of integrity which may comprise denouncing colleagues for illegal practices, including collusion and corruption, so that they are not arbitrarily detained and justice is served.

Concerning pre-trial detention

(f) Amend the Code of Criminal Procedure to provide for a maximum time period of pre-trial detention also in the event of a re-trial.

Concerning the Office of the Prosecutor General

(g) Revisit the dual role of prosecution and oversight of the Prosecutor General's Office and entrust another state authority with either oversight or investigation/prosecution functions in criminal procedures to enhance protection of suspects' and accused' rights.

Concerning the judiciary

(h) Provide the legal and operational framework for an independent and effective judiciary including through appropriate recruitment.

(i) Consider providing judges at all levels of the judiciary, who authorise pre-trial detention and other forms of detention and sentence the accused to imprisonment, with increased oversight competences, including the power to conduct unannounced visits to detention facilities.

(j) Cease the practice of appointing a president of a court entitled to distribute cases *ad libitum* to the judges of the court and guarantee that, in any given case, the competent judge who takes decisions related to deprivation of liberty is predetermined by law.

Concerning access to a lawyer and legal aid

(k) Legally enact a nationwide Bar Association with an independent and effective mandate, with enhanced powers, also capable of efficiently holding those lawyers responsible who do not act in the defence of their clients.

(l) Empower the legal profession by taking measures such as raising the daily salary for public defence in criminal cases.

(m) To reserve access to the profession of defence lawyers to advocates following university education and legal clerkship.

(n) Ensure that, in practice, all detainees have recourse to lawyers from the moment of arrest.

Concerning imprisonment

(o) Maintain records and statistical information concerning all stages of a person's detention including temporary releases and disciplinary measures imposed upon prisoners. Provisions should be made that disciplinary measures such as solitary confinement may be challenged before a court not only *ex post facto.*

(p) Introduce, where necessary, i.e. especially in detention facilities under the authority of the State Department for the Execution of Sentences, a system of detention

registries which contains all relevant information on the detention of the concerned person to avoid having to consult different files. The guidelines of the Working Group contained in its annual report 2007 (A/HRC/7/4, p. 24 et seq.) could be taken into account.

(q) Consider ceasing the practice of conducting court hearings for early release and trials regarding new crimes committed during the serving of a prison term on prison premises.

Concerning administrative offences detention

(r) Provide for an effective appeal procedure against administrative sentences which are a form of punishment.

Concerning immigration detention

(s) Ensure that delays in the processing of asylum requests do not have a bearing on the length of detention and to prevent unnecessary detention of asylum seekers.

Concerning detention pending extradition

(t) Legally provide, save for exceptional circumstances, and unless Ukraine has criminal jurisdiction itself, for the mandatory release of a person subjected to an extradition request, who has been granted refugee status because of the situation prevailing in the country of origin, to which an extradition, if carried out, would amount to a violation of the principle of non-refoulement and can therefore not be effected.

Concerning juvenile justice

(u) Continue with and reinforce its efforts to enact a separate juvenile justice system in compliance with Ukraine's obligations under the Convention on the Rights of the Child and other applicable international human rights norms and standards.

Concerning monitoring mechanisms

(v) Further strengthen the Office of the Ombudsperson, including by providing it with the necessary financial and human resources to carry out its human rights protection and oversight functions in relation to detention and prevention of, and protection against, torture.

Concerning deprivation of liberty in general

(w) Legally provide that all persons deprived of their liberty are released as soon as a court has made an order to that effect, even in the event of an appeal by the State of this court order, thereby removing the suspensive effect of such appeal.

(x) Provide for legal and institutional guarantees that next-of-kin of persons arrested or detained are always and promptly informed.

Appendix I

DETENTION FACILITIES VISITED

Kyiv

CIZO #13

Holosiiv Division of the Ministry of the Interior (police station)

Dniprovsk Division of the Ministry of the Interior (police station)

ITT of the Ministry of Interior for the city of Kyiv in Podil

District Central Police Station

Detention Centre of State Security Service (former CIZO, currently refurbished to be re-opened as ITT)

Disciplinary Battalion

Temporary Holding Facility at the Border Guard Unit, Kyiv Boryspil Airport

State Municipal Psychiatric Hospital No. 1

Simferopol (Autonomous Republic of Crimea)

CIZO

Main Watch (Gauptvahta-Guardroom) of the Crimean Territorial Law Enforcement Administration

Sevastopol

ITT

Lviv

CIZO

Centre for Reception and Distribution of Minors

Temporary Holding Facility of Border Guard Detachment

Muckachevo

Temporary Holding Facility for Irregular Immigrants (Pavshino)

Mukachevo Detention Centre for Women and Children

Chop

Temporary Holding Facility of Border Guard Detachment

Uzhhorod

CIZO

ITT

Appendix II

UNITED NATIONS HUMAN RIGHTS CONVENTIONS TO WHICH UKRAINE IS A STATE PARTY

International Convention on the Elimination of All Forms of Racial Discrimination;

International Covenant on Economic, Social and Cultural Rights;

International Covenant on Civil and Political Rights;

First Optional Protocol to the International Covenant on Civil and Political Rights;

Second Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

Convention on the Elimination of All Forms of Discrimination Against Women;

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

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

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Convention on the Rights of the Child; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Appendix III

EXCERPTS FROM THE CONSTITUTION OF UKRAINE

Article 28. Everyone has the right to respect of his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.

No person shall be subjected to medical, scientific or other experiments without his or her free consent.

Article 29. Every person has the right to freedom and personal inviolability.

No one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, official bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by court within 72 hours. The detained person shall be immediately released if a substantiated court decision regarding detention is not served within 72 hours. Everyone arrested or detained shall be informed without delay of the reasons for the arrest or detention, apprised of his or her rights, and from the moment of detention, shall be given an opportunity to personally defend himself or herself or to receive legal assistance from a defender.

Every person detained shall have the right to challenge his detention in court at any time.

Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention.

Article 40. Everyone has the right to file individual or collective petitions, or to personally appeal to bodies of state power, bodies of local self-government, and to the officials and officers of these bodies, that are obliged to consider the petitions and to provide a substantiated reply within the term established by law.

Article 55. Human and citizens' rights and freedoms are protected by the court.

Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada [*Parliament*] of Ukraine.

After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.

Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

Article 56. Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or

omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority.

Article 59. Everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his or her rights.

In Ukraine, the advocacy acts to ensure the right to a defence against accusation and to provide legal assistance in deciding cases in courts and other state bodies.

Article 61. For one and the same offence, no one shall be brought twice to legal liability of the same type.

The legal liability of a person is of an individual character.

Article 62. A person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved through legal procedure and established by a court verdict of guilty.

No one is obliged to prove his or her innocence of committing a crime.

An accusation shall not be based on illegally obtained evidence as well as on assumptions. All doubts in regard to the proof of guilt of a person are interpreted in his or her favour.

In the event that a court verdict is revoked as unjust, the State compensates the material and moral damages inflicted by the groundless conviction.

Article 63. A person shall not bear responsibility for refusing to testify or to explain anything about himself or herself, members of his or her family or close relatives in the degree determined by law.

A suspect, an accused, or a defendant has the right to a defence.

A convicted person enjoys all human and citizens' rights, with the exception of restrictions determined by law and established by a court verdict.
