



# 'PUT DEEDS BEFORE WORDS'

DELIVER HUMAN RIGHTS FOR  
UKRAINE

**AMNESTY**  
INTERNATIONAL



## **'PUT DEEDS BEFORE WORDS' DELIVER HUMAN RIGHTS FOR UKRAINE**

Following his inauguration on 25 February 2010, President Victor Yanukovich has the opportunity to build on past progress in human rights and address some outstanding concerns: torture and other ill-treatment in police custody, the rights of refugees and asylum-seekers, and racial discrimination.

Despite some progress towards bringing its legislation into line with international and Council of Europe human rights standards, serious human rights violations are still taking place. There is widespread impunity for torture and other ill-treatment, asylum-seekers are at risk of being forcibly returned to countries where they face human rights violations, and visible minorities face discrimination and racist attacks from members of the public and officials.

At his inauguration, President Yanukovich promised "to put deeds before words". Amnesty International asks him to live up to this promise, and to act now to ensure that Ukraine upholds its international human rights commitments in practice.

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## 1. INTRODUCTION

In his inaugural speech on 25 February 2010 President Viktor Yanukovich promised "to put deeds above words", and Amnesty International urges the President to live up to this promise and take concrete steps to demonstrate a genuine commitment to human rights and to ensure that Ukraine lives up to its international human rights obligations. On his first day in office President Yanukovich passed three decrees aimed at fighting poverty, establishing structural economic reforms and eradicating corruption. Amnesty International requests the President to issue a fourth presidential decree committing to concrete reforms to make human rights a reality for people in Ukraine.

When Ukraine acceded to the Council of Europe in 1995 it committed itself to a number of reforms of the criminal justice system including reform of the role of the Prosecutor General's Office, which has not yet been completed. In November 2009, the European Union (EU)-Ukraine Association Agenda was agreed which included a list of priorities for action including reform of the judiciary and the Criminal Procedural Code, and respect for human rights and fundamental freedoms.

Over the past 20 years Ukraine has made some progress towards bringing its legislation into line with international human rights standards. However, Ukraine is still failing to protect people on its territory from torture and other ill-treatment in police custody, and from racial discrimination; and it is failing to protect the rights of refugees and asylum-seekers. Amnesty International requests the President to pursue a zero tolerance policy towards torture and other ill-treatment, to protect the rights of asylum-seekers and refugees and to take decisive action to end racial discrimination.

This document focuses on torture and ill-treatment, the rights of refugees and asylum-seekers, and racial discrimination, as these are the issues on which Amnesty International has done substantive research and on which the organization will measure the performance of the new government. Amnesty International recognizes, however, that there are other human rights concerns in Ukraine.

## 2. TORTURE AND OTHER ILL-TREATMENT: OLD HABITS DIE HARD

In a report published in 2005 (*Ukraine: Time for Action, Torture and Ill-treatment in Police Detention*, EUR 50/004/2005), Amnesty International concluded that torture and ill-treatment at the hands of the police was widespread, that law enforcement officers routinely extracted confessions and testimony from detainees through force, sometimes resorting to torture, and that allegations of torture and other ill-treatment were hardly ever effectively investigated and victims rarely received reparation. Since the publication of the report, the Ministry of Internal Affairs has demonstrated increased openness and taken several positive steps to overcome torture and other ill-treatment. A new Human Rights Department with regional representatives, including many with NGO backgrounds, was established; a system of monitoring police detention, known as the "mobile groups", was introduced in 2004 and carried out 377 visits in 2008; and a Public Council providing a forum for consultation with

civil society has been functioning regularly since 2005. The Human Rights Department was regrettably closed in March 2010, and Amnesty International is unaware whether it will be replaced.

However, torture and other ill-treatment persist, fostered by a climate of impunity. According to a survey carried out by the Kharkiv Institute of Social Research in five regions during 2009,<sup>1</sup> 3.5 per cent of respondents said that they had experienced torture and ill-treatment by police during their lives.

Police practice has still not shaken off many of the legacies of Soviet practice including over-reliance on confessions, failure to respect the presumption of innocence, and performance assessment criteria for police officers, including the setting of inappropriately high targets for solving crimes, that do not encourage respect for human rights. The number of people detained by police continues to be unacceptably high and alternatives to detention are not sufficiently implemented.

### **VADIM GLAVATIY**

Vadim Glavatiy was reportedly severely and continuously beaten for four days at Podil police station in Kyiv in September 2006 to force him to confess to a robbery. He was hospitalized on 4 September because of his injuries. On 30 November, he was taken to Kyiv Psychiatric Hospital No.13 for a check-up, and remained there until 3 January 2007. He reported that he was beaten again by police officers while handcuffed to his bed in the hospital on 1 December. According to medical records he received further head injuries, a broken arm and bruising. The injuries resulted in multiple swellings, partial memory loss, severe speech impairment and reduced mobility. On 3 January 2007, he was conditionally released allegedly on the grounds of his poor health, but in June 2008 he was detained again by officers from the same police station and charged with rape. He was allegedly again beaten by officers repeatedly, to try to force him to confess. On 24 March 2009, Vadim Glavatiy was sentenced at Podil regional court to nine years' imprisonment for rape and robbery. He is currently detained in Kyiv pre-trial isolation prison (SIZO) pending appeal. He maintains his innocence, and continues to suffer serious health problems. His allegations of torture have been ignored by the prosecution and the court, and all requests for an investigation to be opened have been refused. In a meeting with Amnesty International in January 2010 the prison authorities claimed that he was faking his inability to speak, and that his allegations of ill-treatment were fabricated.

The improvement of laws and practices relating to detention and the elimination of ill-treatment of detainees in police detention also constitute a priority in the EU-Ukraine Association Agenda. Political leaders and senior officials must pursue a “zero tolerance” policy and give a clear message that torture and other ill-treatment will not be tolerated.

## **2.1 IMPUNITY**

According to a report commissioned by the Council of Europe<sup>2</sup>, published in April 2010, procedures for investigating allegations of torture and other ill-treatment fall short of European standards and encourage a climate of impunity: “Few police officers are ever called to account for their unlawful behaviour; even fewer are ever convicted.” In 2001, Article 127 prohibiting torture was added to the Ukrainian Criminal Code; however, prosecutors are reluctant to bring charges under Article 127 making it difficult for judges to convict police



officers for torture, and officials of the Ministry of Internal Affairs have expressed frustration to Amnesty International that 70 per cent of prosecutions of police officers are for "abuse of office", although they were convinced that many of these crimes could be classified as torture. According to figures cited in the Kharkiv Institute for Social Research report, in 2008 there were three prosecutions under Article 127 and 15 investigations against police officers ongoing under the same article. A further 2,090 police officers were convicted in 2008 for crimes such as rape, murder, grievous bodily harm and hooliganism. In some cases these crimes may have been perpetrated against detainees and in circumstances that amounted to torture; however, this fact remains unrecorded and hidden.

#### **ALEXANDER RAFALSKIY**

Aleksandr Rafalskiy was allegedly tortured by police in Kyiv in June 2001 in connection with a murder investigation. He stated that police officers beat him on arrest and then subsequently in the police station where they placed a black plastic bag over his head and tightened it around his neck with a belt, suffocating him repeatedly. They then placed a gas mask on top of the bag on his face. On 16 July 2001, he was taken to the police cells at Stavishche in the Kyiv region where electric wires were reportedly attached to various parts of his body and he was given electric shocks to try to force him to confess. On 30 June 2004, Aleksandr Rafalskiy was sentenced to life imprisonment for murder, but he maintains his innocence. All complaints to the authorities calling for an investigation into the allegations of torture have been unsuccessful. In a letter to Aleksandr Rafalskiy's parents dated 20 June 2008 the Prosecutor General stated that there was no need to open an investigation into such "minor violations".

Prosecutors are responsible for deciding whether to open an investigation into torture and other ill-treatment by police officers, as well as for investigating and prosecuting ordinary criminal cases. The UN Special Rapporteur on torture drew attention in 2001 to "the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions".<sup>3</sup>

In Ukraine, the lack of structural impartiality of the Prosecutor General's Office means that cases against law enforcement officers are inadequately investigated, delayed or stalled, or are not opened at all. The percentage of allegations of torture or other ill-treatment that are actually investigated is unacceptably low. The jurisprudence of the European Court of Human Rights on the prohibition of torture or other ill-treatment (Article 3) requires states to investigate promptly, independently and effectively any allegation of such violations.

According to the Council of Europe report, out of 6,000 complaints alleging ill-treatment recorded by the Prosecutor General's Office in 2008, 5,800 resulted in a refusal to open an investigation, or the closing down of an investigation.

Furthermore, in all investigations into torture and other ill-treatment there appears to be a clear bias in favour of the perpetrators. The burden of proof lies with the victim, who must prove that he has been tortured, rather than relying on effective investigations into the actions of law enforcement officers to prove that the ill-treatment could not have happened. It is a general principle in the European Court of Human Rights' case law that it is the responsibility of the state to explain how a person received their injuries. There is a growing consensus that independent and effective investigation into allegations of police torture and other ill-treatment will only be achieved if a completely separate and independent complaints procedure is established.

Amnesty International urges the government to establish an independent police complaints mechanism; this is also one of the priorities for the EU-Ukraine Association Agenda.

## 2.2 INDEPENDENT MONITORING OF PLACES OF DETENTION

One of the most effective ways to prevent torture and other ill-treatment is to ensure independent, regular and unannounced visits to places of detention, because torture and ill-treatment is more likely to take place when the perpetrators feel confident that they are not being monitored or held to account. The Optional Protocol to the UN Convention against Torture, and other Cruel, Inhuman and Degrading Treatment (OPCAT) adopted by the UN General Assembly on 18 December 2002 requires states parties to set up National Preventive Mechanisms (NPM) for the prevention of torture at the domestic level within one year of ratification. Ukraine was among the first countries to ratify OPCAT in September 2006; however, it has not yet lived up to its obligation to establish an NPM.

A proposal for a NPM is currently under discussion and in a meeting in January 2010 the Deputy Minister of Justice informed Amnesty International that it would be functional by January 2012. Amnesty International calls on the new President to ensure that the mechanism is fully in line with the requirements of the OPCAT by guaranteeing its functional independence and the independence of its personnel. It should include relevant experts and should be adequately funded. The mechanism should be established through a transparent process including broad consultation with civil society.

## 3. REFUGEES AND ASYLUM-SEEKERS: BETWEEN A ROCK AND A HARD PLACE

There is no adequate and fair asylum procedure in Ukraine and its asylum system fails to comply with international law. Migrants, refugees and asylum-seekers are subjected to a range of human rights violations. Most importantly, they are at risk of being forcibly returned to countries where they face persecution or serious human rights violations including torture or other ill-treatment (*refoulement*). Moreover, migrants are routinely detained without being able to challenge their detention; people in need of international protection are rarely granted asylum and there are no other forms of protection; they are subjected to considerable hardship because there is virtually no state support; and they are at risk of discrimination and racist attacks from state officials and members of the public. Consequently, many asylum-seekers consider that remaining in Ukraine is not an option and are compelled to repeatedly try to cross the border into the EU in order to access a fair hearing of their asylum claims and minimum basic levels of support.

In January 2010, the EU-Ukraine Readmission Agreement came into force. Since Ukraine is on a major migration route to the EU, this agreement allows EU states to return irregular migrants to Ukraine providing they entered the EU via Ukraine, and where there is no possibility of returning them directly from the EU country to their country of origin. Amnesty International is concerned that, in the wake of this agreement, increasing numbers of migrants, and potentially, asylum-seekers, will be returned to Ukraine where they face the risk of various human rights violations and will be left unprotected by an inadequate asylum system. There is also a risk that asylum-seekers will face *refoulement*; they will be sent to Ukraine on the false assumption that they will be provided with protection and may then be

returned to their country of origin where they face the risk of serious human rights violations. They may also face so-called, "chain *refoulement*", when they are sent to a third country from where they may be returned to their country of origin.

### 3.1 FAILURE OF THE ASYLUM SYSTEM

*"There is no functioning asylum system and Ukraine is not carrying out its obligations,"*  
Hebrew Immigrant Aid Society employee.

The Refugee and Asylum Affairs Department within the State Committee for Nationalities and Religion is the state body tasked with granting asylum. In the 11 years since it took on this responsibility, the asylum function has been restructured 10 times, each time resulting in serious gaps in protection for refugees and asylum-seekers. Most recently, a Cabinet of Ministers Decision of June 2008 transferred responsibility for Refugee and Asylum Affairs from the State Committee for Nationalities and Religion to the Ministry of Internal Affairs. However, the decision never took effect because it was vetoed by the President, with the result that the State Committee for Nationalities and Religion has remained without the authority to issue documents or grant status to refugees since August 2009. While the regional offices of the Refugee and Asylum Affairs Department continue to issue documents confirming the registration of asylum claims to asylum-seekers, approximately 300 asylum-seekers who issued an appeal against status determination decisions are left without documents. They risk harassment at the hands of police checking for irregular migration, or, in the worst case, deportation without having their asylum claim properly assessed. The Hebrew Immigrant Aid Society (HIAS), a UN Refugee Agency (UNHCR) partner organization in Kyiv, told Amnesty International that their staff had been called out 115 times between November 2009 and January 2010 to assist asylum-seekers who had been detained for not having identity documents.

#### **HAMIDULLO TURGUNOV**

Hamidullo Turgunov, an asylum-seeker from Andizhan in Uzbekistan, was last seen in Kyiv sometime around 24 December 2009. He had left Uzbekistan for Russia in the wake of a series of attacks on government buildings and officials in the Ferghana Valley in May 2009. Following the attacks 170 people in his village were reportedly rounded up. Many are believed to have been detained without charge or trial and some were reportedly subjected to torture or sentenced after unfair trials. Khamidullo Turgunov applied for asylum in Ukraine in November 2009, and the Kyiv Migration Services Office rejected his application. He appealed against this rejection on 9 December, and in line with established practice his asylum-seeker identity documents were removed, but he was not issued with any replacement documents proving his status in Ukraine. His friends became suspicious when he failed to answer his phone and they found that his possessions were still in his flat. On 3 January, his relatives informed his friends in Kyiv that he was in prison in Tashkent, Uzbekistan.

An extremely low number of asylum applications are ever successful in Ukraine. In 2007, 2,272 people applied for asylum and only 33 people were granted refugee status (0.7 per cent). Part of the reason for this is that most cases are rejected in the first instance as manifestly unfounded without ever being seriously considered and without giving any reason. Furthermore, in the course of 2009, the Prosecutor General's Office exercised its prerogative to supervise the activities of lower courts and all state bodies, and lodged a protest with the Refugee and Asylum Affairs Department against 20 refugee status decisions granting asylum, thus overturning them.<sup>4</sup>



Those who are not granted refugee status according to the 1951 Convention relating to the Status of Refugees (Refugee Convention), but who cannot return to their country of origin because they would be at risk of serious harm in violation of international human rights standards, should be offered complementary protection measures as required by the *non-refoulement* principle enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the UN Convention against Torture. However, Ukrainian law does not provide for such protection.

### 3.2 DETENTION OF MIGRANTS AND ASYLUM-SEEKERS

According to international human rights standards, detention of migrants and asylum-seekers is only lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that alternatives will not be effective, that it is on grounds prescribed by law, and when there is an objective risk of the person absconding. The individuals concerned should also be provided with an effective opportunity to challenge the decision to detain them, and detention should be subject to regular review.

Migrants, including asylum-seekers, who enter the country without the necessary travel documents, are routinely detained on the basis of administrative offences pending deportation. There are two Migrant Accommodation Centres, one in Rozsudov on the eastern border and one in Zhuravichi on the western border where migrants can be held for up to six months. These so-called “accommodation centres” are intended for detention pending deportation; however, out of the 468 migrants detained in Rozsudov “accommodation centre” in 2009, only 197 were deported, and the rest were either released on the expiration of their six-month sentence, granted refugee status or voluntarily repatriated. Migrants are also detained at Boryspil airport, including in the departure lounge, but without a court order, as they are considered not to have entered Ukrainian territory.

Amnesty International is concerned about the limited access of non-governmental organizations (NGOs) and asylum lawyers to the detainees in the “accommodation centres” and in the airport, as well as the possible detention of vulnerable individuals, including minors. The organization is also concerned that asylum-seekers and migrants may not be able to challenge the lawfulness of their detention.

Although there is a border guard detention centre at Boryspil airport, in practice migrants are detained in a waiting room next to the smoking area in the departure lounge. There are no facilities and they are taken under guard to the public toilets nearby. It was in this area that a group of Afghan women and children was held for 12 days in November 2009, and a Palestinian asylum-seeker, Hizhazi Mohammed Zidan, was held for almost six months in 2009. Amnesty International is concerned that being held in these conditions for long periods constitutes cruel and inhuman treatment.

*“They just want a decent life”, airport staff.*



Detention area in departure lounge of Boryspil airport © Amnesty International

### 3.3 FORCIBLE RETURN

As a state party to the Refugee Convention, the Convention against Torture, the International Covenant on Civil and Political Rights and the ECHR, Ukraine has an obligation not to return anyone to a country where their life or freedom would be at risk, or where they would be subjected to serious human rights violations including torture. Ukraine is also required to ensure that all asylum-seekers have access to a full and fair refugee status determination procedure allowing them to document their fear of persecution.

Despite this, Ukraine has repeatedly forcibly returned asylum-seekers and even recognized refugees to countries where they were at risk of being subjected to grave human rights violations. In February 2006, 10 asylum-seekers from Uzbekistan were forcibly returned; in March 2008, a group of ethnic Tamil asylum-seekers was returned to Sri Lanka; in September 2009 a group of Congolese nationals was returned despite the fact that one of them had asked for asylum in Ukraine; in November 2009 a group of Afghan women and children who spent 12 days in the airport departure lounge was deported to the United Arab Emirates, a country that has not ratified the Refugee Convention. In this last case the applications for asylum were rejected and they were not given the chance to appeal. The cases that have come to the attention of Amnesty International represent a small number of the asylum-seekers whose right to asylum has been violated in Ukraine.

Amnesty International is asking for the new President's assurance that his administration will introduce a fair asylum procedure and will respect the right to international protection.

## 4. RACIAL DISCRIMINATION: LEARNING TO LIVE WITH DIFFERENCE

*“Please ask the President to stop people beating foreigners in Ukraine”.  
Somali asylum-seeker in Vinnytsya in January 2010*

As a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (Convention on Racial Discrimination), Ukraine has committed itself to prohibit and eliminate racial discrimination by all appropriate means. Despite some progress by the Ukrainian authorities, minorities continue to be subjected to attacks on the basis of their racial, ethnic or religious identity. These range from verbal abuse to serious physical attacks and even murder. Anybody who looks “different” is also liable to face frequent document checks by the police, which may result in extortion or other violations. Amnesty International is concerned that institutional policies and practices, and societal attitudes perpetuate a culture of racial discrimination against ethnic minorities and continue to secure a climate of impunity for the perpetrators.

In its July 2008 report (*Ukraine: Government must act to stop racial discrimination*, EUR 50/005/2008) Amnesty International made a series of recommendations to the Ukrainian government to help it fulfil its international human rights obligation to eliminate racial discrimination. The report drew attention to a lack of coordination and absence of a clear state policy to combat racism. In August 2008 an Inter-Ministerial Working Group to combat xenophobia and racial intolerance was set up under the jurisdiction of the State Committee for Nationalities and Religions. However, Amnesty International has expressed concern that the working group did not have the necessary authority and resources to be effective, and has recommended that its terms of reference should be approved at the level of Cabinet of Ministers, and that they be accompanied by an adequate budget for the Working Group's activities. These concerns must now be addressed.

### 4.1 PROSECUTION AND RECORDING OF RACIST CRIMES

Under the Convention on Racial Discrimination states parties are obliged to ensure that all crimes committed on the basis of race or ethnic origin are prosecuted. Furthermore, the European Court of Human Rights has pointed out that racial violence is particularly destructive to fundamental human rights, and for this reason governments have a special duty to establish whether or not ethnic hatred or prejudice may have played a role in criminal acts, and not to treat racist crimes on an equal footing with other crimes (European Court of Human Rights, *Nachova and Others v Bulgaria*, Judgment, 6 July 2005, p.30).

Amnesty International remains concerned that the Ukrainian authorities prosecute racist crimes as ordinary crimes. The two articles of the Criminal Code which refer specifically to racist crimes, Article 161 and Article 67, are rarely used and many racist crimes are prosecuted as “hooliganism” leaving the racist motive unrecognized and unrecorded. According to the Diversity Initiative, a group of local NGOs and Inter-governmental organizations in Ukraine, out of the 11 investigations into racist incidents opened in 2009, nine were classified as “hooliganism”.

In November 2009 changes were made to six articles of the Criminal Code including Article

115 (murder), Article 121 (grievous bodily harm) and Article 127 (torture) to include a reference to racial motivation as an aggravating factor. The maximum punishment under Article 161 (Violation of citizens' equality based on their race, nationality or religious preferences) was also increased from five to eight years.

However, the true extent of racist crimes in Ukraine remains hidden. There are no accurate statistics on the number of racially motivated crimes and racist incidents reported, nor are there any statistics about how many of those complaints were actually prosecuted and under what charges. In November 2009, the Ministry of Internal Affairs replied to an enquiry from Amnesty International stating that only two racist crimes had been recorded during the first nine months of 2009. This figure refers only to those crimes qualified under Articles 161 (Violation of citizens' equality based on their race, nationality or religious preferences) and 180 of the Criminal Code (Interference in Religious Ritual), and gives no indication of the scale of the problem.



Zhulyavska market in Kyiv where many migrants and asylum-seekers work © Amnesty International

#### 4.2 POLICE EXTORTION AND RACIAL PROFILING

Anyone who belongs to an ethnic minority or who looks “different” is vulnerable to document checks by the police. These checks are carried out ostensibly to control irregular migration,

but they can lead to arbitrary detention, extortion or other abuses at the hands of the police. According to Article 11 of the Law on the Police of Ukraine, the police have the right to ask for identification documents from any person they suspect of having committed a crime, but many people are stopped by the police for no other reason than their appearance. Refugees and asylum-seekers are particularly vulnerable to such abuses.

### **POLICE EXTORTION IN VINNYTSYA**

In interviews recorded by the Vinnytsya Human Rights Group three asylum-seekers from Somalia, including Ismail Abdi Ahmed, stated that they were detained and taken to a police station on 28 February 2009, where two of them were beaten by police officers, reportedly in revenge for the kidnapping of Ukrainian sailors by Somali pirates. The allegations were denied by the Vinnytsya District Prosecutor's office. The UNHCR received an assurance from the Prosecutor General's office that another investigation would be conducted but no results were ever communicated. Later the Vinnytsya Human Rights Group was informally notified that the two alleged perpetrators were no longer employed by the police. Ismail Abdi Ahmed and Ibrahim Muhammad Abdi told Amnesty International that they were approached by three men in plain clothes outside their apartment building on 29 January 2010, and asked to show their documents. Ismail Abdi Ahmed recognized two of the three men as the same police officers who were involved in the incident on 28 February 2009. The three men then went with Ismail Abdi Ahmed and Ibrahim Muhammad Abdi to their flat where they forced their way in without identifying themselves or producing a search warrant. They searched the entire flat and threatened to take away a laptop and digital camera, claiming that they would have to work for months to be able to afford such items. They took US\$250 from the pocket of a pair of jeans belonging to Ibrahim Muhammad Abdi, money which was reportedly used collectively by the residents in the apartment. Throughout the search, the men in plain clothes called the Somali men 'pirates'.

There has been a growing awareness within the Ministry of Internal Affairs of the need to counter not only racial discrimination by members of the public, but also racist discrimination by police officers. In January 2010, a draft Plan to Combat Racism, Xenophobia and Discrimination was being prepared by the Human Rights Department within the Ministry of Internal Affairs, and it contained recommendations to counter racial profiling by police officers as well as proposals for training and awareness-raising among employees of the Ministry. A series of trainings to be conducted by the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been planned for over a year and has still not taken place.

Decisive action is urgently needed to eliminate racial discrimination from state policies and practice, protect individuals from racial discrimination by state and non-state actors and ensure that the right to live free from racial discrimination is enjoyed by all who live in Ukraine.

## 5. RECOMMENDATIONS

Amnesty International urges President Viktor Yanukovich to take the following steps:

### **Torture and other ill-treatment**

- Provide for statistics on the number of complaints of torture and ill-treatment and how they have been dealt with to be published regularly, in order to identify patterns of violations and to establish appropriate remedial action;
- Ensure that Ukraine fulfils its obligations as a state party to the Optional Protocol to the UN Convention against Torture by setting up a National Preventative Mechanism (NPM) to monitor places of detention; the NPM should be established through a transparent process including broad consultation with civil society; it should be functionally independent, include relevant experts and be adequately funded; it should have the mandate to make regular and unannounced visits to all places of detention;
- Establish a fully-resourced independent agency to investigate all allegations of human rights violations by law enforcement officers, including the police;
- Continue the process of bringing legislation into line with Council of Europe standards and in accordance with the EU-Ukraine Association Agenda, including passing the new Criminal Procedural Code and reforming the role of the Prosecutor General.

### **Refugees and asylum-seekers**

- Establish a functioning fair asylum system empowered to make refugee status decisions and to issue identity documents to refugees and asylum-seekers promptly at all stages of the procedure;
- Ensure that in all cases Ukraine fully complies with its obligations under the Refugee Convention, the Convention against Torture, and the ECHR, in particular the obligation not to return refugees and asylum-seekers to countries where they would be at risk of grave human rights violations;
- Ensure that irregular migrants and asylum-seekers are detained only in exceptional circumstances, based on an individual assessment of necessity and proportionality and only after other alternatives have been considered.

### **Racial Discrimination**

- The Inter-Ministerial Working Group to combat xenophobia and racial intolerance should be given the necessary authority and resources to function effectively and should be approved at the level of the Cabinet of Ministers;
- Ensure that all incidents of racially motivated crimes across Ukraine are monitored and recorded accurately, that this information is made available to all government departments, NGOs and the wider public. The monitoring should follow a clear methodology of what constitutes a racist attack, in accordance with international standards;
- Ensure that crimes which are racially motivated are effectively and thoroughly investigated and prosecuted as such;
- Develop clear guidelines and training for police, prosecutors and judges who deal with cases of racial discrimination. Guidelines should be informed by and comply with Ukraine's obligations under international human rights law.



## ENDNOTES

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1 *Unlawful violence in law-enforcement agencies of Ukraine: results of the sociological survey*, Kharkiv Institute for Social Research, March 2010.

2 *Ukraine: Combating impunity – the effective investigation of allegations of ill-treatment inflicted by the police*, Jim Murdoch, Council of Europe, April 2010.

3 Report to 2001 session of the UN Commission on Human Rights E/CN.4/2001/66, para 1.

4 This function of general oversight of legality that is exercised by the Prosecutor General’s Office has been criticized by the PACE co-rapporteurs on Ukraine, in their March 2010 report on their visit to Kyiv in December 2009, as a “remnant of Soviet legislation and which runs against European standards”.



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Following his inauguration on 25 February 2010, President Victor Yanukovich has the opportunity to build on past progress in human rights and address some outstanding concerns: torture and other ill-treatment in police custody, the rights of refugees and asylum-seekers, and racial discrimination.

Despite some progress towards bringing its legislation into line with international and Council of Europe human rights standards, serious human rights violations are still taking place. There is widespread impunity for torture and other ill-treatment, asylum-seekers are at risk of being forcibly returned to countries where they face human rights violations, and visible minorities face discrimination and racist attacks from members of the public and officials.

At his inauguration, President Yanukovich promised "to put deeds before words". Amnesty International asks him to live up to this promise, and to act now to ensure that Ukraine upholds its international human rights commitments in practice.

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