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Dear Members of Parliament

**RE: UKRAINE'S NEW PARLIAMENT MUST ADDRESS COUNTRY'S APPALLING HUMAN RIGHTS RECORD**

Once you take office today, just two days after the world celebrated International Human Rights day, you have a five year opportunity to make a real difference to your country. For too long successive Ukrainian parliaments have failed to adequately address the abuse of its citizens' rights at the hands of the officials that should be accountable to them.

In the 20 years since it gained independence Ukraine has made some progress towards establishing the rule of law and improving its legislation, but the country is still taking too long to fulfill some of the most basic human rights promises it made when joining the Council of Europe in 1995.

Torture and ill-treatment remains widespread, and impunity for such acts continue. Failings in the criminal justice system lead to lengthy periods of pre-trial detention, and there are not enough safeguards for detainees. Refugees and asylum-seekers risk detention and forcible return to countries where they face human rights violations. Lesbian, gay, bisexual and transgender people are not protected from discrimination, and could even face prosecution for exercising their right to free expression if draconian new laws are introduced outlawing 'homosexual propaganda'.

Amnesty International is urging the Ukrainian Parliament to address the issues below and start fulfilling its international human rights obligations.

**I. TORTURE AND OTHER ILL-TREATMENT IN POLICE CUSTODY**

According to some estimates, hundreds of thousands of people in Ukraine may be victims of police abuse each year. Violations range from minor infringements of the criminal procedural code, to racial abuse, extortion, torture and other ill-treatment, and deaths in custody. One year since Amnesty International launched its report "No Evidence of a Crime: Paying the Price for Police Impunity in Ukraine" in October 2011 we continue to receive allegations of torture and other ill-treatment from those who suffer at the hands of the police. The Ukrainian people desire and deserve better and will be looking to you to push through the necessary legislative reforms.

Failures in effectively investigating allegations of such violations and in bringing disciplinary and criminal proceedings against those responsible has led to a climate of impunity, undermining the principle that no one, including the police, is above the law, and leaving victims without an effective remedy and reparation.

Amnesty International considers that the prevalence of impunity is the result of a lack of independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with

allegations of torture and ill-treatment. Investigations into complaints against police are carried out by the Public Prosecutor's office. Although the Public Prosecutor is structurally independent, it is not functionally independent or impartial: through their work on criminal investigations prosecutors often have very close personal links with police officers, and may be reluctant to pursue complaints.

The UN Convention against Torture states that torture allegations should be promptly and impartially investigated by competent authorities and the European Court of Human Rights has found in numerous cases against Ukraine that torture allegations were inadequately investigated. It has also ordered in many of its judgments that Ukraine take urgent action to address the failure to investigate torture by police officers. For examples see *Zakharkin v. Ukraine*, *Samardak v. Ukraine*, or *Bocharev v. Ukraine*.

In order to fulfill its obligations under the Convention Against Torture, and to comply with the European Court instructions, and not least to protect the rights of Ukrainian citizens, Ukraine should establish a fully resourced independent agency to investigate all allegations of human rights violations by law enforcement officers, including the police. Such an agency should comply with the five principles of independence, adequacy, promptness, public scrutiny and victim involvement, as elaborated by the European Court of Human Rights, and should have no hierarchical or institutional links with the police or government.

There is already an opportunity before the Ukrainian parliament to do so. Article 216 of the new Criminal Procedural Code provides for a State Investigation Bureau which will investigate, among others, crimes committed by law enforcement officers. Parliament should ensure that the proposal for a new State Investigation Bureau will be designed in a way that it will be able to ensure independent, impartial and effective investigations of crimes by law-enforcement officials.

Ukraine must also carry out a radical reform of its police force to ensure greater internal accountability of individual police officers and of the institution of the police as a whole.

#### **Recommendations:**

- Parliament should legislate to establish, as a matter of priority, a fully-resourced independent agency to investigate all allegations of human rights violations by law enforcement officers, including the police, within the State Investigation Bureau framework. Such an agency should:
  - Comply with the five principles of independence, adequacy, promptness, public scrutiny and victim involvement, as elaborated by the European Court of Human Rights;
  - Have no hierarchical or institutional links with the police and operate completely independently from the government, and the police;
  - Be adequately resourced and staffed, including with its own body of independent expert investigators, and headed by individuals of acknowledged competence, expertise, independence, impartiality, and integrity;
  - Be mandated to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody, torture and other ill-treatment, and racial discrimination, including investigations on their own initiative in the absence of a specific complaint;
  - Have all necessary powers, including that of immediate access to police premises or other relevant locations and the power to summon witnesses and to order the production of evidence and documents;
  - Refer matters to the criminal prosecutor and/or to the police internal disciplinary body, as appropriate, and have the power to order the initiation of disciplinary proceedings and to require the disciplinary body to report back to it on the outcome of such proceedings;
  - Recommend appropriate action in respect of the police system overall.
  
- Parliament should amend Article 127 of the Criminal Code to ensure that it accurately reflects all elements of the definition of torture as set out in Article 1 of the Convention against Torture.
  
- Parliamentarians should condemn explicitly and unequivocally torture and other ill-treatment.

## **II. DISCRIMINATION - THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS**

In October, the Ukrainian parliament passed through its first reading Draft Law No. 8711 “On amendments to some legislative acts (to protect the right of children to a safe information environment)”. The Law proposes to ban any production or publication of products promoting homosexuality, the use of media, TV or radio broadcasting, distribution of publications, the import, production or distribution of creative writings, cinematography or video materials “promoting” homosexuality.

If enacted the law would directly contravene Ukraine’s obligations under European and international human rights treaties to protect the right to non-discrimination, including on the ground of sexual orientation, to equality before the law, and to freedom of expression, association and peaceful assembly. If adopted, the law will also violate the rights of children to access information.

Amnesty International would like to remind Members of Parliament that LGBT rights are human rights. The Ukrainian State has voluntarily accepted an obligation before the international community to protect, respect and fulfill human rights. If it is to live up to European and international human rights standards, the Ukrainian government must strive to create a society in which diversity is viewed not as a threat, but as a source of enrichment for society as a whole.

### **Recommendation:**

- To reject the adoption of Draft Law No. 8711 on the grounds that this law would restrict the rights of children to seek, receive and impart information and ideas of all kinds and result in discriminatory treatment of lesbian, gay, bisexual and transgender people including by violating their right to freedom of expression, association and peaceful assembly, and to equality before the law.

## **III. INTERNATIONAL JUSTICE**

At the review of Ukraine’s national report as part of the Universal Periodic Process on 24 October, government representatives stated that Ukraine remained committed to the idea of the establishment of an international court. However, no steps were taken to make the necessary legislative changes to implement the Roma Statute of the International Criminal Court and the Agreement on Privileges and Immunities to which Ukraine acceded on 20 January 2000 and 29 January 2007 respectively.

### **Recommendation:**

- To make the necessary constitutional changes to ratify the Rome Statute of the International Criminal Court, and to draft legislation to implement Rome Statute and the Agreement on Privileges and Immunities.

## **IV. OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

On 24 September 2009 Ukraine signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. However, no steps were taken to ratify this document.

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is an international treaty establishing complaint and inquiry mechanisms for the International Covenant on Economic, Social and Cultural Rights.

**Recommendation:**

- To ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

**V. REFUGEES AND ASYLUM SEEKERS**

Amnesty International is concerned by the continued failure by the Ukrainian authorities to respect the rights of asylum-seekers and refugees. In particular the Ukrainian authorities continue to return refugees and asylum-seekers to countries where they may face serious human rights violations in violation of the principle of non-refoulement, and fail to provide full and fair refugee status determination procedures.

On 8 July 2011, Ukraine adopted a new law on “refugees and persons in need of complementary protection”. This law improves the status of refugees, simplifies documentation for asylum-seekers, and introduces the concept of complementary protection for those who do not fall strictly within the definition of a refugee under the UN Convention Relating to the Status of Refugees. However, it falls short of international standards by not offering complementary protection for reasons of international or internal armed conflict.

**Recommendations:**

- To amend the law on refugees and persons in need of complementary protection to provide complementary protection in the context of international or internal armed conflict, in line with international standards;
- To ensure that legislation protects the rights of refugees and asylum-seekers in line with Ukraine's international human rights obligations, and that extradition procedures take into account whether a person is an asylum-seeker or not.

**VI. SUMMARY**

Amnesty International calls on members of the Ukrainian parliament to ensure that Ukraine's international human rights obligations are reflected in all legislation.

Amnesty International is looking to the new parliament to uphold the human rights and fundamental freedoms of the Ukrainian people and to ensure that every person in Ukraine enjoys every right enshrined in the Universal Declaration of Human Rights, as well as the other international human rights treaties to which Ukraine is a party.

Enclosed you will find the Universal Declaration of Human Rights which we hope you will refer to constantly while acting as a Member of the Verkhovna Rada.

Yours sincerely

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