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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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## INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee (the Committee) ahead of its examination of Ukraine's seventh periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant). The document highlights the main aspects of Amnesty International's on-going human rights concerns in Ukraine in relation to a number of questions on the Committee's list of issues to be taken up in connection with its review of the state report.<sup>1</sup>

Further details on these concerns can be found in the Amnesty International publications enclosed with this briefing:

*Nothing to be proud of: Discrimination against LGBTI people in Ukraine*, AI Index: EUR50/005/2013, April 2013, <http://www.amnesty.org/en/library/info/EUR50/005/2013/en>

*"No evidence of a crime": Paying the price for police impunity in Ukraine*, AI Index: EUR50/009/2011, October 2011, <http://www.amnesty.org/en/library/info/EUR50/009/2011/en>

*Ukraine: Don't stop halfway: Government must use new Criminal Procedure Code to end torture*, AI Index: EUR50/004, 2013, April 2013, <http://www.amnesty.org/en/library/info/EUR50/004/2013/en>

## RIGHT TO LIFE; PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, LIBERTY AND SECURITY OF PERSON, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTS. 6, 7, 9 AND 10)

The new Criminal Procedural Code which came into force in November 2012 significantly improves safeguards for detainees; it clarifies that detention starts from the moment of apprehension by the police; that detainees have the right to a lawyer and to an independent medical expert from that moment; and clearly states that pre-trial detention should only be applied in exceptional circumstances, in line with Council of Europe recommendations during preparation of the law. It also provides for automatic review of the continuing justification for pre-trial detention at two-monthly intervals and stipulates that confessions made to police outside the court are no longer admissible in court thus reducing one incentive for police to torture.

However, concerns remain that a lawyer is only mandatory in cases of especially grave crimes that entail a penalty of more than 10 years in prison, and that free legal aid is also only available in cases where a lawyer is mandatory.

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<sup>1</sup> Ukraine's seventh periodic report on its implementation of the ICCPR (UN Doc. CCPR/C/UKR/7, 16 September 2011) is available at: [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.UKR.7\\_en.doc](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.UKR.7_en.doc); for the Committee's list of issues to be taken up in connection with the examination of the state report (UN Doc CCPR/C/UKR/Q/7, 23 November 2012) see: [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-UKR-Q-7\\_en.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-UKR-Q-7_en.pdf).

Also, there are continuing reports of cases of torture and other ill-treatment by law enforcement officers that do not take place in the context of criminal investigations, and where the provisions of the new Criminal Procedural Code cannot offer protection; for example where police resort to torture and other ill-treatment for the purposes of retaliation, or extortion, or against those detained under the provisions of the Administrative Code.

For example, **Mikhail Belikov**, a retired miner, was tortured by police officers from Petrovskiy District police station in Donetsk on 17 June 2012. He was approached by three duty police officers in a park for drinking in public. He reported that he was beaten in the park and then taken to the Petrovskiy District sub-police station, where a fourth duty police officer raped him with a police baton while three other policemen held him down. A more senior officer told him to forget what had happened, and asked him to pay 1,500 hrynya (€144) to be released. He agreed to pay and was released without charge. That night his condition worsened considerably. He was taken to hospital where doctors found that he had suffered serious internal injuries, and he would require a temporary colostomy. In March 2013 the police officer who had raped him was sentenced to 10 years imprisonment for torture under Article 127 of the Criminal Code, and two further officers were handed down suspended sentences under Article 365 of the Criminal Code.

## IMPUNITY – CONCERNING QUESTIONS 13 AND 14 ON THE LIST OF ISSUES

*13. Please comment on the limited number of investigations and actual convictions under article 127 despite the high number of complaints of torture and ill-treatment received (CCPR/C/UKR/7, paras. 76-80), and provide updated information on the number of reported cases of torture and ill-treatment, the investigations and prosecutions initiated, the number of actual criminal convictions and the compensation awarded. What practical steps have been taken to guarantee the right of inmates to submit complaints and to ensure that complainants are not subject to reprisals?*

*14. In light of the Committee's previous concluding observations (CCPR/C/UKR/CO/6, para. 7), please provide information on the steps taken to set up an independent police complaints mechanism and indicate whether videotaping of interrogations of criminal suspects was made mandatory. Please also outline any concrete measures taken to reform the General Prosecutor's Office in order to ensure its independence and impartiality.*

Article 127 of the Criminal Code covers the crime of torture, and carries a maximum sentence of 10 years, but it refers to torture as a general crime that can be committed by anyone and does not specifically refer to state actors as perpetrators. In 2009, the reference to torture committed by public officials as an aggravating factor was removed from the Criminal Code and replaced with torture committed "for reasons of race, national or religious intolerance". Very many incidences of serious crimes amounting to torture and other ill-treatment by police are prosecuted under Article 365 of the Criminal Code ("Exceeding authority or official powers"), which carries a sentence of three to 10 years depending on the gravity of the offence. Any prosecutions under other articles, however, are not recorded as prosecutions for torture and other ill-treatment, thus concealing the scale of the problem.

The new Criminal Procedural Code provides the Ukrainian government with the opportunity to establish an independent police complaints mechanism. Article 216 of the Code provides for a State Investigation Bureau to investigate crimes committed by judges, law enforcement officers and high level officials and allows five years for its establishment. The establishment of such a bureau could potentially improve the effectiveness of investigations into torture allegations by removing the conflict of interest inherent in the role of the General Prosecutor's Office. However, no progress has yet been made towards its creation, and until the bureau is established, investigations into crimes by officials, and in particular by law enforcement officers, continue to fall short of the standards of independence, adequacy, promptness, public scrutiny and victim involvement required by the European Court of Human Rights. It is regrettable that the Ukrainian government response to the list of issues does not provide information on progress towards the establishment of an independent police complaints mechanism.

Despite the new Criminal Procedural Code victims of torture and other ill-treatment continue to experience difficulty in obtaining redress. Prosecutors continue to close investigations without taking into account the evidence presented by victims. Out of 114,474 complaints made to prosecutors about the police in 2012, only 1,750 were investigated leading to only 320 prosecution cases being opened against 438 police officers.

**Olexander Popov** was detained by four plain clothed police men at about 9am on 16 October 2012 in Mariupol. Police officers handcuffed him, forced a plastic bag over his head and drove him to a forest where they electrocuted him for several hours, using different voltages, intermittently through his feet and little fingers. He was asked a series of questions in connection with a murder investigation. Between 5 and 6pm he was taken to Mariupol City police station, but his presence in the station was not registered in violation of the Criminal Procedural Code. He was transferred to Illichivskiy District police station at about 6pm where his presence was properly recorded, and he was formally interviewed before release. On 17 October Olexander Popov and his brother submitted a complaint to the Mariupol Prosecutor's Office. On 21 November an investigation was opened into "abuse of power with violence" under Part 2 of Article 365 of the Criminal Code. On 13 March 2013 the prosecutor closed the case on the basis that the police officers' testimony contradicted Olexander Popov's testimony.

## DEATHS IN CUSTODY – CONCERNING QUESTION 11 ON THE LIST OF ISSUES

*11. Please clarify whether any of the cases of deaths in custody listed in paragraph 7 of the Committee's previous concluding observations (CCPR/C/UKR/CO/6) have been resolved. Please also provide statistics on the number of cases of death in custody since 2006 and on the measures taken to investigate, prosecute and convict those responsible, including in the cases of Ihor Indylo and Tamaz Kardava.*

Amnesty International is concerned that the investigation into the death of **Ihor Indylo** has failed to satisfactorily explain how Ihor Indylo died, and that the punishments handed down to the police officers concerned do not reflect the gravity of the crime. On 5 January 2012, police officer Serhiy Prikhodko received a five-year suspended sentence for abuse of office for failing to follow procedures during the detention of Ihor Indylo, who died in police custody in Shevchenkivskiy police station in Kyiv in May 2010. A second police officer, Serhiy

Kovalenko, benefited from an amnesty in December 2011 on the basis that he had a young child. On 14 May 2012, the Kyiv Appeal Court cancelled both the suspended sentence and the amnesty, and returned the case for further investigation. On 29 October 2012, the Kyiv Appeal Court again asked for an additional investigation.

## **NON-DISCRIMINATION, EQUALITY BETWEEN MEN AND WOMEN, PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED AND RIGHTS OF MINORITIES (ARTS. 2, 3, 20, 26 AND 27)**

### **LEGISLATION – CONCERNING QUESTION 3 ON THE LIST OF ISSUES**

*3. Please indicate whether the State party plans to include in the Constitution the right to equality and non-discrimination for all, but not just for citizens. Please also clarify whether the Law on the principles of preventing and combating discrimination adopted on 6 September 2012 (a) addresses discrimination in all areas of life; (b) defines direct and indirect, as well as de facto and de jure discrimination; (c) contains a comprehensive list of grounds for discrimination, including discrimination based on sexual orientation and gender identity; (d) provides for remedies to victims of discrimination and (e) establishes a mechanism for the effective implementation of its provisions in practice.*

The government's attempts to bring Ukraine into line with international and European standards on the protection of human rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) people have unleashed vociferous opposition from religious and conservative groups in society. In February 2013, the law "On Principles of Prevention and Combating Discrimination in Ukraine" was passed by parliament. In March 2013, the government presented parliament with amendments to the law, which among other things also included a ban on discrimination on the basis of sexual orientation in employment, however, the law does not cite sexual orientation and sexual identity as forbidden grounds for discrimination.

### **RIGHTS OF LGBTI PEOPLE – CONCERNING QUESTION 5 ON THE LIST OF ISSUES**

*5. In light of reports about attacks and discrimination against lesbian, gay, bisexual or transgender (LGBT) persons, including violence, threats, illegal arrests and extortion by law enforcement bodies please outline the steps taken to combat discrimination and social exclusion of LGBT persons. Please provide information on the status of the following draft laws and explain whether these laws are compatible with the Covenant: (a) draft law No.10290, that bans the "promotion" of homosexuality; (b) draft law No. 8711 (adopted by the parliament at first reading on 2 October 2012), concerning the ban imposed on any production or publication of products "promoting" homosexuality, which provides for fines or deprivation of liberty of up to five years.*



In October 2012, parliament passed the first reading of draft law 8711 (now 0945), which would ban any production or publication of products “promoting homosexuality”, including the use of media, television or radio broadcasting; the printing or distribution of publications; the import, production or distribution of creative writings, cinematography or video materials. The law foresees fines or prison sentences of up to five years. On 23 May 2013, the Parliamentary Committee on Freedom of Expression and Information recommended to parliament to reject the bill stating that it had “lost its relevance”.

Another draft law (No. 1155, formerly 10290) is still awaiting discussion. It would introduce measures “to ensure the healthy moral, spiritual and psychological development of children, promote the idea that a family consists of a union between a man and a woman” and to “overcome the demographic crisis”. The law would ban the promotion of homosexual relations, and provides an exhaustive list of activities that would fall under the ban, including meetings, parades, actions, pickets, demonstrations and other mass gatherings aimed at disseminating positive information about homosexuality. The law also bans any educational activities regarding homosexuality or, presumably, the lives of LGBTI individuals, and any messages, articles or appeals in the media that refer to diverse sexualities. Both laws would discriminate against LGBTI people and severely limit their rights to freedom of expression and assembly.

Furthermore, Ukraine is failing to take into account the discriminatory nature of hate crimes against LGBTI people, as it does not record such crimes adequately, and has been slow to investigate them. Amnesty International has previously drawn attention to the inadequacy of government regulation and action dealing with hate crimes based on race. Hate crimes based on sexual orientation or gender identity are also not addressed adequately by the government.

Article 161 of the Criminal Code criminalizes “Violations of citizens’ equality on the basis of racial, national origin or religious conviction.” Part one of the article outlaws “direct or indirect restriction of rights or privileges of citizens” based on race, colour, political, religious or other beliefs, gender, ethnic and social origin, property, residence, language or other grounds. It does not refer to violent actions directed against people because of their sexual orientation or gender identity. In most cases hate crimes against LGBTI people are prosecuted as ordinary crimes such as hooliganism or murder and the homophobic motive is not recorded or taken into consideration when sentencing the perpetrators of hate crimes.

## **REFUGEES AND ASYLUM SEEKERS (ARTS. 7, 9 AND 13)**

### **REFOULEMENTS – CONCERNING QUESTION 21 ON THE LIST OF ISSUES**

*21. According to information available to the Committee, the State party continued to expel or deport aliens to countries where they faced a risk of torture or ill-treatment, without a proper determination of their claims and without the possibility of appeal against negative decisions, despite the Committee’s recommendation to the contrary (CCPR/C/UKR/CO/6, para. 9). Please provide information on the measures taken to ensure the effective protection against refoulement in practice. Please comment on the information before the Committee that authorities at border points deny entry to persons expressing the need for refugee protection, exposing them to refoulement.*

Ukraine continues to breach its international human rights obligations under the UN Refugee Convention and the Convention against Torture by complying with extradition requests even in cases where the individuals concerned were recognized refugees or asylum-seekers.

**Ruslan Suleymanov** had moved to Ukraine in November 2010, fearing an unfair trial, torture and other ill-treatment in Uzbekistan, after the construction company he worked for was targeted by rival business interests. He was detained in Ukraine on 25 February 2011, and in May 2011 the General Prosecutor's Office confirmed his extradition to Uzbekistan to stand trial for alleged economic crimes. Although his application for asylum in Ukraine was rejected, he had been recognized by UNHCR, the UN refugee agency, as a refugee, and they were actively seeking his resettlement to a third country. On 20 September 2012, the Ukrainian authorities returned Ruslan Suleymanov to Uzbekistan, in violation of Ukraine's obligations under the UN Convention against Torture and the UN Refugee Convention. He remained in pre-trial detention in Tashkent, the capital of Uzbekistan, at the end of the year.

On 19 October 2012, **Leonid Razvozhayev**, a Russian citizen and aide to Russian opposition MP Ilya Ponomaryov, was reportedly abducted by Russian law enforcement officers from outside the offices of an NGO in Kyiv, where he had gone for legal assistance and advice in order to apply for asylum in Ukraine. On 22 October, Leonid Razvozhayev alleged that he was subjected to torture and other ill-treatment upon his return to Russia to force him to incriminate himself and other opposition activists in planning mass disorder. On 25 October 2012, a spokesman for the Ministry of Internal Affairs confirmed that Leonid Razvozhayev had been abducted "by law enforcement officers or law enforcement officers of another state". He stated that this was not a criminal matter, but "a matter of co-operation between law enforcement agencies, about which I know nothing."

## **FREEDOM OF RELIGION AND BELIEF, FREEDOM OF EXPRESSION AND ASSOCIATION, RIGHT OF PEACEFUL ASSEMBLY (ARTS. 2, 18, 19, 21 AND 22)**

### **FREEDOM OF PEACEFUL ASSEMBLY – CONCERNING QUESTION 28 ON THE LIST OF ISSUES**

*28. Please indicate whether the draft Act on organizing and holding peaceful events has been adopted (CCPR/C/UKR/7, para. 216), and whether it complies with the Covenant. Please also provide information on its implementation in practice, including on sanctions provided for violations of the right of peaceful assembly and their application in practice.*

While the Constitution guarantees freedom of assembly there are no other laws regulating freedom of peaceful assembly in Ukraine and consequently it is unclear what the procedures are for holding public demonstrations. In the absence of a national law on freedom of peaceful assembly, courts in Ukraine refer to local authority regulations or to the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics (USSR) of 28 July 1988 on the procedure for organizing and holding meetings, rallies, street marches and

demonstrations in the USSR. The Decree is not in line with international standards on freedom of assembly in that it requires organizers to apply for permission, rather than notify the authorities, and sets a 10-day deadline for applications. In April 2013, the European Court of Human Rights found that **Oleksiy Vyerentsov** had been deprived of his right to freedom of assembly when he was imprisoned in Lviv for three days in 2010 for allegedly breaching the procedure for holding and organizing a demonstration and for ignoring the demands of the police to stop the demonstration.

In their annual report on the state of human rights in Ukraine in 2012 the Ukrainian Helsinki Union found that when local authorities applied to courts to ban peaceful assemblies a very high percentage of such applications were successful. During the first half of 2012, 92.5 per cent of such applications by local authorities were successful, and in 2011, 89.4 per cent were successful. Among the reasons given by courts for banning actions were the existence of simultaneous meetings, potential damage to public areas, traffic jams, interference in rest and leisure of the public, the fact that “not everyone shares the views expressed by the organizers”.

## AMNESTY INTERNATIONAL RECOMMENDATIONS

*Regarding impunity for torture and other ill-treatment, deaths in custody (concerning question 11, 13-14 on the list of issues)*

Amnesty International considers the Ukrainian government should:

- Urgently establish the State Investigation Bureau outlined in the new Criminal Procedural Code as a genuinely independent institution that effectively and promptly investigates all allegations of torture and other ill-treatment by law enforcement officers;
- Amend Article 127 of the Criminal Code concerning the crime of torture to bring it into line with Article 1 of the Convention against Torture.

*Regarding rights of LGBTI people (concerning questions 3 and 5 on the list of issues)*

Amnesty International considers the Ukrainian government should:

- Amend the draft Law to Combat Discrimination to include sexual orientation, and gender identity as forbidden grounds for discrimination in Article 1 in the Law "On Principles of Prevention and Combating Discrimination in Ukraine";
- Ensure that hate crimes against people who are or are perceived to be LGBTI are fully investigated and that the suspects are brought to justice;
- Create a data collection system for reported hate crimes which takes account of the specific discriminatory motive of such crimes;
- Ensure that gender identity and sexual orientation are included in Article 161 of the Criminal Code as grounds for the prosecution of hate crimes.

*Regarding refugees and asylum-seekers (concerning question 21 on the list of issues)*

Amnesty International considers the Ukrainian government should:

- Abide by its obligations under international human rights and refugee law not to send individuals to countries where they face a real risk of grave human rights abuses, including torture and other ill-treatment.
- Ensure prompt, effective and impartial investigation into the alleged abduction and forced return of Leonid Razvozhayev to the Russian Federation and ensure that any official found to have sanctioned or conducted such acts is held accountable.

*Regarding peaceful assembly (concerning question 28 on the list of issues)*

Amnesty International considers the Ukrainian government should:

- Immediately introduce legislation guaranteeing the right to freedom of peaceful assembly in accordance with international human rights standards.



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