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**Promotion et protection de tous les droits de l'homme, civils,  
politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## Visite en Ukraine

### **Rapport du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants\*, \*\***

#### *Résumé*

Le Rapporteur spécial a effectué une visite officielle en Ukraine du 28 mai au 8 juin 2018. Dans le territoire contrôlé par le Gouvernement, il a joui d'une liberté de circulation totale et eu accès à tous les lieux de privation de liberté, sauf un. Malheureusement, à Donetsk et à Louhansk, les autorités de facto ne lui ont donné accès qu'à trois lieux de détention sous leur contrôle et selon des modalités non conformes à son mandat. Dans l'ensemble, en dépit de récentes améliorations visibles, les informations recueillies par le Rapporteur spécial révèlent que la torture et les mauvais traitements continuent d'être pratiqués en toute impunité dans l'ensemble du pays, y compris dans les territoires qui échappent au contrôle du Gouvernement.

\* Il a été convenu que le présent rapport serait publié après la date normale de publication en raison de circonstances indépendantes de la volonté du soumetteur.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.



## Annex

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Ukraine**

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## I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment conducted a visit to Ukraine, at the invitation of the Government, from 28 May to 8 June 2018.
2. The Special Rapporteur expresses his appreciation to the Government of Ukraine for the excellent cooperation he enjoyed during the visit and for the meaningful official meetings.
3. The Special Rapporteur also thanks the armed groups and their de facto authorities in Donetsk and Luhansk for their cooperation.
4. The Special Rapporteur further thanks the human rights monitoring mission in Ukraine for the assistance provided throughout his visit.
5. During the 12-day visit, the Special Rapporteur visited the cities of Kyiv, Odesa, Kharkiv, Starobilsk and Bakhmut and the territories controlled by armed groups and their de facto authorities in Donetsk and Luhansk. In Kyiv, the Special Rapporteur had the opportunity to engage in open and constructive exchanges of views with officials of the Ministries of Foreign Affairs, Justice, Health, Social Policy, Internal Affairs (and its departments: the National Police, the State Migration Service and the Administration of the State Border Service) and Defence, with the Ukrainian Armed Forces, with the Security Service of Ukraine, with the Prosecutor General's Office, with the Office of the Ombudsman and with magistrates of the Supreme Court. Furthermore, he held open and fruitful exchanges with representatives of civil society organizations and with victims of torture and ill-treatment.
6. In Donetsk, the Special Rapporteur had the opportunity to engage in a dialogue with the Ombudsperson and the deputy head of the Penitentiary Service of the de facto authorities. Unfortunately, despite repeated requests, he was not able to meet with representatives of the Prosecutor's Office or the de facto Ministries of Justice and the Interior. In Luhansk, he met with a member of the People's Council and with the acting Minister of Foreign Affairs of the de facto authorities.
7. Throughout his visit in the government-controlled territory, the Special Rapporteur and his team enjoyed unrestricted freedom of movement and access to all places where persons are deprived of their liberty, with the exception of the psychoneurological facility for women in the Sviatoshynskyi district of Kyiv, where access was unduly delayed by the management, and which therefore could not be visited. The team were able to meet with and interview all male, female and juvenile inmates of their choosing in private, in full compliance with the terms of reference of the Special Rapporteur's mandate.
8. While the de facto authorities in Donetsk and Luhansk provided the Special Rapporteur with restricted access to three places of detention under their control, the Special Rapporteur greatly regrets to report that the modalities of these visits did not comply with the terms of reference of the mandate. The de facto authorities had preselected the sites that the Special Rapporteur was authorized to visit, and no other institutions could be accessed.
9. Moreover, in the two facilities he visited that are under the control of the de facto authorities in Luhansk, the Special Rapporteur was not authorized to conduct any confidential interviews with the detainees, and even collective interviews of a general nature were made impossible by an oppressively intimidating presence of prison staff. He was able to speak to two detainees, who reportedly had themselves asked the management to be granted this opportunity, in a separate office. However, given the constant presence of a guard, the Special Rapporteur was unable to discuss conditions of detention and treatment freely. He was not authorized to access the disciplinary sections of these facilities.
10. In the institution he visited in Donetsk, the Special Rapporteur was granted access to all sections to which he requested access, including the disciplinary section. He was also given the opportunity to speak individually to four interned members of the Ukrainian

armed forces preselected by the authorities, albeit in the presence of a prison guard next to the open door of the interview room, which did not ensure full confidentiality. All dialogue with other inmates seen during the visit to the various sections had to take place in the immediate presence of one or several guards, and therefore remained extremely limited. The Special Rapporteur regrets to report that, despite the formal and timely announcement of the entire delegation, the prison authorities in Donetsk arbitrarily denied access to a human rights officer who was an official member of his team.

11. In view of the restrictions imposed on the Special Rapporteur's visits to places of detention controlled by the de facto authorities in Donetsk and Luhansk, the Special Rapporteur wishes to stress that he agreed to conduct these visits on an absolutely exceptional basis only, taking into consideration a multitude of factors including, most notably: (a) the fact that these places of detention were not under the control of the authorities of Ukraine or any other internationally recognized State having extended an official invitation to his mandate; (b) the prolonged lack of access to such places of detention by other international monitoring mechanisms such as the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the human rights monitoring mission in Ukraine, and even the International Committee of the Red Cross (ICRC); and (c) the resulting lack of reliable information on the whereabouts, living conditions and treatment of thousands of persons held in such places of detention. The Special Rapporteur's decision to conduct the visits under the given circumstances constituted an exceptional measure of confidence-building tailored to the Ukrainian context and does not reflect any intention to deviate from the official terms of reference of his mandate.<sup>1</sup>

12. In preparing his official visit to Ukraine, the Special Rapporteur sought access to the Autonomous Republic of Crimea and the city of Sevastopol (hereinafter Crimea) on the basis of General Assembly resolutions 68/262, 71/205 and 72/190.<sup>2</sup> Having received the authorization of the Ukrainian authorities, he also sought the concurrence of the authorities of the Russian Federation for the delegation to visit Crimea. The Russian Federation responded positively to the request but requested that such access take place in accordance with the procedures required for an official visit to the national territory of the Russian Federation. Therefore, he regrets to report that he was unable to visit Crimea in the framework of his visit to Ukraine.

## **II. Situation in government-controlled territory**

### **A. Legal framework**

#### **1. International and regional level**

13. Ukraine has ratified most international human rights treaties relevant to the prohibition and prevention of torture and other cruel, inhuman or degrading treatment or punishment, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (24 February 1987), the Optional Protocol to the Convention against Torture (19 September 2006) and the International Covenant on Civil and Political Rights (12 November 1973). Since 12 September 2003, Ukraine has accepted the inquiry procedure and the individual complaints procedure under the Convention against Torture.

14. Furthermore, Ukraine has ratified the Geneva Conventions relating to the protection of victims of international armed conflicts (3 August 1954) and their Protocols additional to 1977 (25 January 1990). While Ukraine is not a party to the Rome Statute of the International Criminal Court, on 17 April 2014 the Government lodged a declaration under

<sup>1</sup> See <https://www.ohchr.org/EN/HRBodies/SP/Pages/TermsOfReference.aspx>.

<sup>2</sup> "See United Nations General Assembly resolution 71/205 of 19 December 2016 referring to Crimea as occupied by the Russian Federation; and resolution 72/190 of 19 December 2017 and 73/263 of December 22, 2018, urging the Russian Federation to comply with its obligations as an occupying power in Crimea",

article 12 (3) of the Rome Statute, accepting the Court's jurisdiction over alleged crimes committed on the territory of Ukraine from 21 November 2013 to 22 February 2014 (the Maidan events). On 8 September 2015, the Government of Ukraine submitted a second declaration under article 12 (3) of the Rome Statute, accepting the exercise of jurisdiction by the Court in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. Following the declarations, the Office of the Prosecutor of the International Criminal Court has been conducting a preliminary examination covering all crimes committed after 20 February 2014. The Court may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Ukraine since 21 November 2013.

15. At the regional level, Ukraine has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (11 September 1997) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (5 May 1997).

16. The Special Rapporteur takes note of the fact that, in June 2015, the Government of Ukraine notified the Secretary-General of derogations from articles 2 (3), 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights to be applied in certain districts of the Donetsk and Luhansk provinces. On 20 October 2015, the Government gave further notification on "the specifics of the territorial application and implementation" of 16 United Nations treaties, including the Convention against Torture, stating that the application and implementation by Ukraine of its obligations under those treaties was "limited" and "not guaranteed" on territories deemed to be "occupied and uncontrolled".

17. In this context, it should be recalled that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is of absolute character and cannot be derogated from under any circumstances, including in times of public emergency such as armed conflict. Moreover, while the Special Rapporteur recognizes that the current circumstances may limit the ability of the Government to implement all of its human rights obligations in parts of the Ukrainian territory that are not under its effective control, that does not absolve the Government from respecting those rights whenever its operations can affect the inhabitants of those territories, or from taking all measures reasonably available to it to otherwise ensure respect for human rights throughout its territory.

## **2. National level**

### **(a) Definition and prevention of torture**

18. To a large extent, the international and regional legal regimes are implemented at the national level through a strong normative and procedural framework for the prevention and punishment of torture. The right to be free from torture is protected by article 28 of the Constitution and article 127 of the Criminal Code.

19. However, the definition prescribed in the Criminal Code does not cover all elements of the crime of torture, as defined in article 1 of the Convention against Torture. Notably, the Criminal Code criminalizes only the direct perpetration of torture, but not mere consent or acquiescence by a public official or other person acting in an official capacity, and it does not foresee command or superior responsibility. Furthermore, the Criminal Code fails to make clear that the definition of torture includes the intentional infliction of severe pain and suffering for any reason based on discrimination of any kind, as set out in article 1 of the Convention. In the view of the Special Rapporteur, both shortcomings create unacceptable loopholes for impunity.

20. The Special Rapporteur is of the view that the fact that the Criminal Code penalizes torture by any perpetrator, regardless of their official status, may have certain benefits in the current circumstances where parts of the Ukrainian territory are controlled by de facto authorities lacking recognized status as State officials. However, he is concerned that the definition of the crime of torture in article 127 of the Criminal Code does not incorporate all the elements required by article 1 of the Convention. Most notably, the mere consent or acquiescence of State officials with regard to acts of torture or ill-treatment does not appear to be criminalized.

21. Additionally, according to article 127 of the Criminal Code, the crime of torture is punishable by imprisonment for a term of three to five years, a maximum sentence that is not commensurate with the potential gravity of the crime.

22. Finally, the Special Rapporteur is concerned at information indicating that, in practice, acts that could amount to torture and ill-treatment under article 1 of the Convention appear to be prosecuted not as torture and ill-treatment, but under articles of the Criminal Code relating to abuse of power or authority.

**(b) Legal and procedural safeguards**

23. The Criminal Procedure Code provides safeguards for the prevention of torture and ill-treatment, including the right to access a medical doctor in the first hours of detention, the right to legal counsel, the right to be notified of the charges and the right to notify family members of the arrest (arts. 210–213). Moreover, persons detained in criminal justice institutions have the right to receive documentation setting out the reasons for their detention and to be informed of their rights (arts. 208 (4) and 212 (3) (2)). Article 224 of the Code prescribes legal standards for the interviewing of suspects, which are aimed at preventing torture and ill-treatment. For example, an interrogation can be conducted for no more than eight hours per day and for no more than two hours without a break.

24. Article 87 of the Code prohibits the use of evidence obtained in violation of human rights and freedoms, including evidence obtained under torture, cruel or inhuman treatment or the threat thereof. However, the Special Rapporteur did not receive any information of cases in which evidence obtained under torture had been excluded from subsequent legal proceedings, in accordance with article 87 of the Code. The Special Rapporteur insists that it is indispensable for judges and prosecutors to request alternative evidence to avoid relying exclusively on confessions, and to always exclude information obtained through coercion.

25. The Special Rapporteur takes note of article 206 of the Code, which provides that, whenever a person states that he or she has been subjected to ill-treatment during apprehension or detention by public officials, the investigative judge is required to record such a statement or accept a written statement to that effect from the person concerned.

**B. Conditions of detention**

26. Places of deprivation of liberty in Ukraine are classified as pretrial centres under the authority of the national police, pretrial or remand prisons, high-security prisons, medium-security prisons and low-security prisons.

27. The delegation visited the Kyiv pretrial detention centre at the Lukianivske facility, police unit No. 4 in the Shevchenkivskyi district Police Department at 12 Prorizna Street, the Shevchenkivskyi district Police Department at 9 Hertseni Street and the Kyiv Temporary Detention Facility (a pretrial centre). In Odesa the delegation visited Odeska prison No. 14, Odeska penitentiary institution No. 21, a prison with pretrial detention functions, the guardroom of the Southern territorial administration of the Ukrainian Military Police and the Kyivskyi Police Division in the city of Odesa. In Kharkiv the delegation visited the reception centre for children at the Main Department of the National Police in Kharkiv province. In Starobilsk the delegation visited the temporary detention facility and the pretrial detention centre. In Bakhmut the delegation visited Bahmutska Penitentiary Institution No. 6, a prison with a pretrial detention centre. In Kramatorsk the delegation visited the Kramatorsk Temporary Detention Facility and a municipal treatment and preventive institution, the Sloviansk City Regional Psychiatric Hospital.

**1. Excessive length of pretrial detention**

28. In the course of his visit, the Special Rapporteur received numerous complaints from detainees about the perceived excessiveness of their pretrial detention and the absence of judicial action on the part of the adjudicating authorities. In particular, a number of

detainees mentioned being in pretrial detention for more than a year without any investigative actions or court hearings.

29. Alternative measures to detention were reported to be used in exceptional cases only and never in conflict-related cases. The regime for pretrial detainees is significantly more restrictive than the regime applied to convicted detainees, and includes very limited contact with family members, a strict regime regarding food parcels and the prohibition of paid work.

30. Visits, telephone calls and letters are only allowed with the express permission of investigating officers. For detainees accused of crimes in connection with the armed conflict, who undergo even more lengthy investigations, the resulting isolation from the outside world is often additionally prolonged.

## 2. Overall conditions of detention

31. The Special Rapporteur welcomes the ongoing reforms of the penitentiary system in the government-controlled territory of Ukraine. The overall conditions of detention observed were generally acceptable, and efforts to renovate and modernize some centres, in particular various “temporary detention facilities” (pretrial centres) “under authority of the National Police of Ukraine” were noted.

32. However, most of the detention infrastructure is very old and in dire need of renovation or replacement. Some cells and pavilions the Special Rapporteur visited had very poor sanitary conditions. Some detainees reported that their cells were poorly heated and infested with cockroaches. In Odesa remand prison, the cell walls were covered in mould and the sanitary installations were reported to be often clogged. In addition, occasional leaking or lack of heating was noticed in some cells, while others were poorly ventilated.

33. The 2015 amendment to the Criminal Code,<sup>3</sup> which instituted the rule of calculating every day spent in a remand prison as two days of sentence, was intended to reduce the duration of detention. That law was abolished in June 2017, however its provisions are still applied to the detainees arrested before that date.

34. At the time of the visit, there were approximately 60,000 sentenced inmates accommodated in 148 institutions with an official capacity of 100,000 places. However, due to the poor conditions of the infrastructure, the inmates in some institutions were concentrated in fewer blocks, thus considerably reducing the available space per inmate. That was particularly the case for the Kyiv SIZO, where, due to refurbishments, the number of inmates exceeded the capacity.

35. In most of the remand prisons and colonies visited, the occupancy rate was lower than the official maximum capacity of the institution. However, the official capacity of places of detention appears to be calculated on the basis of available beds rather than available space per inmate, which in some facilities results in available surface areas as small as 2 m<sup>2</sup> or less per inmate, thus clearly falling short of the universally recommended minimum standards of 3.4 m<sup>2</sup> per inmate in collective accommodation and 5.4 m<sup>2</sup> in single cells.<sup>4</sup>

36. Blankets and mattresses were available to all the inmates the Special Rapporteur visited, although many were old and in need of replacement. Detainees in the Bakhmut remand prison complained about poor sanitary conditions and bedbugs. Most hygienic products including toilet paper and soap were reportedly not provided by the administration, and detainees were said to have to rely on outside support including family contributions or donations from humanitarian organizations to maintain tolerable living conditions. This problem reportedly also affected the specific needs of female detainees. All detainees were reported to receive three meals a day, although in most places the food

<sup>3</sup> Act No. 838-VIII of 26 November 2015 amending the Criminal Code, in force as of 24 December 2015.

<sup>4</sup> International Committee of the Red Cross, *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (Geneva, 2012), p. 33.

was described as “inedible”. As a consequence, most inmates were reported to rely almost exclusively on supplementary food they received through family parcels.

37. The Special Rapporteur is pleased to report that the conditions in the guardroom of the Southern territorial administration of the Ukrainian Military Police were found to be fully compliant with international standards. Cells were adequately lit and ventilated, the quality and quantity of the food seemed satisfactory, detainees had access to basic hygienic products and the relationship between detainees and guards seemed relaxed and appropriate.

### **3. Detention of juveniles**

38. While acknowledging the Government’s efforts to ensure that juveniles are held in isolation, the Special Rapporteur noted with concern that, throughout Ukraine, adolescents from 14 to 18 years of age are accommodated in the same institutions as adults, under conditions which, considering their age and vulnerability, must be regarded as inadequately harsh.

39. The Special Rapporteur is of the view that the juvenile justice system should emphasize the well-being and best interests of the juvenile and ensure that any response to offences committed by juveniles remains in proportion to the circumstances of both the offenders and the offence.

40. All juvenile detainees in Ukraine should therefore be accommodated in institutions separate from adults, providing conditions that cater to their specific vulnerability and needs and to the best interests of the child.

41. Moreover, the Special Rapporteur recommends that pretrial detention of juveniles be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, pretrial detention should be replaced by alternative measures, such as close supervision, intensive social care or placement with a family or in an educational setting or home.

### **4. Access to health**

42. The Special Rapporteur is particularly concerned by reported shortcomings in access to medical care throughout the penitentiary system. The Special Rapporteur’s team noted that specialized medical services, such as gynaecology and dentistry, among others, were not always available due to a shortage of the required means of transportation and guarded wards in general hospitals.

43. Despite a high prevalence of drug addiction, special treatment for drug addiction is either lacking or is terminated upon a prisoner’s entry into a place of detention. The procurement of medication for prisoners with HIV and multi-drug-resistant tuberculosis seemed adequate for sentenced detainees but difficult to access for pretrial detainees. The Special Rapporteur is also concerned by the apparent shortage in mental health professionals including psychologists and social workers.

44. While the Special Rapporteur welcomes the envisaged transfer of responsibility for health care from the penitentiary administration of the Ministry of Justice to the Ministry of Health, he notes with concern the reported reluctance of some of the authorities concerned to complete this crucial change. In particular, the currently unclear supervisory chain of health professionals in detention centres may impede them from documenting and reporting injuries resulting from torture or ill-treatment.

45. The Special Rapporteur also notes with serious concern the reported failure of medical staff to conduct thorough medical examinations of detainees, despite existing regulations. Medical staff reportedly did not inquire about injuries or probe further for explanations. Many medical personnel are generally unfamiliar with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), and in some places of detention do not consider it to be their duty to question whether observed injuries may be the result of torture and ill-treatment.



## C. Allegations of torture and ill-treatment

46. The Special Rapporteur is pleased to report that, in his meetings with the judicial, legislative and executive branches of the Government of Ukraine, all officials emphasized their unequivocal commitment to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

47. However, despite existing international, regional and domestic legal safeguards for the prevention of torture and ill-treatment, and despite a reported improvement in the recent past, the use of violence by law enforcement agencies and the Security Service of Ukraine seems to be structural and impunity widespread. The forensic expert who accompanied the Special Rapporteur on his visit conducted a number of medical examinations of inmates, which confirmed physical injuries consistent with the allegations of torture or ill-treatment received.

### 1. Police violence

48. The Special Rapporteur received numerous allegations of torture and ill-treatment at the hands of the police, including against juveniles as young as 14, almost always occurring at the time of apprehension and interrogation. Most inmates reported that such treatment was used by investigative officers to intimidate them or to force them to confess to an alleged crime.

49. In addition to threats and insults, police officers reportedly resorted to kicking and beating, suffocation techniques, most notably by placing plastic bags over the head, or suspension and prolonged stress positions. Numerous inmates also reported having been electrocuted and, in some cases, subjected to mock executions. Several detainees showed signs of depression and post-traumatic stress disorder, and some still displayed visible marks of ill-treatment and torture. Others reported having been subjected to techniques of torture specifically designed to leave no marks including, *inter alia*, beatings with a thick book or on the soles of the feet and suffocation techniques, such as water submersion.

50. Several allegations were also received of excessive use of force at the time of or immediately following apprehension, including kicks and truncheon blows after the apprehended person had been placed face down on the ground and handcuffed, of unduly tight handcuffing during transportation, of death threats and of threats to inflict pain or use violence (including rape with objects) during questioning.

51. The Special Rapporteur notes with satisfaction that efforts have been taken to avoid unnecessary police custody in order to reduce the risk of ill-treatment. The delegation did not meet any detainees held in local police stations in the course of the visit. However, a number of inmates who were interviewed claimed to have been detained and ill-treated for several days in unofficial places of detention before being officially apprehended by the police.

52. The Special Rapporteur takes the view that determined action is required on the part of the Ukrainian authorities to combat what appears to amount to a persistent pattern of police violence. In this context, prompt and effective measures should be taken to change the culture of the police, which apparently still views ill-treatment as acceptable, and to ensure that any allegations of ill-treatment are effectively reported and investigated. To that effect, clear reporting lines should be established to enable law enforcement officials to report any acts of ill-treatment and torture, and measures should be adopted to protect those who report such allegations. Moreover, experience shows that overreliance on confession-based evidence in criminal cases constitutes one of the main incentives for law enforcement officials to use torture and ill-treatment. It is therefore essential for law enforcement bodies to move away from confession-based coercive interrogation to science-based non-coercive interviewing techniques.

### 2. Conflict-related torture and ill-treatment

53. Testimonies of detainees and released victims suggest that the use of incommunicado detention and torture in government-controlled territory was widespread

between 2014 and 2016, but later decreased. According to the testimonies received by the Special Rapporteur, torture allegedly frequently occurred in the custody of the Security Service of Ukraine or during periods of unofficial detention. It is also the understanding of the Special Rapporteur that, in some cases, such abuse was committed in collaboration with private individuals or volunteer battalions.

54. The majority of allegations of conflict-related torture and ill-treatment documented by the Special Rapporteur were said to have occurred in the context of detention by the Security Service. Detainees accused of crimes linked to the armed conflict in eastern Ukraine reported having been tortured in order to extract information regarding their involvement, perceived or actual, in separatist activities or to identify armed groups' military positions.

55. The methods reportedly used included suffocation with gas masks, dislocation of joints, electric shocks and mock executions. Interviewees also reported having received death threats, against both themselves and their families, and having been systematically denied access to medical care.

56. Some interviewees, both men and women, reported having been subjected to sexual violence. Beatings and electrocution in the genital area, forced nudity, threats of rape and, in one case, actual rape were allegedly used as methods of torture and ill-treatment to punish, humiliate or extract confessions. To increase the pressure, the perpetrators allegedly threatened also to detain, abduct, rape, injure or kill relatives of the victims, especially their children.

57. Interviewees also reported having been subjected to excessive use of force during apprehension, often not being granted access to legal counsel until they confessed or incriminated themselves. In many cases, the detainees were allegedly blindfolded or hooded, which made it nearly impossible to identify the perpetrators and hindered the lodging of complaints.

58. Exposure to torture was reported to continue until the detainees signed self-incriminating statements. In some instances, confessions extracted under torture were videotaped and later shown on Ukrainian television broadcasts. In some cases, such torture-tainted evidence has been admitted by the courts, in clear violation of the exclusionary rule, which constitutes a cornerstone of the prevention of torture (Convention against Torture, art. 15).

### **3. Ineffective investigation of complaints of torture and ill-treatment**

59. The Special Rapporteur welcomes the measures taken by the authorities to investigate cases of torture and other ill-treatment, most notably by the Office of the Prosecutor General of Ukraine. However, despite persistent allegations of systematic torture and other ill-treatment, notably made in relation to the aftermath of the conflict of 2014, formal investigations and prosecutions of such allegations appear to be rare, thus creating a strong perception of de facto impunity for acts of torture and other ill-treatment. According to official data, in the first nine months of 2018, 563 criminal proceedings were initiated regarding alleged cases of torture by the law enforcement authorities. However, only 27 indictments were referred to court against 47 persons, of which 2 were under article 127 of the Criminal Code (torture), 23 came under article 365 (2) (excess of authority or official powers), and 2 were under other articles of the Code. At the same time, Ukraine lost 73 cases brought before the European Court of Human Rights between 2014 and 2018 under article 3 of the European Convention on Human Rights (prohibition of torture). The low number of investigations, prosecutions and convictions for the specific crime of torture seems to point to an insufficient determination on the part of the relevant authorities to ensure criminal accountability for such abuse.

60. In some of the institutions visited, the Special Rapporteur noted a perceptible reluctance on the part of victims to speak about ill-treatment, which was reportedly both because of their fear of reprisals and because of their general distrust in the ability and willingness of the judicial authorities to hear their claims.

61. A large number of detainees claimed that they had complained about police torture and/or ill-treatment to the judge before whom they had been brought after apprehension, but that the judge had simply ignored their complaint, despite the fact that they displayed visible injuries. Furthermore, several interviewees who had filed a complaint with the Office of the Prosecutor General regarding acts of torture reported that law enforcement officials had attempted to intimidate them or their relatives, pressuring them to withdraw their complaints.

62. The Special Rapporteur further found that lawyers, police officers, prosecutors and judges seemed to lack the requisite knowledge of how to investigate and document allegations of ill-treatment and torture. Consequently, victims of torture or other ill-treatment are often confronted with inaction from State authorities. Furthermore, the forensic expert accompanying the mission noted that even medical personnel often lacked the expertise to conduct efficient and genuine documentation of acts of torture and other ill-treatment. Furthermore, there are essentially no State rehabilitation services. Consequently, services for the victims of torture and other ill-treatment are provided by civil society organizations through donor-funded programmes.

63. Interviewees further reported that lawyers – public or private – rarely made any real efforts to present their case. The Special Rapporteur notes with concern that detainees do not appear to have access to their personal medical and legal records. The Special Rapporteur has been able to personally verify and confirm that, in some cases, these records seemed to have been tampered with, with a view to concealing potential evidence of torture and other ill-treatment. This observation particularly concerns the documentation of physical injuries upon arrest, which does not appear to be carried out systematically, even where such injuries are visible on photographs taken upon arrest, or which is not carried out in accordance with the international standards set forth in the Istanbul Protocol.

64. The Special Rapporteur takes note of the setting up of the State Bureau of Investigation, which is tasked, *inter alia*, with criminal investigations into allegations of torture or ill-treatment by law enforcement officials. However, he regrets to report that, at the time of the visit, the Bureau was still not operational.

65. The Special Rapporteur urges the Ukrainian authorities to ensure that the relevant judicial authorities comply with their duty to systematically document and investigate all allegations of torture or ill-treatment and to prosecute all public officials suspected of having committed, ordered or otherwise instigated, consented to, acquiesced in or covered up such abuse, including in situations where they knew or ought to have known that torture was about to be, was being or had been committed by persons under their authority or command.

## **D. Psychiatric, mental health and social institutions**

66. The Special Rapporteur welcomes the ongoing deinstitutionalization initiative by the Ministry of Health and the Ministry of Social Policy and welcomes the initial steps taken to provide community-based alternatives.

67. Regarding the process of admitting individuals to mental health institutions, the Special Rapporteur insists on the importance of maintaining close judicial supervision of the process of internment and of the medical treatment provided, ensuring access to independent and effective complaints mechanisms. In that context, the Special Rapporteur notes with appreciation that, by law, individuals over the age of 14 years cannot be placed in a mental health institution without their consent.

68. The Special Rapporteur regrets to report that his request to access the psychoneurological facility for women in the Sviatoshynskyi district of Kyiv was unduly delayed by the centre's director, thus not allowing his team to conduct the visit and to assess the conditions and treatment prevailing in the institution.

69. The Special Rapporteur's delegation visited the Sloviansk City Regional Psychiatric Hospital, in particular the sections for children and the ward for tuberculosis patients. The

facilities had recently been renovated thanks to international donations and were found to be in excellent condition.

70. Regarding children in psychiatric institutions, the Special Rapporteur regrets to report that information about their health status and rights, potential interventions and alternatives to medical treatment are reportedly not made accessible to the children concerned, taking into account their age and disability.

## **E. National monitoring of detention conditions and the role of the national preventive mechanism**

71. The Special Rapporteur notes with satisfaction that the Ukrainian national preventive mechanism, under the responsibility of the parliamentary Commissioner for Human Rights or Ombudsperson, has come a long way in establishing a solid and long-standing relationship with civil society. In particular, through an exemplary system of accreditation (the “ombudsman plus” system), the Ombudsperson has been facilitating the regular participation of various civil society actors, medical doctors and media personnel in the monitoring of detention centres and in fact-finding regarding potential violations.

72. It is the Special Rapporteur’s considered view that regular monitoring of places of detention is one of the most effective measures to prevent torture. The Special Rapporteur calls on the new Ombudsperson, who had been recently appointed at the time of the visit, to maintain and further strengthen best practice in that respect, and to facilitate the accreditation of civil society actors previously engaged in monitoring tasks. He commends the work of non-governmental actors involved in the monitoring process and encourages them to continue to strengthen their activity throughout Ukraine.

73. The mechanism’s preventive activities should be strengthened by ensuring a structural unit for data collection and investigating allegations of torture and ill-treatment. Last but not least, in order to ensure the effective implementation of the mechanism’s recommendations, it is crucial that all ministries concerned establish an internal follow-up mechanism dedicated to that purpose.

## **F. Persons in vulnerable situations**

74. The Special Rapporteur regrets to report that he has received consistent information pointing to a pattern of violent attacks and apparent hate crimes against various segments of the Ukrainian population, including minorities and lesbian, gay, bisexual, transgender and intersex persons.

75. The Special Rapporteur is particularly concerned about the reported rising frequency of violent attacks against the Roma minority in Ukraine. The attacks are reported to be hate motivated and to involve physical aggression, destruction of property, harassment and intimidation against Roma people, including against women and children. According to information received, such incidents had taken place in different parts of Ukraine, in particular in Kyiv, Kharkiv, Ternopil and Lviv, and had not triggered any attempt by law enforcement officials to protect the alleged victims. These violent incidents are allegedly orchestrated and perpetrated mainly by extreme right-wing groups with clearly expressed intentions to target Roma communities on the basis of their ethnicity.

76. In the light of those allegations, the Special Rapporteur calls on the Ukrainian authorities, and in particular the regional and local police, to take effective measures to protect the members of the Roma minority and to punish the perpetrators.

# **III. Situation in territories controlled by de facto authorities**

## **A. Legal and procedural safeguards**

77. Regardless of the precise legal qualification of the Ukrainian armed conflict, the Special Rapporteur recalls that all parties to the conflict, including the de facto authorities

in Donetsk and Luhansk, have direct international obligations under applicable international humanitarian law, including the absolute prohibition of torture and other ill-treatment. Common article 3 of the Geneva Conventions of 1949 prohibits “cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” of all persons who are not or are no longer taking an active part in hostilities, including those deprived of their liberty. In addition, “torture or inhuman treatment” and “wilfully causing great suffering or serious injury to body or health” constitute grave breaches of the Geneva Conventions and are war crimes under the Rome Statute of the International Criminal Court.

78. The Special Rapporteur regrets that many of the interlocutors he requested to meet with in both Donetsk and Luhansk were not available for a meeting, despite repeated and timely requests. He was therefore not able to conduct a proper and meaningful assessment of the specific legal and procedural safeguards against torture in place or to evaluate the effectiveness of their implementation.

79. However, it is with the utmost concern that the Special Rapporteur takes note of recent amendments to the martial law imposed by the de facto authorities in both areas, which have reportedly introduced systems of “administrative arrest” (Donetsk) and “preventive arrest” (Luhansk), which can be applied for up to 30 days and then extended to 60 days without the detainee having any contact with legal counsel or the outside world. It must be stressed that any such regime of incommunicado detention is absolutely incompatible with the prohibition of torture and ill-treatment, and provides no safeguards whatsoever against arbitrary detention and disappearance.

80. The Special Rapporteur recalls that incommunicado detention is known to facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such abuse. All persons deprived of their liberty must be treated with respect for their inherent human dignity at all times, which includes ensuring the requisite contact with the outside world. The Special Rapporteur therefore urges the de facto authorities in Luhansk and Donetsk to keep a detailed and accessible register of all persons deprived of their liberty, regardless of the detaining authority, and to systematically inform the families of detainees about the fact and place of their detention.

81. The Special Rapporteur received several reports that detainees who have completed their sentence in territories controlled by the armed groups could not be released because, as a result of the conflict, their personal files were not in the possession of the de facto authorities and the required judicial authorizations for their release could not be obtained. The Special Rapporteur also received several inquiries from detainees as to the possibility of transfers to the government-controlled territory, where they have their families. The Special Rapporteur therefore encourages both the Ukrainian authorities and the de facto authorities in Donetsk and Luhansk, to the maximum extent possible to them, to facilitate any pending judicial proceedings or other measures that may be required in order to allow the detainees concerned to serve their sentences in government-held territory.

82. In accordance with common article 3 of the Geneva Conventions of 1949, the Special Rapporteur strongly recommends that, without prejudice to their respective legal status, all parties to the conflict in Ukraine endeavour to bring into force, by means of special agreements, the other provisions of the Geneva Conventions, including the obligation to allow visits by the ICRC to all persons deprived of their liberty.

## **B. Conditions of detention**

83. Prior to the conflict, the provinces of Donetsk and Luhansk had one of the highest concentrations of penitentiary facilities in Ukraine. According to various estimates, at the outbreak of the conflict there were over 10,000 pre-conflict prisoners in the territories controlled by armed groups. The overall deterioration of the humanitarian situation in 2014 negatively – and at times severely – affected the detention conditions in the penal colonies located in the territory controlled by armed groups.

84. Given that the Special Rapporteur was unable to conduct his visit to places of detention controlled by the de facto authorities in Donetsk and Luhansk in accordance with the terms of reference of his mandate, he was unable to assess the treatment and conditions

of detention in these institutions with sufficient reliability and comprehensiveness. Nevertheless, the Special Rapporteur was able to draw a number of general conclusions from his observations made during these visits, including on factors such as visible and audible interactions between prison staff and inmates, the strict discipline imposed on all inmates during the entire visit, the behaviour and apparent nutritional state of the inmates and the overall conditions in terms of occupancy compared with the available space, access to fresh air and the quantity, quality and appearance of infrastructure, premises and equipment throughout the institutions he visited.

## 1. Luhansk

85. The Special Rapporteur was given restricted access to Krasnyi Luch penal colony No. 19 and Petrovske penal colony No. 24, both facilities having been preselected by the de facto authorities in Luhansk. The Special Rapporteur's request to visit the Luhansk remand prison and the Slovyanoserbbsk penal colony was not granted.

86. The conditions under which the Special Rapporteur had to make his visits were not in accordance with the terms of reference of his mandate and did not allow for a reliable and comprehensive assessment of the treatment and conditions of detention prevalent in the facilities visited.

87. Most notably, the Special Rapporteur was not authorized to access all sections of his choice in the facilities, nor to conduct any confidential interviews with the detainees. In Krasnyi Luch penal colony No. 19, the management informed the Special Rapporteur that two detainees had requested an opportunity to talk to him. They were both brought to a management office, a guard was present during the interview and they expressed their sole desire to be transferred to other regions in Ukraine to be closer to their families. Collective interviews of a general nature were made impossible by the oppressively intimidating presence of prison staff, resulting in an overall climate of fear.

88. In both institutions, all detainees were forced to abandon their cells and pavilions and to stand at attention in the courtyard with their faces facing the wall and their hands behind their backs throughout the entire visit. In Petrovske penal colony No. 24, educational programmes on good citizenship were played on a loudspeaker.

89. Due to the impossibility of interviewing detainees confidentially, the Special Rapporteur had to rely upon information provided by former inmates who had been recently released and transferred to the government-controlled territory.

## 2. Donetsk

90. The Special Rapporteur was able to obtain restricted access to the pretrial detention facility No. 5 in Donetsk city, which had been preselected by the de facto authorities. His request to visit the detention facility at 3 Svitloho Shliakhu Street (also known as *Izoliatsiia*, run by the de facto ministry of state security), Makiivka penal colony No. 97 and Makiivka penal colony No. 32 was not granted.

91. The conditions under which he was allowed to interview detainees in the Donetsk pretrial detention facility did not ensure full confidentiality and he was therefore not able to reliably and comprehensively assess the conditions of detention and treatment prevalent in the institution.

92. In terms of direct interaction with detainees, the Special Rapporteur was able to individually interview four detained members of the Ukrainian armed forces in a separate office room, albeit with a guard placed just a few metres away, right outside the open door of the room. It was obvious that this setting did not allow the inmates to express themselves freely, and the conversation was therefore limited to information relating to their personal health and well-being and their contact with their families. In the course of his tour through the facility, the Special Rapporteur asked and was able to visit the cell in which the four interviewees were detained but, again, he was not able to engage in a confidential conversation with them, given that a guard was present in the middle of the cell.

93. The Special Rapporteur is concerned to have found that juveniles are detained in this institution under conditions clearly not corresponding to their age, vulnerability and best interests.

94. Despite the presence of medical staff, access to health care appeared to be restricted and the quality of the food was reported to be unacceptable, forcing inmates to rely on family parcels. This presented a significant problem for conflict-related detainees, given the difficulties of maintaining contact with family members in government-controlled territory.

95. Some of the collective cells the Special Rapporteur was allowed to visit did not provide the required minimum space of 3.4 m<sup>2</sup> per inmate and were poorly ventilated, resulting in mould on the walls next to the sanitary installations. Overall, the infrastructure of the building was very old and in dire need of renovation.

### **C. Allegations of torture and ill-treatment**

96. The restricted access granted to persons detained in the territories under the control of the de facto authorities in Donetsk and Luhansk did not allow the Special Rapporteur to make a reliable and comprehensive assessment of the treatment to which they were subjected.

97. However, the Special Rapporteur was able to interview individuals who had been detained by armed groups for reasons related to the armed conflict and who had been released to government-controlled territory as part of the simultaneous release on 27 December 2017 under the Minsk agreements. Those interviews provided some insight into the treatment of conflict-related detainees and the methods of torture used in the territories controlled by the de facto authorities in Donetsk and Luhansk.

98. Interviewees reported having been apprehended in the street or at home by armed men in civilian clothing and transferred to the Ministry of State Security of the respective de facto authorities, where they underwent interrogation for prolonged periods of time, sometimes exceeding one month, with no access to lawyers and no communication with their relatives. In the majority of cases, the detainees were kept either in the basements of the Ministry buildings or in premises generally not intended for detention, and were regularly brought to Ministry of State Security officers for interrogation.

99. Torture or ill-treatment reportedly took place during the interrogation period, involving beating and kicking, threats of sexual violence against them or their families, electrocution, mock executions and suffocation. The primary purpose of such abuse was to extract confessions or information about military targets. Detainees were often hooded or blindfolded and handcuffed and/or strapped to a chair, which made it impossible for them to identify the perpetrators.

100. Many of the interviewees reported that they had been charged with espionage, subversive activities or terrorism on the basis of self-incriminating statements extracted under torture. Persons regularly crossing the contact line appeared to be at higher risk of arbitrary arrest and torture.

101. According to those interviewees, the de facto authorities regularly (sometimes as often as every month) conducted violent searches using external special forces, during which inmates had to stand at attention facing the wall. Masked officials would then enter selected cells and spread a climate of fear through arbitrary and severe beatings of inmates, generally without any apparent cause. Former inmates also reported insufficient access to medical care, particularly regarding specialized treatment, and the quality of the food was generally assessed as being extremely poor and the quantity as insufficient.

102. The Special Rapporteur did not receive any information indicating that the de facto authorities of Luhansk and Donetsk had attempted to investigate acts of torture or to hold alleged perpetrators accountable.

## **IV. Allegations of torture and ill-treatment in the Autonomous Republic of Crimea**

103. With no physical access to the Autonomous Republic of Crimea, the Special Rapporteur obtained only limited information about acts of torture and other ill-treatment there. The lack of access to the territory and to persons deprived of their liberty there prevents any independent oversight, and makes it very difficult to comprehensively examine the situation relating to torture and ill-treatment.

104. The Special Rapporteur was able to meet with a number of individuals who had managed to escape from the Autonomous Republic of Crimea, allegedly after having been subjected to severe acts of torture and ill-treatment at the hands of Russian law enforcement and intelligence officers. Opponents to the March 2014 referendum and other critics including journalists, bloggers, civil society activists and Crimean Tatars, notably the supporters of the Mejlis of the Crimean Tatar People, were found to be particularly exposed to various human rights violations, including arbitrary detention, unfair trials and torture and other cruel, inhuman or degrading treatment or punishment.

105. The Special Rapporteur is concerned at consistent information he received according to which hundreds of prisoners and pretrial detainees have been transferred to the Russian Federation, with some incarcerated in high-security penal colonies in Siberia.

106. The Special Rapporteur reiterates that torture can only be prevented if oversight mechanisms and international organizations such as the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the ICRC are granted unfettered access to all places of deprivation of liberty.

## **V. Conclusions and recommendations**

### **A. Conclusions**

107. Throughout his visit, and irrespective of the territories visited, all of the Special Rapporteur's interlocutors emphasized their unequivocal commitment to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

108. Despite noticeable improvements in the recent past throughout the government-controlled territory of Ukraine, the information collected by the Special Rapporteur indicates that torture and ill-treatment continue to be practised with impunity throughout the country, including in territories outside the control of the Government.

109. The Special Rapporteur received persistent allegations of torture and ill-treatment at the time of arrest and during interrogation, both at the hands of national police and State security services and at the hands of security services established by the de facto authorities in Donetsk and Luhansk.

110. Regardless of the authority concerned, the reported ill-treatment followed a common pattern of intimidation, punishment and forced confessions. In addition to acts or threats of sexual violence and insults, the most frequent methods of torture allegedly include kicking and beating, electric shocks, suffocation, suspension techniques and mock executions, including against teenagers as young as 14 years old.

111. Formal investigations into the numerous allegations of torture and ill-treatment appear to be rare on both sides of the conflict line, thus creating a strong perception of impunity.

112. While the Special Rapporteur welcomes ongoing reforms of the penitentiary system in the government-controlled territory of Ukraine, living conditions in many detention facilities remain difficult and most of the infrastructure is in dire need of renovation. The Special Rapporteur notes with particular concern that children



between the ages of 14 and 18 are held under inappropriately harsh conditions in the same institutions as adult detainees.

113. In the territories controlled by armed groups in Donetsk and Luhansk, the Special Rapporteur found the detention regime to be extremely oppressive and intimidating, with inmates being prevented from freely communicating with his team. While the infrastructure seems generally comparable with that in areas controlled by the Government, the Special Rapporteur strongly deplores the fact that the conditions under which he had to make his visits to places of detention in Donetsk and Luhansk did not allow for a reliable assessment of the treatment prevalent there.

114. Furthermore, the Special Rapporteur reiterates his grave concerns at a system of “preventive” and “administrative” detention recently introduced in Donetsk and Luhansk respectively, under which detainees can reportedly be held without access to a lawyer and or any outside communication for up to 60 days. Any practice of such incommunicado detention is known to facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and can in itself amount to such abuse. The Special Rapporteur urges the de facto authorities of Luhansk and Donetsk to immediately terminate any practice of incommunicado detention and to respect universally recognized safeguards concerning the liberty, security and dignity of the person.

115. While fully recognizing the difficult circumstances Ukraine is facing in the presence of an armed conflict and multiple threats against the sovereignty and territorial integrity of the State, the Special Rapporteur stresses the need for effective action on the part of the Government of Ukraine with a view to ensuring strict compliance of all State officials with existing laws and safeguards for the prevention, investigation and prosecution of torture and other cruel, inhuman or degrading treatment or punishment. Determined action on the part of the Ukrainian authorities is required, particularly to combat what appears to constitute a pattern of police violence.

116. The prohibition of torture and ill-treatment is one of the most fundamental norms of international law, and allows for no exceptions under any circumstances. The systematic and independent monitoring of its faithful implementation throughout the territory of Ukraine must be a priority both for the Government and for the various de facto authorities.

## **B. Recommendations**

117. The Special Rapporteur believes that there is no better deterrent to torture and other cruel, inhuman or degrading treatment or punishment than the unambiguous expression and determined implementation of a strong political will to prevent, investigate and prosecute such abuse.

118. It is in a spirit of respect and support that the Special Rapporteur offers the following recommendations with a view to ensuring that every individual in Ukraine is free from torture and other cruel, inhuman or degrading treatment or punishment, regardless of the authority under which she or he lives.

### **1. Recommendations to the authorities of Ukraine**

119. Regarding the effective prevention of torture and ill-treatment, the Special Rapporteur recommends that the executive, legislative and judicial authorities:

(a) Amend the Criminal Code of Ukraine to align it with international standards and practice and to ensure accountability for acts of torture and other cruel, inhuman or degrading treatment or punishment. In particular, the following changes should be introduced:

(i) Amend the legislation to include a definition of torture in the Criminal Code that is in conformity with the Convention against Torture and covers all

the elements contained in article 1, including the infliction of torture by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, who can be prosecuted under article 127 of the Criminal Code, and the element of discrimination;

(ii) Amend the legislation to ensure that persons who are alleged to have committed acts of torture are prosecuted under article 127 of the Criminal Code and that penalties commensurate with the gravity of the crime are applied in such cases, as set out in article 4 (2) of the Convention against Torture;

(b) Ensure that statements or confessions taken from persons deprived of their liberty, other than those made in the presence of a judge and with the assistance of legal counsel, have no probative value in proceedings against that person, and that confessions and testimonies that may have been obtained through torture or other ill-treatment are not used in any proceedings;

(c) Ensure that fundamental safeguards are granted to all persons deprived of their liberty without exception, such as the right to be informed of their rights and about the reasons for their arrest, the right to inform their family of their arrest and whereabouts, the right to a lawyer, the right to see a medical doctor and the right not to self-incriminate and not to sign documents of unknown content;

(d) Establish a single national register of detention that includes factual details about detention, including transfers, and ensure that it contains the exact date, time and place of detention from the outset of deprivation of liberty and not only from the time of writing of the detention record;

(e) Improve forensic medical capacity and infrastructure within places of detention, and ensure the full independence of all forensic medical staff, their unhindered access to all detainees on the basis solely of the detainees' individual medical needs, and their ability to examine alleged victims of torture and ill-treatment freely and without supervision;

(f) Ensure adequate training of all law enforcement, legal and health professionals involved with detainees, specifically including training on the forensic investigation and documentation of torture and other ill-treatment, in accordance with the Istanbul Protocol and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the Minnesota Protocol);

(g) Ensure that photographic documentation of trauma injuries becomes an obligatory routine practice and provide all medical services with adequate equipment for this purpose;

(h) Ensure and facilitate regular, effective and independent monitoring of all institutions or locations where individuals may be deprived of their liberty, by national and local bodies such the national preventive mechanism, by specialized civil society organizations and by the relevant international and regional bodies, such as the Subcommittee on Prevention of Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ICRC and the relevant special procedure mandate holders;

(i) Ensure the full institutional, political and financial independence, impartiality and professionalism of the national preventive mechanism, and the compliance of the national human rights institution with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);

(j) Ensure that all relevant detention monitoring bodies operating under the "ombudsman plus" system have free and unhindered access to places of detention. In that context, the Office of the Ombudsman should ensure a swift accreditation process to permit the participation of experienced and adequately trained staff from civil society organizations in such monitoring tasks.

120. Regarding prompt, thorough and impartial investigations, the Special Rapporteur recommends that the executive and judicial authorities:

(a) Ensure prompt, thorough and impartial investigation and prosecution of all alleged offences involving torture or other cruel, inhuman or degrading treatment or punishment, including those reported to have been committed in a context of armed conflict;

(b) Promptly give full strength to the newly created independent State Bureau of Investigation established to investigate crimes committed by high-ranking officials, judges, prosecutors and law enforcement officers, and to provide it with the necessary powers and resources to fulfil its indispensable function;

(c) Ensure that perpetrators of torture or other cruel, inhuman or degrading treatment or punishment are held criminally responsible and that adequate penal sanctions and disciplinary measures are imposed on convicted perpetrators;

(d) Strengthen protection services to ensure the rights of victims of torture and other ill-treatment to seek and receive redress and reparation;

121. Regarding the conditions of detention, the Special Rapporteur recommends that the authorities:

(a) Commit the funds necessary for the successive renovation and/or replacement of outdated detention facilities and to ensure that the quality of nutrition, allocation of space and levels of ventilation and hygiene comply with international standards;

(b) Allocate adequate resources to prison health services and ensure that medical services in detention centres are under the administration of the Ministry of Health;

(c) Ensure that general prison staff receive adequate training on how to deal with particularly vulnerable categories of detainees and how to identify signs of torture and ill-treatment and the first signs of potential mental illness and other medically relevant states;

(d) Ensure that the medical registration forms currently used are adapted so that they meet the recommendations of the Istanbul Protocol;

(e) Ensure the adoption and implementation of special health programmes to address situations that occur frequently in detention facilities, such as the spread of contagious diseases, or to provide for inmates with a drug addiction or with HIV/AIDS;

(f) Introduce effective drug-replacement therapy in detention centres;

(g) Introduce alternative regimes and separate institutions for juveniles, keeping in mind that detention must always remain a measure of last resort for them. Where detention is absolutely necessary, the State party should ensure that all juveniles benefit from regular family contact and educational and recreational opportunities;

(h) Systematically supervise and, where necessary, investigate the conditions of detention and treatment of patients in psychiatric hospitals, and take all other necessary measures to ensure compliance with the Convention on the Rights of Persons with Disabilities;

(i) Ensure that decisions concerning legal capacity, involuntary hospitalization and involuntary treatment are subject to regular judicial oversight;

(j) Provide age-appropriate and accessible information to institutionalized children on their health status and alternatives to medication in institutions where they are being placed.

## **2. Recommendations to the de facto authorities in Donetsk and Luhansk**

122. The Special Rapporteur recommends that the de facto authorities:

- (a) Respect the absolute and universal prohibition of torture and other ill-treatment under both human rights law and international humanitarian law;
- (b) Permit regular, independent and impartial international monitoring, including through ICRC and OHCHR, based on the principles of unrestricted and unannounced access to all places of detention and the complete privacy of interviews with all inmates;
- (c) Take all necessary precautionary measures to prevent torture and ill-treatment, including through prompt and impartial investigation of allegations of torture and ill-treatment and through the prosecution and punishment of perpetrators, including commanders and superiors culpably failing to prevent violations by their subordinates;
- (d) Ensure that all members of armed groups and all representatives of the de facto authorities are properly supervised and trained in the rules of international humanitarian law and, in particular, the obligations and standards derived from the prohibition of torture and ill-treatment;
- (e) Issue clear orders prohibiting torture and other cruel, inhuman or degrading treatment under all circumstances and without any exceptions;
- (f) Share relevant information with authorities that have mandates to investigate human rights violations or abuses and violations of international humanitarian law, including torture and other ill-treatment, and support their efforts by facilitating that investigation, notably by ensuring that relevant information and evidence are preserved.

## **3. Recommendations to the Russian Federation**

123. The Special Rapporteur recommends that the Russian Federation:

- (a) Cooperate fully with ICRC, OHCHR and other relevant organizations to enable them to carry out their respective mandates in the Autonomous Republic of Crimea;
- (b) Allow unimpeded access to the Autonomous Republic of Crimea for all regional and international human rights bodies to monitor the human rights situation in accordance with their mandates;
- (c) Take all other measures necessary to ensure the protection of the rights of all residents of the Autonomous Republic of Crimea in accordance with its international legal obligations and, in particular, to prevent any discriminatory measures and practices, arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment;
- (d) Ensure that representatives of the law enforcement agencies in the Autonomous Republic of Crimea are properly supervised and trained on their obligations under human rights law, international humanitarian law and other relevant bodies of international law;
- (e) Investigate all allegations of torture and ill-treatment with due regard to the needs of victims and specific methodologies, in accordance with the Istanbul Protocol;
- (f) Ensure that individuals found to be responsible for abuses are held accountable before an independent judiciary.