

NATIONS UNIES
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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15)
UKR 1/2014

20 February 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 16/16, 16/4, 24/5, 16/5, 17/5, 16/23, and 23/25.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning alleged excessive use of force against, killings, injuries, enforced disappearances of, and arbitrary arrests and detention of, largely peaceful protestors and journalists in the context of Euromaidan ("Independence Square") protests, which have been ongoing in Kiev and other parts of the country since November 2013.

According to the information received:

Lethal casualties and injuries, including from excessive use of force

On 21 January 2014, Mr. **Yury Verbytsky**, born in 1963 and a Euromaidan activist, was allegedly abducted by unidentified individuals in a local hospital, where he was reportedly requesting medical treatment. According to reports, that same day, Mr. Yury Verbytsky was found dead in a forest on the outskirts of

Kiev. Allegedly, the body showed traces of broken ribs and duct tape around the individual's head.

On 22 January 2014, Mr. **Mikhail Zhiznevsky**, a 25 year-old Belarussian national and Euromaidan activist, allegedly died from injuries caused by a gunshot wound in the heart, during a protest on Hrushevskoho Street. It is reportedly unclear who shot Mr. Zhiznevsky.

On the same day, Mr. **Sergei Nihoyan**, born in 1993 and a Euromaidan security member, died from injuries caused by a volley of buckshot at the stadium Dinamo on Hrushevskoho Street.

Still on the same day, on Hrushevskoho Street, Mr. **Roman Senik**, born in 1968 and a Euromaidan activist from Lviv, was critically wounded in the lung by a sniper. Doctors, who had to amputate one arm, did not manage to save his life.

Following violent clashes in Kiev between riot police and protesters on 18 February 2014, at least 25 individuals were reportedly killed, at least 351 were wounded and at least 241 persons were hospitalized. The casualties include protesters, journalists and law enforcement agents. According to reports, at least half of the killed persons died as a consequence of use of firearms, which was allegedly documented on videos. On 18 February 2014, among those killed in the context of the protests are:

- Mr. **Vyacheslav Veremiy**, a journalist, who is reported to have been fatally shot, while his friend and driver were allegedly severely beaten;
- Messrs **Serhiy Didych**, **Volodymyr Kischuk**, and **Seriy Shapoval**, whose bodies were reportedly found in the House of Officers;
- Mr. **Zurab Khurtsia**, a Georgian citizen, and Ms. **Antonina Dvoryanets**, who were found dead at a barricade located at the entrance of the subway station Khreschatyk;
- One unidentified man who was found dead in front of the National Bank;
- One unidentified protestor who was found beheaded near the Verkhovna Rada;
- Two unidentified individuals who died in hospital no. 17; and
- Seven unidentified bodies which were brought to the city morgue in Kiev.

Incommunicado detention

Mr. **Dimitrii Bulatov**, Euromaidan activist, was reportedly abducted by unidentified men on 22 January 2014, at approximately 11 p.m., in Kiev. He was allegedly held incommunicado where he was subjected to torture during interrogation and being questioned about the funding sources of his activities. It is further alleged that Mr. Bulatov was thrown from an unidentified vehicle into a forest outside Kiev on the evening of 30 January 2014. It was reported that there were bruises and cuts all over his body and he was allegedly crucified. It was further reported that Mr. Bulatov is receiving medical treatment at a hospital in Kiev.

Enforced disappearances and abduction

Mr. **Anatoliy Shynkaruk** allegedly disappeared after a dispersal of Euromaidan protests on the night of 29 November 2013. His fate and whereabouts remain unknown.

Mr. **Volodymyr Pryydun**, Member of Parliament from Batkivshchyna, was allegedly abducted by law enforcement officials, on 30 November 2013 during a dispersal of Euromaidan protests. His fate and whereabouts remain unknown.

Ms. **Inna Grygoryan**, from Lviv, reportedly disappeared on 30 November 2013 when riot police brutally dispersed a crowd of protestors. Her fate and whereabouts remain unknown.

Mr. **Lybomyr Hurmak**, from Kiev, went to the capital around 20 January 2014. It was reported that since then he has had no contact with his relatives. His fate and whereabouts remain unknown.

On 21 January 2014, Mr. **Igor Lutsenko**, journalist and activist, was allegedly abducted, together with Mr. Yury Verbytsky, by unidentified individuals in a local hospital, where both individuals were reportedly requesting medical treatment. Mr. Lutsenko was allegedly abandoned in a forest in freezing temperatures. According to the information received, the individual is still alive.

Mr. **Andriy Karbyshev**, a Euromaidan volunteer, from Ivano-Frankivsk, has reportedly disappeared since 25 January 2014. His fate and whereabouts remain unknown.

Mr. **Danylo Lobintsev** was reportedly last seen on 25 January 2014 when he was on his way to Hrushevskoho Street. His fate and whereabouts remain unknown.

The following 20 persons have also been reported as disappeared:

- Mr. **Sergey Oleksandrovitch Bilitsa**, born on 16 July 1976 and reportedly disappeared as of 31 December 2013 in Kiev;
- Mr. **Vadim Golyunko**;
- Mr. **Evgen Vasylievitch Gornichar**, born in 1987 and reportedly disappeared as of 19 December 2013;
- Mr. **Miron Gorodinsky**, aged 49 and reportedly disappeared as of 4 February 2014 in Kiev;
- Mr. **Ivan Doloban**, reportedly disappeared in Kiev;
- Mr. [REDACTED], born 1996 and reportedly disappeared as of 27 January 2014 in Kiev;
- Mr. **Volodimir Ivanovitch Kopeychuk**, reportedly disappeared in Volynska region;
- Mr. **Mikola Mikitin**, born in 1956 and reportedly disappeared in Kiev;

- Mr. **Yosif Mirinov**, aged 48 or 49 and reportedly disappeared as of 23 January 2014 in Kiev;
- An **unidentified woman**, reportedly disappeared as of 2 February 2014 in Kiev;
- Mr. **Ivan Mikhailovitch Pasitchnyak**, born on 17 June 1967 and reportedly disappeared as of 19 January 2014;
- Mr. **Maksim Polyakov**, born in 1985 and reportedly disappeared in Kiev;
- Mr. **Andriy Vasilyovitch Potapov**, born in 1983 and reportedly disappeared as of 23 January 2014;
- Mr. [REDACTED], born on 25 January 2000 and reportedly disappeared as of 25 January 2014 in Kiev;
- Mr. **Vadim Borisovitch Protsko** (known also under the name of Vadim Stein), born in 1967 and reportedly disappeared as of 20 January 2014 in Kiev;
- Mr. **Oleksey Sergiyovitch Solovyov**, born in 1983 and reportedly disappeared in Kiev;
- Mr. **Dmitro Anatolyovitch Tkach**, born in 1992 and reportedly disappeared as of 10 February 2014 in Vinitska region;
- Mr. **Roman Tkatchuk**, reportedly disappeared in Kiev;
- Mr. **Oleksyy Trofimov**, reportedly disappeared as of 2 February 2014 in Kiev; and
- Mr. **Oleksandr Polikarpovitch Shadchiev**, aged 74 and reportedly disappeared as of 20 or 21 January 2014.

Arbitrary arrests and detention

Many individuals have also been arrested and, oftentimes pursuant to a court order, have been detained in prison or held under house arrest, on a preventive basis as a security measure, for either participating in, or for being perceived as participating in protests.

Many of the individuals detained are members of Euromaidan, such as Mr. **Mykhailo Alekseew**, Mr. **Mykyta Gorskyi**, Mr. **Nestor Dydyk**, Mr. **Sergiy Zelinskiy**, Mr. **Andriy Lenets**, Mr. **Andriy Lisovenko**, Mr. **Igor Kobzar**, Mr. **Oleksandr Kravtsov**, Mr. **Oleksandr Mandych**, Mr. **Volodymyr Marcus**, Mr. **Oleksandr Marcus**, Mr. **Sergiy Martynenko**, Mr. **Igor Paloha**, Mr. **Yaroslav Pyzhak**, Mr. **Dmytro Saidakov**, Mr. **Oleksiy Saliga**, Mr. **Denys Sergienko**, and Mr. **Andriy Shmyndjyuk**.

Many of those arrested were allegedly brutalized in the course of their apprehension by law enforcement authorities.

Following the clashes in Kiev on 18 February 2014, at least 65 individuals were reportedly detained on 18 and 19 February 2014. It is alleged that the detained protesters were subjected to torture and degrading treatment.

Situation of journalists

It is reported that over 100 journalists, cameramen and photographers, from, inter alia, *Novaya Gazeta*, *Vesti*, *Spilno TV*, *Radio Svoboda*, *1+1*, *5 Kanal*, *Uezdnye Novosti*, *Golos Ukrainy*, *Hromadske TV*, *Komentarii*, *Krytyka*, *Prykhovana Pravda*, *Espress-TV*, *the Associated Press*, *20minut.ua*, *Babylon13*, and *ICTV*, have been injured, some very seriously, by law enforcement officials while covering and reporting on the protests. Most of the injuries were caused by rubber bullets, stun grenades and batons. Injuries include concussion, eye, ear, neck and kidney injuries, broken bones (e.g. noses, legs, fingers), multiple wounds and scratches, multiples burns, and intoxication from tear gas. It is reported that these officials specifically targeted many journalists in spite of having clearly identified themselves as media personnel. They also deliberately destroyed or confiscated journalists' equipment or forced them to delete pictures taken. They further put several journalists under house arrest.

While condemning the violence used by some protestors, grave concern is expressed about the alleged excessive use of force against, enforced disappearances of, killings, torture and arbitrary arrests and detention of, largely peaceful protestors in the context of Euromaidan protests, in the exercise of their rights to freedom of opinion and expression and peaceful assembly. Similar concerns are expressed about repeated instances of violence against journalists monitoring and reporting about these protests. Further concerns are expressed for the physical and psychological integrity of those in detention and who have disappeared.

We welcome the establishment by the Parliament of Ukraine on 26 December 2013 of a temporary commission tasked with investigating "illegal actions of the law enforcement bodies and individual officials and attacks on the rights and freedoms, lives and health of citizens during the events connected with the mass actions of political and civil protests that have been taking place in Ukraine since 21 November 2013". We call on the commission to shed light on all the aforementioned cases and others brought to its attention.

While we do not wish to prejudge the accuracy of these allegations, we wish to bring to the attention of your Excellency's Government article 6 of the ICCPR, which the Government of Ukraine ratified on 12 November 1973, providing that every individual has the inherent right to life, this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

In its General Comment on article 6, the Human Rights Committee stated that "[t]he protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his [or her] life by such authorities." (HRI/GEN/1/Rev.9, Vol. I, p. 177, para. 3).

The use of lethal force by law enforcement officials is strictly regulated under international law. In this regard, we would like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials (adopted by General Assembly resolution 34/169) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Principle 14 further states that "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary." The principle of necessity under international human rights law is interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life.

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life by any State or non-State actor, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle 9 provides that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". Principle 18 further requires Governments to "ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice." We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

Furthermore, we would like to refer your Excellency's Government to paragraph 1 of the Human Rights Council Resolution 16/23 that condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment which are and shall remain prohibited. To this end, article 2 (2) of the Convention against Torture (CAT), ratified by Ukraine on 24 February 1987, calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other inhuman treatment. "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that "Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished."

We would also like to recall that the article 12 and 7 of the CAT requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed and prosecute suspected perpetrators of torture. Paragraph 7b of Human Rights Council Resolution 16/23 urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed [...]"

In relation to the allegations according to which six individuals remain missing, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

We would also like to refer to the right to freedom of opinion and expression set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would like to refer your Excellency's Government to article 21 of the ICCPR, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with

the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

With regard to the situation of journalists, we would further like to refer to Human Rights Council resolution 21/12 on safety of journalists (A/HRC/RES/21/12) adopted on 27 September 2012, which “condemns in the strongest term all attacks and violence against journalists, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment;” and “calls upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies.”

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at <http://www.osce.org/odihr/66042>, and to the report to the General Assembly of the Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underlines how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

In this connection, we would like to underline article 12 paras 2 and 3 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, with regards to the killing of Ms. Antonina Dvoryanets, we would like to bring to the attention of your Excellency's Government article 4 (c & d)) of the United Nations Declaration on the Elimination of Violence against Women, which, amongst others, notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. (adopted by General Assembly resolution 48/104 on 20 December 1993).

Moreover, since it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summaries of cases accurate?
2. Please provide information on the whereabouts of Ms. Inna Grygoryan, Messrs. Lybomyr Hurmak, Andriy Karbyshev, Danylo Lobintsev, Volodymyr Pryydun, Anatoliy Shynkaruk, Sergey Oleksandrovitch Bilitsa, Vadim Golyunko, Evgen Vasyliievitch Gornichar, Miron Gorodinsky, Ivan Doloban, [REDACTED], Volodimir Ivanovitch Kopeychuk, Mikola Mikitin, Yosif Mirinov, Ivan Mikhailovitch Pasitchnyak, Maksim Polyakov, Andriy Vasilyovitch Potapov, [REDACTED], Vadim Borisovitch Protsko (known also under the name of Vadim Stein), Oleksey Sergiyovitch Solovyov, Dmitro Anatolyovitch Tkach, Roman Tkatchuk, Oleksyy Trofimov, and Oleksandr Polikarpovitch Shadchiev.
3. Please indicate which branches of the security forces were involved in the alleged incidents and what instructions they have received or were issued in relation to the aforementioned incidents. Kindly specify how these comply with international standards set forth inter alia in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
4. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiry carried out in relation to all the aforementioned cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?
6. Please indicate what measures have been taken, or are being taken, to immediately guarantee the physical and psychological integrity of protestors and media personnel and monitors.
7. Please indicate what measures are to be taken to protect journalists and other human rights defenders engaged in monitoring and reporting on the protests.

8. Please indicate whether victims will be adequately compensated.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearances mentioned in this communication concerning as cases to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In light of the serious implications of these cases, we are considering to publicly express our concern in the near future.

Please accept, Excellency, the assurances of our highest consideration.

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
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