

Mandates of the Working Group on Arbitrary Detention; the Independent Expert on the promotion of a democratic and equitable international order; 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 independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Independent Expert on the promotion of a democratic and equitable international order; 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 independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 27/9, 27/1, 25/2, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recent adoption by the Parliament of a resolution requesting derogation from certain rights protected by international and regional human rights treaties to which Ukraine is a State party, resolution entitled "On the Approval of the Notification of Ukraine about the Derogation from Certain Obligations Determined by the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights".

According to the information received:

On 21 May 2015, the Parliament of Ukraine adopted a resolution requesting the Ministry of Foreign Affairs to notify the Secretary-General of the United Nations about the derogation of Ukraine from certain obligations enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the Secretary-General of the Council of Europe about the derogation from certain obligations enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), pursuant to articles 4 and 15, respectively, of these two treaties. The resolution reportedly applies to certain districts of the Donetsk and Luhansk regions determined by the Anti-Terrorist Centre of the Security Service of Ukraine in connection with the conduct of the Anti-Terrorist Operation, and

mentions derogations of State obligations in relation to the rights to liberty and security; fair trial; effective remedy; respect for private and family life; and freedom of movement, including the right to choose one's residence.

We consider that while States are entitled to derogate from their treaty obligations in accordance with the procedures prescribed in those treaties, any restrictions of rights must be necessary, proportionate and non-discriminatory. The adoption of this resolution has no immediate effects on the nature and scope of Ukraine's international human rights obligations, which remain unchanged on its entire territory. The ICCPR requires a derogating State to also proclaim the existence of a "public emergency threatening the life of the nation".

Let us express our concern that the implementation of the derogation would: significantly lower the level of human rights protection in the regions of Donetsk and Luhansk; violate the principle of equality before the law; constitute a form of discrimination on the basis of geographical location; and prevent victims from engaging the responsibility of the State and seeking compensation from international human rights mechanisms for violations of the treaty obligations covered by the derogation.

The derogation would exempt Ukraine from its obligation to guarantee the following rights under the ICCPR: effective remedy (article 2, paragraph 3,); arbitrary arrest and detention and related procedural rights (article 9); liberty of movement and freedom to choose one's residence (article 12); fair trial (article 14); and privacy of personal life (article 17). The resolution mentions derogation from the same rights under the ECHR: liberty and security (article 5); fair trial (article 6); respect for private and family life (article 8) and effective remedy (article 13).

The resolution envisages derogations from some rights enshrined in the ICCPR which have been interpreted by the United Nations Human Rights Committee as being non-derogable. They include the right to an effective remedy and procedural rights, such as, but not limited to, the supervision by a judicial body of the lawfulness of one's detention.

We would like to remind that any restrictions of rights must comply with the core international humanitarian law principles of necessity, proportionality and non-discrimination. The resolution does not demonstrate that the decision to derogate was taken after having considered less restrictive alternatives and in pursuit of a legitimate aim.

The derogation would significantly lower the level of human rights protection in the regions of Donetsk and Luhansk. Potential victims would not be able to engage the responsibility of the state and seek compensation from international human rights mechanisms for violations of the treaty obligations covered by the derogation.

We consider that the adoption of the resolution is a very worrying development. Given the deepening of the political polarisation, and the ever increasing violence of the armed conflict in Eastern provinces, this drastic step could give way to violations of international human rights law by security forces and law enforcement personnel against

civilians and combatants alike without legal consequences, among others, wide spread arrests; detention outside any legal framework; secret/incommunicado detention; torture; extrajudicial executions; enforced disappearances, etc.

Moreover, derogation from the International Covenant on Civil and Political Rights is dangerous and detrimental because an international order can only be achieved through respect of human dignity and readiness to address the root causes of conflict. The human rights solution to Ukraine's armed conflict is enhanced respect for all human rights throughout the territory of Ukraine, including the human rights of the populations of Donetsk and Luhansk.

Your Excellency's Government would be held accountable for any human rights violation within this context. As you know, it is the duty of Governments to ensure that State institutions develop domestic laws in compliance with their international obligations.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge the authorities to seriously reconsider the adoption of the proposed derogations. Provisions contained in the ICCPR are important as a safeguard against the misuse of the state of emergency.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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