

Mandates of the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the use of force by police against demonstrators and the arrest and detention of more than 100 people.

According to the information received:

On 17 October 2017, a mass protest was held in Kiev, organized by several civil society organizations and political parties. The protestors put forward three main demands: a change to the electoral legislation; cancellation of parliamentary immunity; and the creation of an anti-corruption court. Protesters installed a tent camp near the parliamentary building and announced that they intended to continue the protest until their demands were met. During the existence of the tent camp, the police made several attempts to disperse it.

On 17 December 2017, some supporters stormed the October Palace, resulting in criminal cases being opened against some of the protestors.

In February 2018, some of the leaders of the protests – members of parliament from the “Self Reliance” party (Samopomich) and “Movement of New Forces”- who had actively participated in the protest, announced their departure from the tent camp. Among those who remained, a significant number were veterans of the former volunteer battalion “Donbass” who fought against pro-Russian militants in the east of Ukraine.

On 27 February 2018, clashes broke out between the protesters and the police, resulting in injuries on both sides. In connection to this, law enforcement agencies initiated a criminal case.

On the basis of these criminal cases, on 2 March 2018, the Pecherskiy District Court of Kiev decided to conduct an inspection and search of the tent camp.

On 3 March 2018, at approximately 07:00 in the morning, large forces of the National Police and the National Guard surrounded the tent camp, stating that they had come to carry out the court's decision and "conduct investigative actions". The police stated that the protesters began to "hinder the actions". The protesters reportedly set fire to tires. The police next stormed the tent camp. Reportedly, the protesters fought back with sticks, and the stones, chunks of ice, bottles and similar objects to blast packets or firecrackers at the police officers.

The police in turn, reportedly used tear gas and beat protesters with truncheons. Many protesters suffered head injuries. To quench of the fire, the police used extinguishers and hoses. According to reports, some protesters were hit by the water stream, while the air temperature was below -7°C. Police tied the protesters' hands and, by pushing them, took them back to the police buses. Before they were forced to get on the police buses, they were pushed to their knees or made to squat.

According to official data, 111 people were taken to police stations on 3 March 2018. Almost all of them were detained as "witnesses". By the evening of that same day, all detainees had been released. 13 protesters were admitted to hospital. In most cases, they sustained cranio-cerebral injuries, gash wounds, traumas of extremities and burns. The Red Cross reported that it had provided medical assistance to two police officers.

The nature of injuries sustained by the protesters, indicate the following grave human rights violations by the police:

- Disproportionate use of force and special means: Blows were reportedly inflicted to the head area, which is prohibited by article 45 of the Law on the National Police.
- Degrading treatment: Detainees were made to kneel on frozen ground and kept in this position for some time. Article 29 of the Law on National Police requires the cessation of the police measure if the purpose of its application has been achieved or if there is no need for its further application.
- The use of force against journalists: Three journalists were reportedly injured due to the actions of the police. The police have reportedly forbidden journalists from recording the events.
- Mass arrests: Fingerprints were reportedly taken without any grounds.

- Lack of authorization to liquidate the tent camp: The court decision provided only for the conduct of a search. Yet, the police used the decision as justification to liquidate the camp.

In addition, senior management of law enforcement agencies have supported the use of force in subsequent statements. The Ministry of Internal Affairs has stated that “the degree of police savagery wasn’t excessive”. In addition, the General Prosecutor has reportedly stated that the protests were “paid” by Russia and that the protesters “were developing plans to seize the parliament”.

The police in Kiev have stated that several grenades were found as a result of the search in the tent camp. Police also reportedly discovered smoke bombs, incendiary bottles, truncheons and sticks.

On 5 March 2018, the Office of the Ombudsman stressed that, on 3 March 2018, the police grossly violated human rights in particular the right to freedom of assembly, freedom of expression, to personal freedom and not to be subjected to inhuman treatment. The statement was supported by 23 civil society and human rights organizations

We express concern at the reported excessive use of force against demonstrators and journalists, leading to severe injury of several of them, degrading treatment of protestors and the deprivation of liberty of more than 100 individuals. These measures appear to be particularly concerning in view of their intention to demobilize protests, and to limit the public’s right to information about the protests and their dispersal by prohibiting media from reporting from the events. We express equal concern at the disparaging statements by Government officials which appear to justify the police actions. We urge the authorities to investigate the use of force by police officers as well as the obstruction of journalists’ activity.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw your Excellency’s Government’s attention to articles 7, 9, 10, 14, 19, and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ukraine on 12 November 1973, guaranteeing the right not to be subjected to torture, cruel or degrading treatment; the right not to be subject to arbitrary detention; the right to freedom of opinion and expression; and the right to peaceful assembly.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details, and where available, the results of any investigation and judicial or other inquiry undertaken in relation to the allegations of use of force in the context of the above-mentioned demonstrations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information about the legal basis for the arrest of the protestors, and explain how this complies with Ukraine's obligations under international human rights law.
4. Please provide information about the legal basis for liquidating the tent camp of protestors, despite only having authorization to carry out a search.
5. Please provide information about the legal basis for prohibiting media from covering the events, and explain how this is compatible with Ukraine's obligations under international human rights law, in particular with article 19 of the ICCPR.
6. Please indicate what measures have been taken to ensure that human rights defenders, including protestors, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit a case through its regular procedure, in order to render an opinion on whether a deprivation of liberty was arbitrary or not. This letter in no way prejudices any opinion that the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The above appear to be a violation of articles 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which ratified by Ukraine on 23 November 1973.

Article 9 of the ICCPR states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Paragraph 4 of the same article states that anyone deprived of his liberty is entitled to bring proceedings quickly before a court, for it to determine the legality of such detention or to order the release of the person concerned without delay. The Human Rights Committee has established in its General Comment N° 35, article 9 (Liberty and security of person), that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion, expression, assembly and association (CCPR/C/GC/35, par. 17).

In addition we would like to draw to the attention to articles 10 and 14 of the ICCPR, which state that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and that everyone charged with a criminal offence shall be able to communicate with counsel of his or her own choosing.

We would also like to refer your Excellency's Government to articles 19 and 21 of the ICCPR, guaranteeing the rights to freedom of expression and freedom of peaceful assembly. Article 21 states that the right of peaceful assembly should be recognized, and that 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 interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

We would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "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."

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, article 5 (a), establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.