



EUROPEAN HUMAN RIGHTS TASK FORCE

EUROMAIDAN

REPORT ON HUMAN RIGHTS VIOLATIONS

March 2014



FOREWORD

*Quand la dictature devient un fait, la révolution devient un droit.
When dictatorship is a fact, revolution becomes a right.*

Victor Hugo

As an antiracist, pro-democracy, European, human rights & civil society movement, the 30+-country-strong *European Grassroots Antiracist Movement – EGAM* has been supportive of the democrats leading or involved in the *EuroMaidan* mobilization since its beginning.

Therefore, after a first solidarity trip to Kiev by its leadership in December 2013, and following the proposition of its member organization *Youth Initiative for Human Rights – Croatia*, we have built a *European Human Rights Task Force* in order to document the numerous severe human rights violations conducted against the protesters, since they constituted a violent attack on the rights and freedoms of all citizens.

From February the 22nd 2014, the *European Human Rights Task Force*, constituted of four international and two local researchers, has worked for four days in Kiev and gathered information, documents, multimedia material and statements from the protesters, journalists, medics, local human rights groups, politicians and witnesses of violations.

This report, which has been made possible thanks to the strong involvement and accurate expertise of *YIHR – Croatia*, is the result of these investigations.

It aims at directing the attention of both the Ukrainian institutions and the international community towards these violations, at underlying the importance to prosecute those responsible for them, at providing remedy to victims and their relatives, and at pushing Ukrainian and international institutions for democratic changes in Ukraine.

Settling democracy in Ukraine is not about changing faces but about changing the system.

We hope that this report will contribute to it.

I. INTRODUCTION

1. The present Report presents a non-exhaustive list of severe human rights violations committed in Kiev, Ukraine from late October 2013 until late February 2014.
2. More specifically, the Report shows breaches of the legally binding obligations Ukraine has under international human rights law, which are included in:
 - a. Treaties:
 - i. United Nations International Covenant on Civil and Political Rights,
 - ii. European Convention for the Protection of Human Rights and Fundamental Freedoms, and
 - iii. United Nations Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: CAT); and
 - b. Customary international law:
 - i. United Nations Declaration on the Protection of All Persons from Enforced Disappearance.
3. The breaches of aforementioned legally binding instruments identified by this Report are as follows:
 - i. Failure to respect: severe human rights violations committed by the State agents;
 - ii. Failure to protect: severe human rights violations committed by third parties;
 - iii. Failure to fulfill human rights obligations:
 1. to conduct effective investigations into severe human rights violations,
 2. to prosecute and to punish those who are accountable, both directly and by command responsibility, for committing severe human rights violations, and
 3. to provide an effective remedy to the victims of severe human rights violations along with an enforceable right to compensation for wrongdoings suffered.

II. BREACHES OF THE LEGALLY BINDING OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

4. Ukraine is legally bound to fully respect human rights obligations aroused under:
 - a. The United Nations International Covenant on Civil and Political Rights (hereinafter: CCPR), ratified on November 12, 1973,
 - b. The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), ratified on September 11, 1997 and
 - c. The United Nations Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: CAT), ratified on February 24, 1987.

A) Failure to Respect: severe human rights violations committed by the State agents

i. Right to life

5. Right to life is both protected by CCPR and ECHR:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” CCPR – Article 6

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;*
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.”*

ECHR – Article 2

Violations of the right to life:

6. Violations of the right to life committed by the State agents are as follows:

- a. A reasonable suspicion that the regular police units were arbitrarily killing people who were peacefully protesting at Maidan Nezalezhnosti without absolute necessity justification provided for in Article 1§2 of ECHR;
- b. A reasonable suspicion that special riot police unit ‘Berkut’ arbitrarily killed people in their anti-riot actions against peaceful protesters at Maidan Nezalezhnosti;
- c. A reasonable suspicion that ‘Berkut’ and regular police units endangered lives by using illegal lethal or harmful devices and weapons in order to crush a peaceful public gathering.

7. It was found that the police forces and the special anti-riot forces ‘Berkut’ used lethal weapons in suppressing protests in a way they were targeting

also the unarmed civilians peacefully protesting at Maidan Nezalezhnosti, especially on the 19th and 20th February 2014. The researchers have had a chance to study photographs of those killed by snipers during the protests while interviewing medical staff. These photographs show that the killings were conducted professionally, mostly hitting the heads, eyes, hearts and lungs of the victims. This strongly suggests that the goal of the sniper fire was not to disable victims from protesting or posing danger for the safety of the security staff, but to cause lethal injuries. This conclusion is supported by numerous assessments of the medical staff. According to a medic who provided direct assistance to those wounded, at least 50 people were shot by snipers to the head, while 3 were shot to the heart, some of whom from behind.

8. Further, it was found that the police and 'Berkut' forces were altering the accessible weapons in a way that they cause as much damage to the protesters as possible. From several sources (material and interviews), the researchers have learned that the teargas bombs and bombs with blinding effect were coated with nails in order to disperse metal and harm the protesters, potentially lethally. These altered devices were designed to have an impact similar to that of cluster bombs.
9. An especially troubling event took place on 18th February when the Trade Unions building was set on fire while the protesters, including the wounded ones, were still in it. The protesters have used this building, based on substantial number of interviews conducted, for logistics and communication but also to keep the wounded protesters inside. In this fire, according to the estimates of eyewitnesses and medical staff, over 40 persons were killed, most of which due to their inability to move because of their injuries. At the time of the fire, the building was a strategically important site due to its position relative to the barricades that were built next to it to stop the advancement of the State forces. In the Trade Unions building there were three floors occupied by the wounded people. Several surgical tables were in use in that building because ambulances could not make it through. When the medics worked in the House of Officers the ambulances could not come for 4 hours because roads were blocked by 'Berkut' and military (police), so medical assistance had to be provided on site. It is highly unlikely that the Majdan people did not set fire to the Trade Union Building because of the presence of the wounded people. At the time of the fire the doctors had three people on the operation tables so they could not leave them. 700 volunteers and doctors were working on the day of fire when they tried to evacuate the wounded from the building, but it was not easy since there were too many to swiftly evacuate.
10. It was also found that the State forces did not show any regard for the individual role of those gathered at the Maidan Nezalezhnosti while targeting them, as several journalists and medics were shot or beaten, despite wearing clear markings.

ii. Right not to be subjected to torture and other cruel, inhuman or degrading treatment

11. Torture, cruel, inhuman or degrading treatment represents a severe violation of human rights. Provisions of CCPR, ECHR and CAT have prohibited it. The prohibition of torture represents *jus cogens*, a peremptory norm of the international human rights law.

12. According to CAT, torture is:

“(...) the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person (...) when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (...)” CAT – Article 1§1

13. Article 7 of CCPR and Article 3 of ECHR establishes non derogable obligation to the State to refrain itself from using such treatment:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (...)” CCPR – Article 7

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” ECHR – Article 3

14. Alongside prohibition of torture, CCPR also obliges the State to treat all persons deprived of their liberty with humanity and with respect for human dignity:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” CCPR – Article 10§1

Violations of the right not to be subjected to torture and other cruel, inhuman or degrading treatment:

15. Violations of the right not to be tortured and other cruel, inhuman or degrading treatment committed by the State agents are as follows:

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| <ul style="list-style-type: none">a. A reasonable suspicion that the regular police units submitted people who were peacefully protesting at Maidan Nezalezhnosti to acts of mental and physical torture;b. A reasonable suspicion that special riot police unit ‘Berkut’ submitted protesters, people who were in fact or in their own assessment acquainted with public gathering, medics and journalists to the acts of mental and physical torture;c. A reasonable suspicion that detained, arrested and imprisoned protesters were submitted to acts of torture and were, while under the custody of the State, treated in a cruel, inhumane and degrading manner. |
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16. The researchers found several grounds to claim that the violations of the right not to be tortured and other cruel, inhuman or degrading treatment was imposed on the protesters. Several interviewees disclosed information of torture and other cruel, inhuman or degrading treatment enforced onto the protesters.

17. ‘Berkut’ had learnt that Auto Majdan is using radio for internal communication, so they hijacked the system in order to lure them into a trap. Once they were in the trap the ‘Berkut’ members inflicted bodily harm onto several members of Auto Majdan, and demolished the cars.

Most of them were hospitalised due to the seriousness of injuries, while a handful ended up in detention and were released soon after.

18. It is well documented by the media and the protesters that the police and 'Berkut' units used excessive force in situations of immediate encounter with the protesters, causing severe injuries by beating them.
19. The researchers were allowed to study the lists of wounded protesters who were taken and imprisoned by the police forces. It was concluded that some of these protesters were wounded to the extent that they needed constant intensive care, but were regardless taken into prisons where such care could not have been provided. Several of the imprisoned protesters had open traumas such as severe sniper head injuries at the moment of being taken by the police. Some of them were later confirmed dead to the researchers by the medical staff.
20. Some of the medics disclosed information to the researchers of 3 mutilated bodies of protesters. These bodies were brought to the medics with their eyes taken out, and fingers chopped off.

iii. Right to liberty and security

21. Right to liberty and security is both granted by CCPR and ECHR:

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

(...)

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." CCPR – Article 9§1 and 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(...)

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(...)" ECHR – Article 5§1(c); 3 and 4

Violations of the right to liberty and security:

22. Violations of the right to liberty and security committed by the State agents are as follows:

- a. A reasonable suspicion that both regular police forces and 'Berkut' unit arbitrarily arrested and detained people.
- b. A reasonable suspicion that both regular police and 'Berkut' unit were not complying with the obligation to promptly bring a detained or arrested person before the judge.

23. During the struggle between the protesters and the State forces, it was found that the State forces were arbitrarily imprisoning the captured protesters, regardless of their exact role in the protests. In some of these cases, it was impossible for the State units to claim that those arrested individuals committed a crime or any other punishable act, but were nonetheless captured and held in custody without clear and understandable accusations.

24. One example that was disclosed to the researchers is concerned with the events of November 30th and December 1st. Prior to November 30th, there were 'Camp protests'; which was a peaceful protest. On November 30th, the State forces committed a brutal attack on the students. On December 1st, 11 people were arrested near the Presidential Administration Complex. Out of these 11, 9 people demonstrated peacefully, while the remaining two were trying to relive tensions the situation between the police and the protesters, without posing any danger to the State forces. These people were demonstrating against the earlier violent crack-down on the peaceful Maidan protests.

25. According to the interviewees, the arrested individuals have not been provided with a chance to defend themselves or to legally challenge the provisions of arrests and detention.

iv. Right not to be subjected to enforced disappearance or kidnapping

26. Right not to be subjected to enforced disappearance or kidnapping is enshrined both in CCPR and ECHR and it is established as a rule of customary international law supported by the Rule 98 of the Customary International Humanitarian Law, Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter: Declaration) and ultimately by the International Convention for the Protection of All Persons from Enforced Disappearance of which Ukraine is not a signatory. Enforced disappearance presents the breach of international human rights law and State should refrain itself from this practice, e.g. the Declarations states:

"Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering

on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practice, permit or tolerate enforced disappearances.

(...) "Declaration on the Protection of All Persons from Enforced Disappearance

Violations of the right not to be subjected to enforced disappearance or kidnapping:

27. Violations of the right not to be subjected to enforced disappearance or kidnapping committed by the State agents are as follows:

a. A reasonable suspicion that both 'Berkut' and regular police units submitted people to enforced disappearances by <i>de facto</i> kidnapping them.

28. The State forces provided no clear and legally plausible explanation for taking into custody the wounded protesters from the public hospitals. The medical staff also reported to the researchers that the police did not collect relevant information from them when taking the wounded protesters into custody. On the 18th February alone, 159 people were taken from the hospitals according to the medical records.

29. At the time of this research, the medical staff had no confirmed information on the whereabouts of the detained wounded individuals. Some of them were later confirmed dead, while there was no information whatsoever regarding some of them. It is the opinion of the authors that this constitutes enforced disappearances.

30. A similar situation was documented in several cases of protesters being imprisoned or taken by the State forces during immediate clashes. Other protesters had no information on the whereabouts of these individuals after they were taken by the State forces.

v. Freedom of expression

31. Freedom of expression is granted both by CCPR and ECHR:

"(...)

2. 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 (...)

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals." CCPR – Article 19§2 and 3

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (...)

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” ECHR – Article 10

Violations of the freedom of expression

32. Violations of the freedom of expression committed by the State agents are as follows:

- a. A reasonable suspicion that police units deliberately aimed at and attacked members of the press and journalists in order to prevent them from reporting on the protests.
- b. A reasonable suspicion that the police units deliberately molested, detained and arrested people for showing their support for the protests.

33. As mentioned above, this research found that the shootings and attacks by the State forces were conducted indiscriminately against the protesters, medical staff and the journalists.

34. According to the media outlets and journalist organisations, dozens of journalists were injured either by weapons or by physical attacks, and at least one was killed by the State forces. Some of these cases, such as that of Andrei Kiselev, a Russian journalist and accounts of Mark Rachkevych, an editor of KyivPost, were reported on extensively by the media.

vi. Freedom of assembly

35. Freedom of assembly is enshrined both in CCPR and ECHR:

“The 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 interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” CCPR – Article 21

“1. Everyone has the right to freedom of peaceful assembly (...)

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.” ECHR – Article 11

Violations of the freedom of assembly:

36. Violations of the freedom of assembly committed by the State agents are as follows:

- a. A reasonable suspicion that regular police and 'Berkut' units tried to quash and/or quashed peaceful public assemblies without any reasonable justification necessary to limit the exercise of the freedom of assembly.
- b. A reasonable suspicion that regular police and 'Berkut' units prevented other people from joining the public assembly without any reasonable justification necessary to limit the exercise of the freedom of assembly.

37. It is the conclusion of the researchers, based on numerous accounts, evidence, statements from the protesters, local human rights groups, journalists, medics and other individuals, that the Government tried to suppress the protests without any reasonable justification necessary to limit the exercise of the freedom of assembly.

38. The collected accounts strongly suggest that the State forces used violence prior to the organisation of defense structures by the protesters

39. Furthermore, the types of violations and the methodology of suppression of protests suggest that the State forces acted in such manner so as to discourage others from participating in the protests by creating a situation of grave insecurity.

40. Further, according to the statements from local human rights activists and journalists, the local and regional authorities, especially in the southern and eastern regions of Ukraine, publically labelled the protesters as *foreign agents* and *agitators* to discourage people from joining the protests.

B) Failure to protect: severe human rights violations committed by non-state actors

i. The obligation to protect the right to life against acts of non-State actors

41. The State has to protect the life of a person against acts of non-State actors if it has reasonable grounds to believe that lethal acts are going to be committed by non-State actors and it should exercise due diligence to prevent those acts, e.g. the European Court for Human Rights (hereinafter: ECtHR) states:

"(...) In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (...), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (...)" ECtHR - Osman v. the United Kingdom, no. 14/1997/798/1001, judgment of 28.10.1998, §116

Violations of the right to life:

42. Violations of the right to life committed by the non-State actors are as follows:

- a. A reasonable suspicion that the State agents organised Titushki squads with the purpose of committing criminal acts, *inter alia* murders.
- b. A reasonable suspicion that Titushki squads committed murders of protesters or people whom they regarded as supporters of the protests.
- c. A reasonable suspicion that so far unidentified groups or individuals committed kidnappings, torturing with the aim to murder.

ii. The obligation to protect the right not to be subjected to torture and other cruel, inhuman or degrading treatment committed by non-State actors

43. The State has to protect a person against torture and cruel, inhuman or degrading treatment, and against acts of non-State actors if it has grounds to believe those acts may occur, e.g. the Committee Against Torture states:

'(...) that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent (...) such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop (...) facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission (...)' Committee Against Torture, General Comment no. 2 - §18

Violations of the right not to be subjected to torture and other cruel, inhumane or degrading treatment committed by non-State actors:

44. Violations of the right not to be subjected to torture and other cruel, inhumane or degrading treatment committed by non-State actors are as follows:

- a. A reasonable suspicion that the State agents organised Titushki squads for purpose of committing acts of torture and cruel, inhuman and degrading treatment.
- b. A reasonable suspicion that Titushki squads committed acts of torture and cruel, inhumane and degrading treatment towards the people whom they regarded as supporters of the protests.
- c. A reasonable suspicion that unidentified groups or individuals committed acts of torture and cruel, inhumane and degrading treatment.

iii. The obligation to protect the right to liberty and security against forced disappearance acts committed by non-State actors

45. The State has to protect the liberty and security of a person against acts of non-State actors, if it has reasonable grounds to believe that kidnappings and forced disappearances are going to be committed by non-State actors and it should exercise due diligence to prevent those acts, e.g. the Declarations states the obligation of the State to prevent forced disappearances:

"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." Declaration on the Protection of All Persons from Enforced Disappearance – Article 3

Violations of the right to liberty and security against force disappearances acts committed by non-State actors:

46. Violations of right to liberty and security against forced disappearance acts committed by non-State actors:

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| <ul style="list-style-type: none">a. A reasonable suspicion that the State agents organised Titushki squads for the purpose of committing acts of enforced disappearances and kidnappings.b. A reasonable suspicion that Titushki squads committed acts of enforced disappearances and kidnappings.c. A reasonable suspicion that so far unidentified groups or individuals committed acts of enforced disappearances and kidnappings. |
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iv. The obligation of the State to protect the freedom of expression against acts of non-State actors

47. The State has to protect the freedom of expression of both peaceful protesters and journalists against acts of non-State agents:

*"(...) in addition to the primarily negative undertaking of a State to abstain from interference in the rights guaranteed by the Convention 'there may be positive obligations inherent' in those rights.
(...)*

This is also the case for freedom of expression, of which the genuine and effective exercise does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. (...) the State has a positive obligation to protect the right to freedom of expression, even against interference by private persons (...)"ECTHR, Palomo Sanchez and Others v. Spain, nos. 28955/06, 28957/06 and 28964/06 - §§ 58 and 59

Violations of the freedom of expression by non-State actors:

48. Violations of the freedom of expression against acts of non-State actors are as follows:

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| <ul style="list-style-type: none">a. A reasonable suspicion that the State agents organised Titushki squads for the purpose of committing acts that would violate protesters' freedom of expression.b. A reasonable suspicion that Titushki squads committed acts violating protesters' freedom of expression. |
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- c. A reasonable suspicion that so far unidentified groups or individuals committed acts violating protesters' freedom of expression.

v. The obligation to protect the right to peaceful assembly against acts of non-State Actors

49. The State has to protect peaceful assemblies against acts of violence posed by non-State actors, e.g. the Special Rapporteur on the rights to freedom of peaceful assembly and of association states:

"(...) that States have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly (...) The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed. Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (...)" A/HRC/23/39, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association - §49

Violations of the right to peaceful assembly by non-State actors:

50. Violations of the right to peaceful assembly by non-State actors are as follows:

- a. A reasonable suspicion that the State agents organised Titushki squads for the purpose of committing acts that would violate protesters' right to peaceful assembly.
- b. A reasonable suspicion that Titushki squads committed acts violating protesters' right to peaceful assembly.
- c. A reasonable suspicion that so far unidentified groups or individuals committed acts that violated protesters' right to peaceful assembly.

51. Findings of the researchers regarding severe human rights violations committed by non-State actors enumerated in Section B are as follows:

52. It was found that special mercenary squads 'Titushki' were established and paid for either by the former President Viktor Yanukovich, the police forces, or the Party of Regions to crush anti-Government protests. These mercenaries were used earlier by the regime as well as during the 2013/2014 Euromaidan protests.

53. According to eyewitness accounts, these squads suppressed the protests by threatening to and causing harm to the protesters using weapons and severe physical violence, as well as by kidnappings. On several occasions, the interviewees have that the actions of Titushki squads resulted in deaths or disappearances of several protesters. Some of the interviewees have claimed that such violations were committed by unidentified groups of individuals.

54. The researchers found that it is a common belief of the protesters, as well as local human rights activists and journalists, that the Titushki squads were paid by the Government to commit acts of severe human rights violations. By doing so, the Government tried to, at least in part, transfer the responsibility for these acts from the formal State forces to these squads.

55. The accounts of the actions of the Titushki squads include beatings, torture, killings, abduction, threats and other acts of torture and cruel, inhumane and degrading treatment.
56. Since these squads acted in coordination with the formal State forces, there was no effective protection from their actions.

C) Failure to fulfill human rights obligations:

- a. to conduct effective investigations into severe human rights violations,**
- b. to prosecute and to punish those who are accountable, both directly and by command responsibility, for committing severe human rights violations,**
- c. to provide an effective remedy to the victims of severe human rights violations along with an enforceable right to compensation for wrongdoings occurred.**

57. The abovementioned and listed severe violations of human rights were not effectively and properly investigated, prosecuted and perpetrators were not punished. Victims of those violations are not justly satisfied in regard of redress, as well as material and symbolic compensation.
58. The State is obliged under general rule to investigate severe human rights violations and to prosecute and punish those accountable for committing those violations, both directly and by command responsibility. This obligation is enshrined in CCPR and further elaborated by the United Nations Human Rights Committee:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” CCPR – Article 2§1

“(…) There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3.

(…)

A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.

(…)

Where the investigations (...) reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. (...)” Human Rights Committee, General Comment no. 31 - §8, 15 and 18

59. Similarly to the general rule, ECHR, CAT and the Declaration are more specifically deal with the remedial obligation that the State has to fulfill regarding investigation of severe human rights violations, prosecution and punitive measures for those accountable, both directly and by command responsibility:

“The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, inter alia, thorough, impartial and careful (...)

(...)

The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (...) ECtHR, *Anguelova v. Bulgaria*, no. 38361/97 - §137

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” CAT – Article 12

“Article 13

1. (...) Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

(...)

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial

(...) All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.” Declaration on the Protection of All Persons from Enforced Disappearance – Article 13 and 14

60. The State’s obligation to remedy human rights violations is not fulfilled without an enforceable right to compensation/redress for the wrongdoings suffered. Therefore, victims of human rights have to be satisfied by the State undertaking investigative, procedural and punitive measures against those accountable for violations occurred, while the State also has to justly address compensation/redress the victims of human rights violations. General principles are set forward in CCPR and ECHR:

“(...)”

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(...)”CCPR – Article 2§3a

“Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.” Human Rights Committee, General Comment no. 31 - §16

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by person acting in an official capacity.” ECHR – Article 13

61. Similarly to the general principle, CAT and the Declaration prescribe in more detail the compensational/redress obligations that the State has to fulfill in relation to the requirement for effective execution of remedies:

“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.” CAT – Article 14

“The Committee considers that the term “redress” in article 14 encompasses the concepts of “effective remedy” and “reparation”. The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-

repetition and refers to the full scope of measures required to redress violations under the Convention.

(...)

The obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.” Committee Against Torture, General Comment no. 3 - §§ 2 and 5

“ The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.” Declaration on the Protection of All Persons from Enforced Disappearance – Article 19

III. RECOMMENDATIONS

62. Based on findings and on the legal analysis of applicable international human rights law, the European Human Rights Task Force:

a. *strongly urges the* Ukrainian Government to undertake an effective investigation into allegations that:

- i. regular police forces committed arbitrary killings of the protesters,
- ii. special riot police unit 'Berkut' committed arbitrary killings of the protesters,
- iii. both regular and 'Berkut' police units endangered the lives of protesters by using illegal lethal or harmful devices and weapons in suppressing peaceful assembly and protests,
- iv. regular police units submitted people who were peacefully protesting at Maidan Nezalezhnosti to acts of mental and physical torture,
- v. the 'Berkut' unit submitted protesters, people who were in fact or in their own assessment acquainted with public gathering, medics and journalists, to acts of mental and physical torture,
- vi. detained, arrested and imprisoned protesters were submitted to acts of torture and were, while under the custody of the State, treated in a cruel, inhumane and degrading manner,
- vii. both the regular police forces and 'Berkut' unit arbitrarily detained and arrested people,
- viii. both the regular police and 'Berkut' unit did not comply with the obligation to promptly bring detained or arrested persons before the judge,
- ix. both the 'Berkut' and regular police units submitted people to enforced disappearances by *de facto* kidnapping them,
- x. the police units deliberately aimed at and attacked members of press and journalists in order to prevent them from reporting on the protests,
- xi. the police units deliberately molested, detained and arrested people for showing their support for the protests,
- xii. the regular police and 'Berkut' units tried to clash and/or clashed with peaceful public assemblies without any reasonable justification necessary to limit/prevent the exercise of the freedom of assembly,
- xiii. the regular police and 'Berkut' units prevented other people from joining the public assembly without any reasonable justification necessary to limit the exercise of the freedom of assembly,
- xiv. the State agents organised Titushki squads for the purpose of committing criminal acts, *inter alia* murders,
- xv. the Titushki squads committed murders of protesters or people whom they regarded as supporters of the protests,
- xvi. so far unidentified groups or individuals committed kidnappings, torturing with the aim of murder/lethal harm,
- xvii. the State agents organised Titushki squads for purpose of committing acts of torture and cruel, inhumane and degrading treatment.,
- xviii. the Titushki squads committed acts of torture and cruel, inhumane and degrading treatment towards the people whom they regarded as supporters of the protests,

- xix. so far unidentified groups or individuals committed acts of torture and cruel, inhumane and degrading treatment,
- xx. the State agents organised Titushki squads for purpose of committing acts of enforced disappearances and kidnappings,
- xxi. the Titushki squads committed acts of enforced disappearances and kidnappings,
- xxii. so far unidentified groups or individuals committed acts of enforced disappearances and kidnappings,
- xxiii. the State agents organised Titushki squads for the of committing acts that would violate protesters' freedom of expression,
- xxiv. the Titushki squads committed acts that violated protesters' freedom of expression,
- xxv. so far unidentified groups or individuals committed acts that violated protesters' freedom of expression,
- xxvi. the State agents organised Titushki squads for the purpose of committing acts that would violate protesters' right to peaceful assembly,
- xxvii. the Titushki squads committed acts that violated protesters' right to peaceful assembly,
- xxviii. so far unidentified groups or individuals committed acts that violated protesters' right to peaceful assembly,
- b. *strongly remind* the Ukrainian Government of its obligation to prosecute and punish all those who are individually accountable for the severe human rights violations committed,
- c. *strongly remind* the Ukrainian Government of its obligation to prosecute and punish all those who:
 - i. ordered severe violations of human rights,
 - ii. commanded execution of those orders,
 - iii. knew about those orders but did not take effective steps to prevent acts that would constitute the violations from later occurring
 - iv. or after knowing about violations committed did not sanction those individually, or bellow his rank command, responsible.

63. The European Human Rights Task Force *strongly urges* the Ukrainian Government to fulfil its obligation to provide effective reparations to the victims of severe human rights violations, where appropriate. List of reparations is, *inter alia*, as follows:

- a. just legal redress where applicable,
- b. just financial compensations,
- c. restitution,
- d. rehabilitation for, *inter ali*:
 - i. the victims of torture, cruel, degrading and in-human treatment,
 - ii. the victims of forced disappearances and/or kidnappings,
 - iii. the victims whose lives were immediately endangered,
 - iv. the families of the victims whose family members were murdered as a result of a severe human rights violations
- e. and other measures of satisfaction:
 - i. public apology from the accountable institutions,
 - ii. public memorials and
 - iii. guarantees of non-repetition.

64. In addition, the European Human Rights Task Force *strongly urges* the Ukrainian Government to undertake all necessary steps in order to change or/and amend all existing laws, *inter alia* regulating civil rights and liberties, freedom of expression and assembly, police organization structure and powers, judicial proceedings and prison system to be in full conformity with international standards for the protection and respect of human rights and their effective fulfillment.

65. The European Human Rights Task Force *kindly reminds* the international community of States to their legitimate interest into breaches of the international human rights law, e.g. the severe human rights violations committed by Ukraine:

“(...) every State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the ‘rules concerning the basic rights of the human person’ are erga omnes obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State Party to a treaty being obligated to every other State Party to comply with its undertakings under the treaty. (...) Accordingly, the Committee commends to States Parties the view that violations of Covenant rights by any State Party deserve their attention. To draw attention to possible breaches of Covenant obligations by other States Parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.” Human Rights Committee, General Comment no. 31 - §2

66. In conclusion, the European Human Rights Task Force *strongly urges* the international community of States to:

- a. provide Ukraine with required assistance in the investigation and prosecution of the severe human rights violations enumerated above, as well as in the reparation undertakings through financial, know-how and logistical support,
- b. closely and effectively monitor the Ukrainian fulfillment of the international human rights law obligations linked with respect, protection and fulfillment of human rights in Ukraine, and
- c. truly foster the dialogue and exchange of knowledge and experiences between the international community and Ukraine as well as between Ukrainian civil society organizations, and their civil society organizations, in assisting the planning, implementation, execution and monitoring of legislative and policy reforms needed.

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