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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بالحق في حرية الرأي والتعبير، السيد أمبيي ليغابو*

إضافة

البعثة التي قام بها إلى أوكرانيا**

* تأخر تقديم هذه الوثيقة إلى الدول الأعضاء بسبب تأخر تقديمها إلى خدمات المؤتمرات لتجهيزها.
** يُعمم موحز التقرير بجميع اللغات الرسمية. أما التقرير، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدم بها وباللغة الروسية فقط.

موجز

يورد هذا التقرير، المقدم وفقاً لقرار لجنة حقوق الإنسان ٣٨/٢٠٠٥ ومقرر مجلس حقوق الإنسان ١٠٢/١، معلومات عن تعزيز وحماية الحق في حرية الرأي والتعبير ويحلل هذه المعلومات المستقاة من مصادر الأمم المتحدة ومسؤولين وطنيين رفيعي المستوى ومؤسسات وطنية ومنظمات غير حكومية وأفراد، جمعها المقرر الخاص في سياق الزيارة التي قام بها إلى أوكرانيا في الفترة من ١٤ إلى ١٨ أيار/مايو ٢٠٠٧.

منذ استقلال أوكرانيا في أعقاب انهيار الاتحاد السوفياتي في عام ١٩٩١، ما فتئت تسعى إلى تحقيق التنمية الاقتصادية والاجتماعية، فضلاً عن تعزيز الديمقراطية بوتيرة سريعة. أما الوضع الراهن، الذي يتسم بالتجاذب الشديد وعدم الاستقرار السياسي، فلم يزل يعوق بزوغ نظام ديمقراطي كامل يقوم على سيادة القانون والحكم الرشيد وحقوق الإنسان.

ورغم أوجه التحسن التي تحققت منذ عام ٢٠٠٤، فإن الحالة العامة في مجال التمتع بالحق في حرية الرأي والتعبير لا تزال غير منسجمة مع روح ومحتوى المعايير الدولية لحقوق الإنسان ومع الممارسة الديمقراطية.

وفيما يتعلق بوسائل الإعلام، فقد تعرض عدد من الصحفيين وغيرهم من موظفي المهنة لأعمال عنف قامت بها عصابات شتى وجماعات غير رسمية أخرى، يدعى أنها على صلة ببعض الأجهزة الأمنية والمؤسسات الأكاديمية التابعة للدولة. وبالإضافة إلى ذلك، يتعرض العديد من الصحفيين، ولا سيما العاملون في المناطق الواقعة خارج العاصمة، لضغوط شديدة وللتخويف من قبل السلطات المحلية وكثيراً ما يقدمون أمام العدالة وتصدر في حقهم أحكام قاسية للغاية. وبالمقابل، فإن التأخر بلا مبرر في البت في قضايا العنف ضد الصحفيين سمة شائعة وكثيراً ما يفلت مرتكبو هذه الأعمال من تقديمهم أمام العدالة.

إن انتشار المطبوعات غير المهنية والارتكان إلى جماعات الضغط السياسية والاقتصادية هي من بين أوجه القصور الأكثر بروزاً في أجواء وسائل الإعلام. فالمطلوب تحسين نوعية العمل الصحفي عن طريق التدريب في أخلاقيات وسائل الإعلام، وبشأن أهمية احترام حقوق الإنسان، ولا سيما الحق في الخصوصية. وينبغي السماح لمثلي الصحف من الصحفيين بالقيام بمهامهم بحرية، دون تدخل خارجي، وينبغي ترشيد أنشطة مختلف الأجهزة المؤسسية التي أسندت لها المسؤولية عن المسائل المتعلقة ببث المعلومات ونشرها. وينبغي أن تجرى عمليات تعيين أو انتخاب أعضاء هذه الأجهزة بطريقة شفافة.

وثمة اتجاه في البلد يدعو إلى القلق يتمثل في دعوى العنصرية والكراهية العرقية، التي تتفاقم خطورتها بارتكاب أعمال الضرب والاعتداء الجسدي والقتل ضد الأجانب المقيمين في البلد، بمن فيهم دبلوماسيون معتمدون وطلبة أجانب وجماعات إثنية ومهاجرون. فالضرر النفسي أو الجسدي الناجم عن هذا العنف على وجه الخصوص يمكن أن يذكي التوترات المحلية وينال بشكل لا رجعة فيه من سمعة أوكرانيا باعتبارها مجتمعاً متسامحاً، وودياً. والمطلوب إلى جميع الجهات، ولا سيما الحكومة، بذل المزيد من الجهود المتضافرة لحماية وتعزيز ما لجميع الأفراد المقيمين في البلد من حقوق الإنسان.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO
FREEDOM OF OPINION AND EXPRESSION, AMBEYI LIGABO
ON HIS MISSION TO UKRAINE (14 TO 18 MAY 2007)**

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Introduction

1. The present document is the full report of the mission of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to Ukraine, held from 14 to 18 May 2007 at the invitation of the Government. This document contains information and opinions from various sources, received by the Special Rapporteur prior and following his visit to the country.
2. The contents of the present document refer to the situation prevailing in Ukraine, if not otherwise stated, at the time of the Special Rapporteur's visit. For the sake of clarity, the Special Rapporteur reiterates that his mandate does not concern exclusively the right to the promotion and protection of freedom of opinion and expression of the media, but it includes all forms of opinion and expression as exercised by citizens, groups and associations regarding civil, political, social, economic and cultural matters.
3. The Special Rapporteur would like to mention that in the preparation of his mission and his report, he consulted material from United Nations sources, particularly the Sixth Periodic Report submitted by the Government of Ukraine under Article 40 of the International Covenant on Civil and Political Rights (CCPR/C/UKR/6, 11 April 2006), the Concluding Observations by the Human Rights Committee (CCPR/C/UKR/6, 2 November 2006); the concluding observations of the Committee Against Racial Discrimination (CERD/C/UKR/CO/18, 8 February 2007) on the seventeenth and eighteenth periodic reports of Ukraine (CERD/C/UKR/18); the reports of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.65, 2001) and the core document submitted by the Government of Ukraine (HRI/CORE/1/Add.63/Rev.1, 15 January 1998).
4. During his visit, the Special Rapporteur met with State and Government officials, as well as representatives of the media, trade unions, non-governmental organizations working in the field of human rights and members of the civil society. He also held an exchange of views with members of the diplomatic corps and senior officials of international organizations.
5. On 7 July 2007, the Government of Ukraine sent to the Special Rapporteur additional information and observations on several issues which were discussed during his visit. The contents of that document were taken into account by the Special Rapporteur in the preparation of this report. The full text of the document is available in the archives of the OHCHR Secretariat.
6. The Special Rapporteur wishes to thank the Government of Ukraine for allowing him to carry out his mission in an effective way. The Special Rapporteur would also like to express his gratitude to all national and international personalities, institutions, members of the media, trade unions, non-governmental organizations and individuals with whom he met and had a comprehensive exchange of opinions and information. Moreover, he wishes to thank the United Nations Office in the country for its support and assistance.

I. BACKGROUND

7. Ukraine gained independence after the collapse of the Soviet Union in 1991, and since then is trying to consolidate its European credentials in spite of some domestic and external resistance. Western Ukraine has close historical ties with Europe, particularly Poland. Both Orthodoxy and the Greek Catholic, or Uniate, faith have many followers there. The 1986 accident at the Chernobyl nuclear power station brought the region on the front stage. About 8 per cent of Ukraine's territory was contaminated as were large areas in neighboring Belarus and millions of peoples have suffered as a result.¹

8. While Ukrainian nationalist sentiments are traditionally strong in the western areas, which became part of Ukraine only when the Soviet Union expanded in the aftermath of World War II, a significant minority of the population of Ukraine are Russians or of Russian culture and roots. Russian influence is particularly strong in the industrialized east, where the Orthodox religion is predominant, as well as in Crimea, the base of the Russian Black Sea Fleet and the homeland of the Crimean Tartars, an ethnic group who was accused of collaborating with Nazi Germany and massively deported to Central Asia in 1944. Approximately 250,000 of them have returned to Crimea since the fall of Soviet Union. Russia is also the single largest trading partner of Ukraine, which depends on Russia for its gas supplies like, to various extents, other European countries.

9. The first president after independence, former Communist Party official Leonid Kravchuk, presided over a period of transition marked by economic decline. Following the victory of Viktor Yanukovych - the candidate backed by outgoing president Leonid Kuchma and leader of the Party of Regions - in the 2004 presidential elections, Viktor Yushchenko and the supporters of his coalition (Our Ukraine - People's Self-Defense Block) took to the streets claiming that the vote had been marred by numerous irregularities. After ten days of peaceful demonstrations, dubbed the Orange Revolution, a recount was ordered in a very tense atmosphere and Yushchenko finally became president in early 2005.

10. Regarded as a pro-Western liberal reformer, Yushchenko's claims to bring Ukraine within the circle of the European Union (2015 has been mooted as possible entry date for EU membership) and to seek future NATO membership found remarkable internal resistance from pro-Russian citizens and from Russia itself. Yushchenko, who was credited with steering through successful economic reforms while serving as prime minister under Kuchma's presidency between 1999 and 2001, has been facing a slowdown in economic growth that swept away the wave of optimism generated by the Orange Revolution.

11. In the aftermath of March 2006 parliamentary elections, in which the Party of Regions topped the poll, Viktor Yanukovych became prime minister through the support of a coalition with Socialist and Communist party. As a result, political power is now shared by two strongly

¹ Following the disintegration of the Soviet Union, Ukraine inherited the third largest nuclear arsenal in the world and the option of whether or not to return these weapons to Russia or be considered a nuclear weapons state. In the end, Ukraine decided to return the nuclear arsenal to Russia and to join the Nuclear Nonproliferation Treaty as non-nuclear weapons state signing the START I treaty.

antagonistic parties while their supporters, especially those of the Party of Regions, have been frequently occupying important streets and squares, most of the time in a peaceful way. This climate of constant confrontation has developed anxiety for the future and great uncertainty in all citizens.

12. The Special Rapporteur had the opportunity of witnessing directly a striking example of the consequences of polarization: at the time of his visit, both the Constitutional Court and the National Electoral Committee were besieged by supporters of the Party of Regions. While pacific demonstrations are surely instrumental to the progress of democracy, on the other hand, the blockade of core national institutions puts an undue pressure on administrators and hinders their work which could not be carried out with the necessary impartiality and peace of mind.

13. A former governor of Donetsk Region in eastern Ukraine, Viktor Yanukovich was prime minister during Leonid Kuchma's presidency between 2002 and 2004. Although known for his pro-Russian stance, on becoming Prime Minister Yanukovich undertook to pursue reforms but seemingly reduced President Yushchenko's engagement for full integration with the European Union and NATO.

II. NATIONAL HUMAN RIGHTS LEGAL AND INSTITUTIONAL FRAMEWORK

14. The Constitution of Ukraine was adopted on 28 June 1996 by the Verkhovna Rada (Parliament of Ukraine). In its Article 32, the Constitution affirms that "The collection, storage, use, and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare, and human rights. Every citizen has the right to examine information about him or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions, and organizations. ..."

15. Article 34 states that "Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs. Everyone has the right to freely collect, store, use, and disseminate information by oral, written, or other means of his or her choice. The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice."

16. Article 36 reads: "Citizens of Ukraine have the right to freedom of association in political parties and public organizations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons. (...) Citizens have the right to take part in trade unions with the purpose of protecting their labor and socio-economic rights and interests. (...) Trade unions are formed without prior permission on the basis of the free choice of their members. All trade unions have equal rights. Restrictions on membership in trade unions are established exclusively by this Constitution and

the laws of Ukraine. No one may be forced to join any association of citizens or be restricted in his or her rights for belonging or not belonging to political parties or public organizations. All associations of citizens are equal before the law.”

17. Article 39 affirms that “Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions, and demonstrations, upon notifying in advance the bodies of executive power or bodies of local self-government. Restrictions on the exercise of this right may be established by a court in accordance with the law and only in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons.”

18. Article 55 reads: “Human and citizens’ rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials, and officers. Everyone has the right to appeal for the protection of his or her rights to the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant. (...)”

19. Article 64 (...) Under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effectiveness of these restrictions. The rights and freedoms envisaged in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of this Constitution shall not be restricted.

20. The President, the Verkhovna Rada and the Congress of Judges each appoint six judges to the Constitutional Court. The length of their mandate is nine years without the possibility of reappointment; the Chairperson is elected by secret ballot only for one three-year term. The Constitutional Court is entrusted with the official interpretation of the Constitution of Ukraine and the laws of Ukraine. Its authority comprises decisions deciding on issues of conformity with the Constitution (constitutionality) of the following: laws and other legal acts of the Verkhovna Rada; acts of the President; acts of the Cabinet of Ministers; legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea. The Court, on the appeal of the President or the Cabinet of Ministers, also provides opinions on the conformity with the Constitution of international treaties that are in force, or the international treaties submitted to the Verkhovna Rada of Ukraine for granting agreement on their binding nature.

21. The Chair and other members of the Constitutional Court met with the Special Rapporteur and noted that there were too many laws related to mass media, a fact that generates some confusion in respecting rules and regulations. The decriminalization of defamation has increased the realm of freedom of expression and helped judges to be more liberal in their sentences against media. As a consequence, the amount of fines in civil law proceedings substantially decreased. The fact that also the Constitutional Court was under strict monitoring from a number of media is definitely positive, but the blockade of the Court’s premises, enforced by political activists, was severely limiting its capacity to take decisions independently and impartially.

22. The National Office of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) is Ukraine's national human rights institution established in 1998 as a constitutionally-mandated independent human rights mechanism. Elected for a five year-term with a one-time possibility of renewal, by a majority of the Parliament deputies, the Ombudsman has a broad-based mandate to: protect human rights and freedoms proclaimed by the Constitution, domestic law and international agreements; observe and respect rights and freedoms through bodies of state power, local self-government and their officials and officers; prevent violations or repeat violations; facilitate the process of ensuring compatibility of domestic international law; improve and develop international co-operation for protection of human rights; prevent discrimination in the enjoyment of rights, and encourage legal knowledge among the population.

23. The law provides the Ombudsman with unrestricted and unannounced access to any public official, including the President; unrestricted access to any government installation, and oversight of the implementation of human rights treaties and agreements to which the country is a party. All citizens and residents can address their concerns to the Ombudsman, who serves in many occasions as an intermediary between citizens and the Constitutional Court. The Ombudsman has the right to attend the sessions of the Parliament, the Cabinet of Ministers, the Constitutional Court, the Supreme Court and the higher specialized courts, the collegiums of procurators' offices of Ukraine and other collegiate bodies. The Ombudsman may appeal to the Constitutional Court of Ukraine with regard to the issue of conformity between the Constitution and the laws and the official interpretation of the Constitution. The present Ombudsman, Ms. Nina Karpachova, was elected by Parliament in April 1998 and is currently serving her second term.² As of May 2007, the International Coordination Committee of National Human Rights Institutions (ICC) did not accredit the institution as in compliance with the Paris Principles.

24. In her meeting with the Special Rapporteur, the Ombudsperson underlined that one of the major challenges faced by the Ukrainian society at present is the arrival of an increasing number of refugees, asylum-seekers and migrants. The tense political atmosphere does not help in dealing with this phenomenon, which needs clear policy strategies and respect for international engagements taken by Ukraine. After a time of optimism in the wake of the 2004 political dispute, media independence seems to be facing again the problems related to intimidation from political and economic lobbies. While incarceration of journalists is now very rare, media safety is still at stake, particularly for those media professionals inquiring on corruption cases.

² CCPR/C/UKR/6, paragraph 5: "The Office of the Ombudsman lacks adequate resources for its work, even though the Office has key responsibilities including processing complaints about serious problems such as prison violence and ethnic discrimination. Many of the Ombudsman's reform proposals have not been acted upon by the legislature. (art. 2)

The State party should supplement the resources of the Office of the Ombudsman, to enable it to carry out its work effectively, in particular, by increasing its capacity to investigate and remedy both individual complaints and systemic problems."

Regrettably, no ultimate solution was found in the Gongadze's case³, a somber reminder of the dangers linked to media freedom. The Ombudsperson added that her office was treating the cases of a few journalists whose rights appeared to be violated.

III. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

25. Ukraine is a party to the following major human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol concerning individual complaints; the International Covenant on Economic, social and cultural rights (CESCR); The International Convention on the Elimination of All Forms of Racial Discrimination (CERD); The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol (CEDAW); The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC) and its Optional Protocols. Ukraine has not signed/ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the second Optional Protocol to the ICCPR concerning the death penalty and the Optional Protocol to the Convention against Torture (CAT), while it has accepted the procedures for individual complaints under CAT and CERD. Ukraine became a member State of the Council of Europe on 9 November 1995. It has acceded or ratified 62 treaties, including many instruments relevant to human rights.

26. The Human Rights Committee, in its Concluding Observations on Ukraine at its eighty-eight session concluded that "Violent attacks against journalists, as well as the harassment of journalists, still pose a persistent threat to the freedom of the press. The Committee is concerned by the assassination of journalist Heorhiy Gongadze in November 2000, the killing of Ihor Alexsandrov, director of the Donetsk regional television station, in 2001, and the death of Volodymr Karachevtsev, head of the Melitopol independent journalists union, in December 2003. (arts. 6 and 19)". The Committee recommended that "The State party should protect the freedom of opinion and expression, including the right to freedom of the press. The State party should vigorously investigate and prosecute attacks against journalists."⁴ The Government provided information to the Special Rapporteur that concerning the case of Mr. Karachevtsev, it was found that he committed suicide under the influence of alcohol. Therefore, no criminal case was opened.

27. The Committee also noted that "During the 2004 elections, students participating in a peaceful protest march to Kiev were arrested and detained *en masse*. (art. 21)" and therefore recommended that "The State party should ensure that there are clear standards protecting the right of individuals to engage in peaceful assembly and to exercise the right of free expression."⁵

³ See paragraphs 47, 54 and 55 below.

⁴ CCPR/C/UKR/6, paragraph 14.

⁵ CCPR/C/UKR/6, paragraph 15.

28. The Committee further stated that “Problems of anti-Semitism and impositions on Muslim religious activities persist in Ukraine. Members of the Jewish community have suffered physical assaults, including attacks on Jewish day school students, Yeshiva students, and a rabbi and his son in Kiev. The Committee also is concerned by the anti-Semitic activities of the Inter-Regional Academy of Personnel Management (MAUP)⁶. In addition, there are unresolved claims for restitution of Muslim religious property, including places of worship, and discrimination against the Tatar community in the Crimea. (Articles 20 and 26)”. In this connection, the Committee recommended that “The State party should ensure that all members of ethnic, religious, or linguistic minorities are protected against violence and discrimination. The State party should provide robust remedies against these problems. The next periodic report of the State party should contain information on human rights training for the police, and the investigation and prosecution of acts of private violence.”⁷

29. While it should be noted that the Committee made concluding observations of the same nature after having examined Ukraine’s fifth periodic report⁸ in 2001, the Committee commended the Government and the Office of the Ombudsperson of Ukraine for their concrete contribution to its work.

30. The Committee against Torture, while examining the fifth periodic report of Ukraine (CAT/C/81/Add.1) in May 2007, expressed “(...) concern about information on harassment and violence against journalists, including murders (*e.g.* the case of Mr. Georgiy Gongadze), and human rights defenders, which severely hamper the role of the mass media and freedom of opinion and expression as well as the monitoring activities of civil society with regard to human rights.” The Committee recommended that “The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities, and ensure the prompt, impartial and effective investigation of such acts.”⁹

31. The Committee on Economic, Social and Cultural Rights recommended that the State party strengthen the provisions in its legal order with respect to the prohibition of discrimination in accordance with article 2 (2) of the Covenant, in particular on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Recalling the Code of Conduct for Law Enforcement Officials (General Assembly

⁶ MAUP is a private higher education institution in Ukraine. Founded in 1989 as a non-state establishment, it consists of a preparatory department, a lyceum, college, institutes and postgraduate school and has over 50,000 students in many branches throughout the country. Since 1991, MAUP has been publishing the *Personnel* magazine and the *Personnel Plus* newspaper. (http://en.wikipedia.org/wiki/Interregional_Academy_of_Personnel_Management)

⁷ CCPR/C/UKR/6, paragraph 16.

⁸ CCPR/CO/73/UKR, 2001.

⁹ CAT/C/UKR/CO/5, paragraph 17.

resolution 34/169), the State party should take all necessary steps to prevent incidents of racially motivated ill-treatment and ensure that timely and thorough investigations and effective prosecutions are carried out.¹⁰

32. The Committee also emphasized that the right of trade unions to function freely shall be subject to no restrictions, other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. The Committee requested the State party to ensure that such restrictions contained in the labour law are fully in line with article 8 of the Covenant, and that acts of intimidation against trade unions and their leaders are prohibited.¹¹

IV. THE SITUATION OF FREEDOM OF EXPRESSION IN UKRAINE

A. General overview on mass media

33. Numerous Ukrainian media outlets are private enterprises. Commercial TV networks, particularly Inter TV and Studio 1+1, attract the majority of the audience. The FM radio band in Kiev counts more than twenty, mainly commercial, stations which are strenuously competing for listeners.

34. In the dispute surrounding the presidential elections of November 2004, journalists at the state-run TV took some distance from the network's staunch pro-government line. For the first time, majority and opposition's opinions were aired in a balanced way while the Kuchma years had seen the closure of a number of opposition papers. After his election success, Viktor Yushchenko stated that he considered press freedom as being a key element of Ukraine's overall development.

35. During his meetings with NGOs, the Special Rapporteur gathered their perception concerning the main problems concerning freedom of the media in Ukraine. The central problem that was highlighted by these interlocutors was constant intimidation and other kinds of pressure to which media professionals are subject, both from the state and from the media outlets themselves. It was highlighted, for example, that the top management in the most important media outlets closely monitors the investigative work of the journalists they employ. Additionally, the State allegedly still guarantees the media several benefits, especially fiscal and financial advantages, which is often a source of pressure and power.

36. The Special Rapporteur also received allegations that members of the Party of Regions have intimidated, and in a number of cases attacked, media professionals, particularly in the Crimea province. Interlocutors recognized that after the Orange Revolution, some practices and policies that led to de facto censorship - such as the "temniki"¹² - have been loosened or

¹⁰ E/C.12/1/Add.65, 2001, para. 22.

¹¹ E/C.12/1/Add.65, 2001, para. 27.

¹² Human Rights Watch, "Negotiating the News: Informal State Censorship in Ukrainian Television", Volume 15, N° 2 (D), March 2003, New York.

abolished altogether, which is seen as a positive step. However, it was emphasized that since the attacks and intimidation against the media, and the inability of the police and the judiciary to elucidate the crimes and bring the perpetrators to justice, have created a state of permanent tension and fear among media workers, fostering de facto self-censorship at various degrees.

37. Civil society interlocutors also pointed to the lack of transparency of the activities of the National Security Council, chaired by the Ukraine's President, as a matter of utmost concern. This Council is allegedly able to control 80 per cent of the Internet traffic in Ukraine through an advanced technological system also in use in other countries. It was alleged that Internet providers could only obtain their licenses upon agreement to install this system.

38. The Special Rapporteur's interlocutors also pointed out that smear and falsification campaigns have been often carried out against human rights activists and trade unionists who are addressing sensitive topics such as corruption. However, it was highlighted that the situation with regards to defamation and libel trials against media professionals and other opinion-making leaders has improved since 2004.¹³ In addition to the decriminalization of defamation, fines following a guilty verdict in civil proceedings are now seen as more proportionate.

39. Journalists' associations lamented that political actors continue to influence media professionals, especially in electoral periods. At present, pressure is often of an economic nature as the State or politically-engaged segments of the private sector own the main media outlets. Journalists' association regretted that a large majority of political personalities and their acquaintances seem not to perceive the added value of true freedom of expression and freedom of speech because they are, inter alia, still anchored to the old Soviet régime philosophy. It was felt that a generational change only could modify this state of mind.

40. Many of the Special Rapporteur's interlocutors also recognized that a share of the responsibility for these problems also lie with media workers. A number of journalists were believed to engage in partisan attempts to discredit opposing political factions and to have ambiguous relations with both the State and large companies. The need for training, upgrading of professionalism and more widespread dissemination of journalistic ethics was thus thoroughly felt.

41. Representatives of the Bar Association stated that the Judiciary, and in general lawyers, are not well trained in international human rights law. Although Ukrainian domestic law reflects international norms such as the prohibition of hate speech, racism, xenophobia and war propaganda, these issues are rarely brought to Courts. The Judiciary is believed to be still dependent on political lobbies and especially in rural areas, the pressure on Courts can be strong.

¹³ See paragraph 43 below.

B. Relevant legislation

42. A body of laws, each regulating a specific part of the media sector - the Law on Printed Mass Media (the press), Law on Information Agencies, Law on the National Television and Radio Broadcasting Council, and Law on Television and Sound Broadcasting - are enforced in the country.

43. The regulation of the media environment appears difficult to implement in light of present legislation due to the existence of various institutions that often act with little coordination. In order to remedy these shortcomings, the Parliament adopted the “Amendments to Certain Laws of Ukraine on Ensuring Transparency of Ownership Relations with Regard to Mass Media”. Some media experts have pointed out that the amendments contain positive provisions that will enhance transparency of media ownership. However, these experts believed that these amendments are unable to create the adequate environment for the promotion of media pluralism, especially in what concerns the diversity of outlets.

44. Ukraine decriminalized defamation through the exclusion from a new criminal code adopted on 1 September 2001 of article 125 of the old criminal code, which prescribed prison sentences of up to three years for defamation offenses. After this key achievement, the frequent imposition of high fines in defamation cases remained a tool for pressure against journalists and editors. A subsequent step, the adoption of the “Law on Guarantee of Freedom of Speech”, provided additional protection to the media through, inter alia, a more sophisticated analysis of defamation offences. Other legislative changes contributed to reinforce freedom of speech protection: an amendment to the new Civil Code passed in January 2004 abolished a controversial article about the dissemination of false information. Other relevant changes in legislation include amendments to freedom of speech legislation on 3 April 2003 and to the right to freedom of information law on 22 December 2005.

45. NGOs informed the Special Rapporteur that the growth in the advertisement market was likely to help strengthen media independence, but also entailed the risk of reinforcing the power of economic lobbies. For the time being, state authorities appeared unwilling to complete the process of privatization and a common contractual basis for media professionals was still missing, which allegedly makes salaries be more subjective and related to political connections rather than professional merits. It was also noted that numerous journalists also cover political positions, especially in regional councils.

C. Violence and intimidation against media professionals

46. The greater press freedom achieved in 2005 is reduced by the continuation of physical attacks on journalists and a general atmosphere of intimidation. The completion of the trial of the killers of journalist Georgy Gongadze left doubts about the independence of the judiciary in relation to the capacity of enquiring about high-ranking State officials. Furthermore, the recent attack of a television crew by a Member of Parliament and his bodyguards, who took away crew’s material and equipment, shows that this kind of acts still find some justification in the minds of numerous politicians, who also trust that they can go unpunished.

47. It should be noted that, according to information submitted by the Government of Ukraine to the Special Rapporteur, there has been a decrease in the past years of crimes against

journalists and media professionals. Whereas in 2003 a peak of 169 cases were registered, 68 attacks of this sort took place in 2006 and 13 in the five months of 2007. Whilst recognizing the positive evolution of the trend, the Special Rapporteur notes that the absolute number of attacks against journalists at present is still very high and creates an unfavorable environment for the flourishing of a free press.

48. It should be highlighted that the Government of Ukraine, throughout the years, has been providing timely replies to the Special Rapporteur's communications, particularly concerning violence against media professionals. However, several cases of attacks require further examination and action from relevant authorities. The following cases are but examples of this need.

49. The gates to the home of Lilia Bujurova, editor of the weekly *Pervaya Krimskaya* and president of the Crimean Association of Independent Journalists, were set on fire to in the city Simferopol, capital of Crimea, in the early hours of 1 March 2006. She blamed the attack on her publication of a list of crime-linked candidates in the 26 March 2006 Crimean parliamentary elections. The Government informed the Special Rapporteur that a criminal proceeding was opened based on provisions on hooliganism, but that there are no indications that the attack was related to Ms. Bujurova's professional activity.

50. Other journalists were threatened or physically attacked during the year 2006. The Special Rapporteur met with Volodymyr Katsman, editor of the newspaper *Stolichnye Novosti*, was badly beaten up in his apartment building, on 8 April 2006, and hospitalized with injuries. While the journalist was still in hospital, his newspaper received an envelope contained white powder and a note in which an anonymous individual claiming to be one of the attackers threatened Katsman's colleagues, in particular investigative journalist Sherhy Kovtunenکو, warning that they would have no protection and that calling in police would not help. The official probe into Katsman's beating has made no progress and the newspaper has asked for police protection for the two journalists. The Government informed that protection measures have been taken to guarantee the security of Mssrs. Katsman and Kovtunenکو.

51. Margarita Zakora, editor of the weekly *Dzerzhynets* in Dniprodzerzhynsk, was hounded by authorities over several months. The paper, launched in January 2006, had become popular with a campaign against corruption among regional officials, who filed 19 almost-identical lawsuits against Zakora. She allegedly received threats in June 2006 after having criticized a businessman. After a second critical article, the same businessman would allegedly have distributed pornographic leaflets about her and her 20-year-old daughter, including their addresses. Zakora asked for police and court protection but despite solid evidence of this harassment, no action was taken.

52. Vladimir Lutiev, editor of the weekly *Evpatoriskaya Nedelia*, was sentenced to eight years in prison on 12 July 2006 for corruption, after being held since June 2005 when a former Crimean Member of Parliament accused him of attempted murder. The court trying Lutiev refused to hear defense witnesses or evidence, according to his lawyer, who also said that the journalist was being hounded by local officials because he had accused them of corruption. According to information provided by the Government, the sentence was subsequently cancelled and the case was set to consideration at the Court of Appeal.

53. Five organizers and triggermen accused of the killing of Igor Alexandrov, head of the *TOR TV* station in the Slaviansk region of Donetsk in 2001, were sentenced to between two and a half and 15 years in prison on 7 June 2006 by an appeal court in Lugansk after a two-month trial. The journalist had been beaten with a baseball bat on 3 July 2001 and died of head injuries four days later in hospital. In autumn 2003, the Public Prosecutor's office announced the killers, members of a criminal gang, had been identified and charged.

54. A court in Kiev resumed hearings on 14 September 2006 in the trial of the presumed killers of journalist Georgy Gongadze,¹⁴ editor of *Ukrainskaya Pravda*. The Special Rapporteur received some allegations of obstacles in the trial proceedings. Prosecutor-general Oleksandr Medvedko was suspected of trying to slow down the investigation and influence its outcome while his successor, Sviatoslav Piskun, declared the case closed when three policemen were charged with kidnapping and murdering the journalists. The "Melnichenko tapes" disclosed by the media, indicated that the decision to get rid of Gongadze was allegedly made at the highest levels of government, but despite the change of regime and promises made by President Yushchenko, who said the day the trial resumed that Gongadze's name had become "a symbol of political change and freedom of expression" in Ukraine, the investigation has made no progress. Court proceedings were to continue until 21 February 2008.

55. During his mission, the Special Rapporteur gathered details about a number of alleged anomalies surrounding the investigation and the trial of Gongadze's case. Material and documents about the killing of the journalist have disappeared little by little and the first investigation team was replaced by a new one which had to recommence the enquiry from scratch. In spite of international pressure to find a satisfactory solution to this case, authorities seem to have constantly operated in order to delay the judicial proceedings and to create, as much as possible, confusion about the real motives behind the crime and the persons who perpetrated it. Moreover, the structure of the Ministry of Interior remains the same since 2000, and the family of the journalist still bears the burden of the consequences of the journalist's killing. Close friends have adopted security measures because of the harassment from anonymous entities.

56. The Special Rapporteur also met with numerous journalists who pointed out to cases of intimidation and harassment. One journalist said that he was ordered to dismiss after twenty-five years of service from the top management of the State television. After his refusal, he was followed by management assistants and questioned about his work with gangster's style interrogation. Another journalist was forced to dismiss after hosting, in the programme he run, a heated debate between opposition and Government representatives on the ground that the program was run in an unprofessional manner.

¹⁴ Among the numerous publications and articles about G. Gongadze: International Federation of Journalists, The Institute of Mass Information. The National Union of Journalists of the UK and Ireland, The Gongadze Foundation, "The Gongadze Enquiry", International Federation of Journalists, January 2005.

57. Representatives of the Ministry of Interior rejected all allegations of inactivity concerning crimes against media workers. Conversely, they affirmed that they devote a lot of time and energy to attacks against journalists, which were investigated in depth, often with good results. Ministry's relations with media are quite satisfactory owing, inter alia, to weekly press conference held in the Ministry, which also ensure proper investigations on violations allegedly perpetrated by police officers.

D. Racism

58. The Special Rapporteur detected alarm among the international community living in Ukraine about violence against foreigners, including students, diplomats, businessmen and tourists, a phenomenon that has undoubtedly racist roots. For instance, a number of websites, popular among the young people, disseminate hate speech and very hostile considerations about foreigners in general, but especially non-Caucasian ethnic groups. Slogans like "Stop Zionist-African expansion", "One race, one nation, our motherland Ukraine" have become quite usual in youth's venues such as concerts, universities and coffee bars.¹⁵ It has been reported that attacks against African students are frequent and that, as a consequence, the foreign student population is dramatically diminishing.

59. Racist attacks in the past have also targeted Jewish places of worship, synagogues and cemeteries. The attacks against persons of Jewish origin that have been recorded in the eastern regions and in the capital seem to be carried out by neo-Nazi and fascist groups. Other minority groups, such as Tartars and Roma, have been victims of prejudice and violence as well. Although the Government has been developing actions to promote tolerance towards the Jewish community, including supporting the 153 Jewish cultural organizations in the country and opening an International Center of Tolerance, civil society claimed that a more comprehensive strategy is required, particularly to eliminate impunity.

60. In his meeting with academic institutions, the Special Rapporteur was made aware of efforts made to reduce the incidence of racial attacks. Ukrainian universities have a long practice, like almost all academic institutions existing during the Soviet régime, of hosting students from less developed countries and they intend to pursue this tradition of hospitality notwithstanding the present wave of racist violence. University managers have reinforced security measures around campuses and opened a dialogue with all students on racial discrimination and the harm it can bring to the Ukrainian society as a whole.

61. With regard to the Interregional Academy of Staff management (MAUP), a private educational institution which allegedly disseminates racial discrimination and maintains links with extremist groups, the representatives of the Ministry of Interior stated that they were ready to intervene should the law be broken, and added that, regardless to the fact that some its officials maintain contacts with that institution, the Ministry does not share its philosophy.

¹⁵ Union of Councils for Jews in the Former Soviet Union, "Chronicle of Anti-Semitism in Ukraine and Russia", 2 February 2007; and "Anti-Semitism Used as a Political Weapon in Kharkov, Ukraine", 23 March 2007.

62. The Special Rapporteur noted with satisfaction the information sent by the Government of Ukraine that an Action Plan against racism was adopted by the Ministry of Interior on 31 May 2007, which include a special focus on extremist groups, on the need to put in place a special unit to respond to crimes against foreigners and the creation of a database of racially, ethnically or religiously motivated crimes.

V. CONCLUSIONS

63. **Independent countries emerging from the dissolution of Soviet Union have been experiencing a period of transition marked by political instability and lack of consistent social growth. The legacy of a powerful and centralized state that characterized Soviet times still influences the behavior of some State institutions, particularly law enforcement and regulatory agencies, as well as the way relations between the State and the media are structured at present.**

64. **Combined with a volatile economic growth, the present political context is marked by a high degree of polarization, which has been a negative influence on the empowerment of civil society and the strengthening of media independence. Due to ongoing political disputes, segments of the State that play a crucial role in the safeguarding of democracy and fundamental rights, such as the Constitutional Court and the Electoral Committee, have also suffered of some limitations of their own prerogative to freedom of expression.**

65. **Within the media environment various trends exist: a reformist current aspires to information based on free circulation of ideas and opinions ensured by independent press and media enterprises. A more conservative group, which prefers to continue with old traditions and attitudes inherited by the Soviet regime, supports the pro-Russian parties. A third, more pragmatic group, offers its services waiting for the outcome of the political struggle. It should be underlined that the borders among these trends are very thin and that the pursuit for independence is equally strong.**

66. **The media environment is marked by poor finances and unilaterally-oriented investments. Like in many parts of the world, newspapers and other printed press endure the increasingly aggressive competition of electronic communications tools, while national television and radio channels are struggling to keep their own audience. Powerful media corporations, which have links with political and economic elites, may intervene on editorial content, narrowing diversity of opinions and installing self-censorship. Public interest is best served by a variety of independent news media, both print and broadcast, which must be allowed to emerge and operate freely. Unrestricted access to foreign media should be guaranteed at all times as it ultimately encourages the advancement of independence among the national media.**

67. **Bearing in mind the vital role played by the media in creating broad awareness of political, economic and social issues, the fact that journalists are still targeted by political and public figures, who should be ready to accept criticism and public screening because of their institutional role, is definitely worrying. Although Article 47 of the Law on Information guarantees that no one can be brought to justice for expressing opinions that have a character of assessment or evaluation, it still leaves room for public figures to target journalists with judicial proceedings.**

68. Journalists, editors and other media workers are often under considerable pressure from holders of state bodies, economic lobbies and informal associations, with links to ordinary criminality, acting often in close cooperation. In this context, investigative journalism might reveal to be an uncomfortable exercise, notably when addressing sensitive subjects. Safety and independence of media in the provinces is often at stake. As a result, self-censorship may emerge as a way to guarantee personal security and some financial benefit.

69. The Special Rapporteur believes that some State institutions, particularly law enforcement agencies, have been downplaying the relevance of racist crimes in Ukraine. While noting that the ratification of the International Convention on Migrant Workers is under consideration, the Special Rapporteur remains convinced that the issue of racism is not adequately addressed by public institutions. The Special Rapporteur further underlines that many extremist groups, particularly neo-Nazi organizations, have used their prerogative of freedom of expression to convey messages of racism and racial hatred. International instruments, particularly the International Covenant on Civil and Political Rights, establish clear limitations on free speech when incitement to racial, ethnic or religious hatred is in question. The Special Rapporteur calls on public authorities to implement these provisions as an essential step to curb the spread of racism and intolerance in Ukraine.

VI. RECOMMENDATIONS

70. The Special Rapporteur urges the main political parties in Ukraine and their leaders to bear in mind, while pursuing their legitimate political aims, the importance of respecting its international human rights engagements and to promote a democratic process grounded on human rights and the rule of law. The Special Rapporteur further encourages all stakeholders involved in the exercise of freedom of opinion and expression to find fresh impetus in their work and to show genuine openness and commitment to dialogue with their counterparts. The Special Rapporteur also invites the United Nations and regional bodies to support all efforts to promote peaceful political debates and tolerance, and to strengthen freedom of opinion and expression, which remains one of the most effective tools for building constructive dialogue.

71. The Special Rapporteur calls for a broad and comprehensive revision of media legislation at large, but especially on TV and radio broadcasting. The existence of a growing body of law, at national level, on mass media has created certain confusion about duties and responsibilities of a number of institutions, whose activities may hinder the realm of freedom of expression. The Parliament should initiate a process of revision and simplification to be brought to an end quickly, in order, inter alia, to increase TV and Radio Broadcasting bodies' independence from political lobbies.

72. The Government of Ukraine and principal State institutions should encourage a new state of mind among public personalities and civil servants based on the concept of good governance, which includes, inter alia, the possibility of criticism and screening by the media as well as by ordinary citizens. New legislation should be adopted to protect the media's central role of ensuring accountability of state and government officials.

73. The Special Rapporteur urges the Government of Ukraine and relevant national bodies to further develop actions aiming to guarantee that crimes against media professionals and opinion-makers will not go unpunished. The Ministries of Interior and Justice should strengthen programs to ensure that media workers are adequately protected in performing their professional duties regardless to the identity of the possible aggressors. Protection schemes should be provide whenever necessary and effective judicial enquiries should be completed.

74. The Special Rapporteur urges the Government of Ukraine and relevant national bodies to take immediate and effective action in order to thwart the wave of racist violence which is invading the country. If not addressed properly, this phenomenon could seriously hamper the freedom of expression and of movement of foreign residents and migrant workers.

75. The Special Rapporteur esteems urgent that the Ministry of Interior and the Ministry of Justice extend human rights training programmes to all the personnel under their purview, including law enforcement officials. These training programmes should also have a specific focus on the principles of freedom of expression, public accountability and the fight against racism.

76. In order to improve the quality of journalism and disseminate professional ethics, the Special Rapporteur recommends that a school of journalistic ethics be established, with the support of international organizations, to organize training courses for journalists and other media professionals working in the country. Professional training and financial investments, especially an increase in salaries, may upgrade the moral stance of the press and the media industry at large.

77. The Government should strengthen the provision of remedial measures, including financial compensation as appropriate, for all media professionals and opinion-makers victims of violence and intimidation, in particular whenever law enforcement officials appear to have been involved in these criminal acts. Mutatis mutandis, a similar régime of compensation should be created in favor of those who have been victim of acts of racism and racial hatred.

78. Parliament should legislate on specific and urgent measures for the promotion of the print press, whose role, in a period of great technological revolution, remains fundamental for educational purposes, notably for the development of the reader's capacity of critical approach and analysis of information. In this regard, the Special Rapporteur welcomes the information provided by the Government that new changes in the legislation will be introduced soon, particularly concerning the mass media and social protection for journalists.

79. The Special Rapporteur invites the Government of Ukraine to consider appropriate legislation for the establishment of an independent national human rights commission, which will supplement the activities of the Office of the Ombudsperson, whose functions appear to be too numerous and varied.

Annex

LIST OF PARTICIPANTS IN THE MEETINGS

Government and State Officials

H.E. Volodymyr Khandogiy, Deputy Minister, Ministry of Foreign Affairs

Ms. V. Lutkovskaya, Deputy Minister of Justice

Mr. Taras Petrov, Head, National Commission on Freedom of Expression and Mass Media Development, Office of the President of Ukraine

Mr. Ivan Dombrovski, Chairperson, Constitutional Court

Ms. Olga Kravchenko, Head of the International Department, Constitutional Court

Ms. Nina Karpachova, Ombudsperson

Mr. Yaroslav Davydovych, Head, Central Electoral Committee

Mr. Volodymyr Oleksiyovych, Deputy Head, State Committee for TV and Radio Broadcasting

Mr. Volodymyr Zveryev, Head, National Commission for Communications and Regulations

Mr. Vitalii Shevchenko, Chairperson, National Television and Radio Broadcasting Council

Mr. Ihor Kurus, Deputy Head, National Television and Radio Broadcasting Council, Member of the Council

Prof. Sergey Sidorenko, Vice-Rector, National Technical University of Ukraine

Mr. Oleg Martynyuk, adviser of the Minister, Ministry of Interior

Media

Mr. Igor F. Lubchenko, President, National Union of Journalists of Ukraine

Ms. Nataliya Lygachova, Chairperson, Telekritika

Mr. Pavel Moiseev, Chief of Law Service; Internews Ukraine

Ms. Viktoriya Syumar, Director, Institute of Mass Information

Mr. Adrian Karmazyn, Chief Ukrainian Service, Voice of America

Ms. Olena Prytula, Chief Editor, Ukrpravda

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Mr. Sergiy Kuzin, Editor, Ekonomicheskyy Ezvestia

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Ms. Anna Danyluk, United Nations Officer
