

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

This report assesses the extent to which people in Ukraine enjoy the rights to equality and non-discrimination. It does so by examining the lived experience of those groups commonly exposed to discrimination and by analysing the framework of laws, policies and institutions established to combat discrimination and promote equality. In so doing, it provides the first comprehensive assessment of the enjoyment of these rights in the country.

The overarching conclusion of our assessment of equality and non-discrimination in the country is that Ukraine is caught between two worlds. While historically Ukraine has been perceived from a Russian perspective as being the western borderland of the Russian civilisation, today the country sits between two spheres of influence – Russian and West European. Since independence, political power has alternated between leaders professing strongly pro-European or pro-Russian visions for the country's future, while pledging to work for a balance. The armed conflict which began in the winter of 2013–2014 in the eastern Donbas regions can be seen as a modern expression of a centuries-long tension between opposite geopolitical orientations.

Ukraine's progress towards achieving equality and non-discrimination for all has been profoundly influenced by these competing visions for the country's future. Thus, while a drive to comply with European Union standards led the country to adopt comprehensive anti-discrimination legislation, much of the political class refused to engage with the process, perceiving the new law as a European imposition, rather than a reflection of a political or social consensus. Indeed, as amendments to strengthen this law were being developed, some parliamentarians were seeking support for Russian-inspired "anti-homosexual propaganda" legislation. One consequence is that, even after its amendment, the anti-discrimination law contains numerous inconsistencies which impede its effective enforcement. Elsewhere in the legal framework, the legacy of the Soviet approach to groups commonly exposed to discrimination can still be seen. Thus, while the Constitution and legislation contain strong social welfare provisions in favour of women and persons with disabilities, paternalistic approaches remain in evidence, in the form of discriminatory legal provisions and practices.

Ukraine's position between two different political worlds is also reflected in the patterns of discrimination and inequality identified in this report. Most prominently, issues of language, and latterly ethnicity, have become new key battlegrounds for those promoting different visions of Ukraine's future. In light of the slow-burning and recently more heated discourse over the status of the Russian language in Ukraine, we sought evidence of discrimination on the basis of language, targeting Russian speakers in particular, but found little. This may be due to the unwillingness of respondents to identify certain practices by reference to the still scary term "discrimination", which has historically been understood in the region as something serious, criminal and intentional, contrary to the modern expert understanding of discrimination. Alternatively, it may be that the politicisation of language in the context of the armed conflict in the East of the country where Russian prevails is relatively recent. Thus, it may be that while on the political surface the issue is being dramatized, everyday practice has not yet caught up and most people continue to use both Russian and Ukrainian interchangeably, but with a gradual emergence of choice of language as a political marker.

Similarly, we interviewed prominent ethnic Russians to identify possible links between ethnic discrimination and the pro-Russian separatist movements in the east of the country, but were repeatedly told that historic relations between ethnic Russians and the majority were cordial; that Ukrainians liked the Russians but didn't like the Putin regime. However, our research also found emerging evidence that the conflict may be creating increased ethnic tensions, as those who identify with the Russian language or culture feel forced to choose.

The rights of lesbian, gay, bisexual and transgender (LGBT) persons are another key battleground in Ukraine's nation building. Indeed, socially conservative pro-Russian politicians have made strenuous efforts to paint pro-Europeans as pro-LGBT, in an attempt to discredit them. In the face of homophobic rhetoric from increasingly influential religious leaders, even pro-European politicians have been reluctant to speak out in favour of these groups.

The report also finds consistent evidence that the annexation of Crimea and the conflict in the Donbas have had an adverse impact on minorities within these regions. The Crimean Tatars – victims of Soviet time and independence time discrimination – have experienced a new wave of violence and discrimi-

nation since the annexation of Crimea by Russia in 2014. Roma have been targeted for racist abuse and evictions in areas controlled by pro-Russian separatists in the Donetsk and Luhansk oblasts. Homophobic Russian legislation has been enacted in Crimea, while homophobic hate crime has increased in the Donbas. There is emerging evidence that religious minorities face increased hardships – including violence – in the conflict areas. Moreover, one direct consequence of the annexation and the conflict has been the creation of a new group subjected to discrimination – internally displaced persons.

Thus, in many ways, Ukraine stands at a crossroads in terms of the protection of the rights to equality and non-discrimination. Since 2012, the country has made great progress in improving its legal framework, largely as a result of the state’s desire to pursue greater European integration. Yet these protections – and even older ones in respect of women and persons with disabilities – remain largely unenforced and unimplemented. Moreover, as the fight for the country’s future continues, it will be important for the state to guard against a descent into identity politics and increasing intolerance of minorities.

Patterns of Discrimination and Inequality

Extensive research by the Equal Rights Trust and its partners has identified evidence of discrimination and disadvantage on the basis of **gender; sexual orientation and gender identity; disability; HIV status; ethnicity, national origin and colour; citizenship; language; religion; status as an internally displaced person; and age.**

Women experience **gender** discrimination in a range of areas of life, limiting their ability to participate in society on an equal basis with men. Despite the existence of a strong protective legal framework and a legal process to identify and amend discriminatory laws, patriarchal legal provisions remain in force in a number of areas of law, in particular in labour and social welfare laws. These provisions both reflect and reinforce persistent stereotypes about gender roles and responsibilities, limiting women’s choices in employment and in other areas of life. Our research has identified evidence of discrimination in all areas of employment, from recruitment through to promotion. The gender pay gap remains stubbornly high, in part reflecting continued vertical and horizontal segregation in the labour market. Violence against women remains a significant problem: rates of domestic violence are high, and there

are good grounds to believe that official figures are underestimates. Women are severely under-represented in public life: only one in eight members of the Verkhovna Rada is female. Finally, this report finds that sexist and misogynistic images of women in product advertisements and media imagery are rife, presenting an image of women as sexual objects.

The situation of **LGBT persons** is of significant concern. Ukrainian law does not provide explicit protection from discrimination on the basis of sexual orientation or gender identity. Calls to introduce such provisions have been strongly resisted, and have contributed to an increase in homophobic statements by political and religious leaders. Surveys conducted by Nash Mir indicate that prejudice and intolerance towards LGBT persons is high and may be increasing. Legislation contains a number of provisions which discriminate on the basis of sexual orientation, particularly in family law where there is no legal recognition of same-sex couples. Transgender persons also face a range of discriminatory laws: they are required to undergo surgery before being able to change their legal gender and subject to various prerequisites before they can undergo a sex change. Our research found evidence of sexual orientation discrimination in many areas of life. Discrimination by the law enforcement agencies ranges from abuse, harassment, blackmail and extortion to a failure to protect from discriminatory violence. In employment, openly gay, lesbian or bisexual people can face workplace harassment and threats of being fired. LGBT people also face discrimination in healthcare and education. Of immediate concern is the increased level of homophobia in Crimea and the areas controlled by pro-Russian separatists in Donbas since the start of the armed conflict in and the annexation of Crimea.

Persons with disabilities are unable to participate in any area of life on an equal basis with others, as a result of both direct discrimination and failure to make reasonable accommodation. Ukraine is a party to the Convention on the Rights of Persons with Disabilities and has reformed its laws to reflect its Convention obligations, but implementation remains poor. Thus, despite the recent reforms, the state displays a tendency to treat persons with disabilities as objects of social concern and welfare, rather than as autonomous rights-holders. Reasonable accommodation obligations are not implemented and enforced, with the result that many buildings, including public buildings such as courts and hospitals, and means of transportation remain inaccessible. The unemployment rate for persons with disabilities is extremely high

and policy measures adopted to promote employment – including quotas and requirements for employers to provide reasonable accommodation – appear to have had little impact. In education, the needs of children with disabilities are not sufficiently addressed, a point which the government itself has acknowledged. Our research also found evidence of obstacles preventing equal access to healthcare and to other services for persons with disabilities.

Ukraine has one of the highest prevalence rates of HIV in Europe but as many as half of **persons living with HIV** are unaware of their status. Stigma and prejudice against persons living with HIV is high and manifests itself in many areas of life. Interviews conducted by the Equal Rights Trust indicate that persons living with HIV face direct discrimination and harassment in education, employment and – a matter of significant concern – in healthcare, where discrimination can prevent persons living with HIV from accessing services for which they have a particular need.

In researching this report, the Equal Rights Trust has identified significant evidence of discrimination and disadvantage experienced by Roma and Crimean Tatars on account of their **ethnicity**. The Trust also found evidence of discrimination against Ukrainian Jews. The report also found evidence of serious discrimination and violence against visible minorities – predominantly those from Africa and Asia – on the basis of skin colour.

The **Roma**, as in many other parts of Europe, suffer particularly high levels of discrimination in almost all areas of life regulated by law, and are rightly considered the most discriminated ethnic group in the country. The Roma are exposed to widespread social prejudice, with levels of intolerance higher towards them than towards any other ethnic group. High levels of violence and hate crime against the Roma are exacerbated by failures to properly investigate and prosecute such incidents. Indeed, the Roma are often harassed by the police themselves. As a result of various historical factors, many Roma do not have identification documents, while many continue to face problems in accessing such documents today. Lack of identification documents restricts access to certain state services, such as healthcare and social welfare. Unemployment amongst the Roma community is particularly high and Roma children often receive poorer quality education. A high proportion of Roma children do not go to school, or fail to complete even primary education.

Crimean Tatars have long experienced severe discrimination as a result of their status as a localised ethnic minority subject to prejudice from their neighbours in the region. They experience significant problems resulting from the seizure of their land during the Soviet period following their deportation in 1943. While many Crimean Tatars have returned in recent decades, restoration of land ownership has been slow. Living standards are generally low and the Crimean Tatars suffer high rates of poverty and unemployment. Crimean Tatars continue to express concern that insufficient efforts are being made to preserve their language. There is evidence of anti-Tatar political discourse and intolerance, sometimes manifested in violence and hate crimes. Since the annexation of Crimea, and Crimea's coming under the de facto jurisdiction of Russia, the situation of the Crimean Tatars has deteriorated with Crimean Tatar activists being abducted or disappearing.

Ethnic Russians make up by far the largest ethnic minority in Ukraine, though in general members of the group, due to a high degree of prior integration and a low degree of differentiation among ethnic Ukrainians and ethnic Russians, do not feel as if they belong to a minority. In researching this report, we sought evidence of discrimination against this group, to establish whether this was a factor in causing the conflict between ethnic Russian separatists and the state in eastern Ukraine. While there have been grievances among ethnic Russians in the east and south prior to the conflict of 2013–2014, these did not appear to have been based on ethnicity *per se*. Indeed, many ethnic Russian interviewees were keen to stress the historically good relations between ethnic Russians and ethnic Ukrainians. Rather than ethnicity, the dividing factor seems to have been **political opinion**: divergent geopolitical orientations to Russia and to the West and the closely related language preference among otherwise bilingual populations have been both the cause and the consequence of the armed conflict. Interviews conducted in April 2015 found, unsurprisingly, that the conflict had antagonised ethnic Russians to a certain degree, even though political choice, experienced as a choice between two rather different civilisations, remained the much stronger marker of identity. Some ethnic Russian respondents talked about an “identity crisis” for ethnic Russian Ukrainians, as aspects of identity which were historically compatible with membership of a multi-ethnic Ukrainian state have begun to become associated with political preference for the Russian state. It is too early to assess what impact this will have on experiences of discrimination, though the trend is a cause for concern.

While **Ukrainian Jews** have suffered severe human rights abuses in the past, our research found that today Jewish community leaders consider the community to be well-integrated. Indeed, leaders interviewed by the Trust indicated that most Jews consider themselves Ukrainian citizens first and foremost. While interviewees did identify anti-Semitic incidents, they emphasised the fact that these were relatively rare acts by private individuals, in contrast to the state sanctioned anti-Semitism of the Soviet era. This said, given the critical time in major Ukrainian cities at the time of these interviews, the way in which Jewish leaders downplayed racist anti-Semitic incidents against their communities should be viewed with great caution. This attitude may be the result of a protective profession of loyalty to the authorities of the state which they have chosen as their future. The political polarisation among Jews is obvious in the fact that Jewish emigration from Ukraine has increased very considerably since 2013.

The report presents evidence of hate crimes and violence directed towards persons on the basis of their **nationality or skin colour** and finds that such crimes are not properly investigated and prosecuted. Indeed, there are reports of the police harassing foreign nationals. Migrants and students from outside of the former USSR, particularly those with dark skin, have been victims of violent assaults, prejudice and intolerance.

This report found that **non-citizens** face discrimination in the field of employment, with legislation restricting many professions to Ukrainian citizens, including the civil service, local government bodies and the military. While in some limited cases, there may be a genuine occupational requirement for a particular field of employment to be restricted to citizens, it is clear that a number of the limitations in Ukrainian law – such as those applicable to auditors or to work in agriculture – are manifestly unjustified.

Few issues excite more attention and controversy amongst Ukrainian politicians than the question of **language** and, specifically, the status and use of the two major languages in the country: Ukrainian and Russian. Despite the heated politics surrounding the issue, the report did not find evidence of a significant or widespread problem of discrimination on the basis of language, though isolated examples, particularly in print, online and video media, were identified. In the context of the armed conflict since November 2013, language has become strongly politicised: there are indications that in the public

mind, the choice of language spoken in various circumstances is more noticeably associated with political opinion, despite vigorous attempts by human rights minded individuals interviewed for this report to de-couple language and politics.

Religious discrimination in Ukraine is manifested in a range of different patterns. Both minority and larger faith groups can experience discrimination, with larger religious groups most frequently experiencing problems where they are in a localised minority. Our research identified evidence of religiously motivated hate crime and hate speech affecting Jehovah's Witnesses and of state officials drafting men from this community into the army, without due regard to their conscientious objection. The Trust also found evidence of discrimination and corruption in the allocation of land for church use; and discrimination by state actors involved in registering religious bodies. Moreover, as with a number of other patterns of discrimination, our research found that the annexation of the Crimea and the conflict in the Donbas have had an adverse impact on the enjoyment of the right to non-discrimination on the basis of religion. In Crimea, Muslim Crimean Tatars have experienced increased religious harassment since the annexation, while in Donetsk and Luhansk, minority churches have faced increased difficulties since the conflict there began.

One significant impact which the annexation of Crimea and the conflict in the Donbas have had is the creation of a population of **internally-displaced persons** (IDPs). As this is a new phenomenon in Ukraine, it is difficult to draw firm conclusions on the nature, scope and prevalence of discrimination against the group. Nevertheless, recent reports indicate that IDPs are experiencing discrimination, notably in employment and housing, caused in large part by prejudice against them.

Our research found that Ukraine has failed to ensure equal rights to **children**, in particular those who are most vulnerable. The institutionalisation of children continues on a significant scale, despite clear commitments to reform. Institutionalisation is a significant human rights problem in itself. Moreover, the poor conditions and poor quality of education within institutions have an adverse impact on children's equal enjoyment of a wide range of human rights. Ukraine has failed to take effective measures to establish a system of juvenile justice which would be appropriate for the needs of chil-

dren who are in conflict with the law. Finally, there is compelling evidence that children with disabilities and children with HIV are subjected to multiple discrimination and disadvantage, as minors within groups which are already exposed to significant discrimination are exposed to violence and abuse. Ukraine still continues to categorise children with more severe disabilities as “uneducable”, in contravention of both human rights and modern medical standards.

Legal and Policy Framework on Equality

While certainly stronger than the majority of other countries worldwide, when compared to other European states, Ukraine’s **legal and policy framework related to equality** remains below European standards. Most importantly, good legislative provisions on paper are not matched by measures to ensure effective enforcement and implementation. The result is a clear gap between the purported protections in law and the actual enjoyment of the rights to equality and non-discrimination in practice.

With respect to ratification of **international human rights treaties**, Ukraine’s record is good. The country has ratified seven of the nine core UN human rights treaties, omitting only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Significantly, Ukraine also has a good record of allowing people within its jurisdiction to bring individual complaints to relevant UN treaty bodies. It permits individual complaints under five of the seven treaties which it has ratified, with the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child being the exceptions, though in the latter case the state has signed but not yet ratified the relevant protocol. Ukraine also has a good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the 1951 Convention Relating to the Status of Refugees and the key Conventions relating to statelessness. Ukraine has ratified all eight of the fundamental International Labour Organization Conventions pertaining to non-discrimination and equality in employment and the 1960 UNESCO Convention against Discrimination in Education.

Ukraine has also taken on important legal obligations through **regional human rights instruments**. The state has ratified both the European Convention

on Human Rights (ECHR) and Protocol 12 to the Convention, which provides a free-standing right to non-discrimination. It has also ratified the European Social Charter (revised), the European Charter for Regional or Minority Languages, the Convention on Preventing and Combating Violence against Women and Domestic Violence, the Framework Convention for the Protection of National Minorities and the European Convention on Nationality.

Together, the Constitution and legislation provide that Ukraine's **international treaty obligations form part of national law** and, where there is conflict, international treaties take precedence. The ECHR has an even stronger position in national law, with legislation requiring the courts to apply the ECHR and the case-law of the European Court of Human Rights when deciding cases. Despite these provisions, references to international treaties and relevant decisions of the European Court of Human Rights are rare, and appear to have little impact upon judicial thinking.

The national legal framework related to equality comprises both constitutional protections and legislation. Article 24 of the **Constitution** is the most important, containing both a freestanding right to equality and a prohibition of discrimination on certain grounds. However, in both cases, there are notable weaknesses. The right to equality is, specifically, a guarantee that citizens have "equal constitutional rights and freedoms" and are "equal before the law". Thus, protection is limited only to citizens and the right to equality, as defined, is more limited than international best practice would suggest. The prohibition of discrimination is limited to a prohibition of "privileges or restrictions". It is not clear that this definition would prohibit all forms of discrimination (particularly indirect discrimination). Moreover, while the list of grounds is open-ended, it omits many which are recognised at international law, such as sexual orientation, gender identity, disability and health status. There has been limited jurisprudence on what further grounds should enjoy protection; judgments on whether "age" is a protected characteristic, in particular, are contradictory and difficult to reconcile. Article 24 also provides for a list of measures which the state is required to take in order to ensure "equality of the rights of women and men"; however, these are problematic, reinforcing stereotypical notions of the role of women in society as needing protection.

At the level of **national legislation**, the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", adopted in 2012 and

amended significantly in 2014, is the most important. The Law, while imperfect, can be considered a **comprehensive anti-discrimination law**. The text of the law, as amended, is largely in line with international best practice: there are appropriate definitions of the different forms of discrimination; discrimination is prohibited on an extensive and open-ended list of protected characteristics, though sexual orientation and gender identity are notably omitted from the listed grounds; and the law has a broad material scope. However, there are also a number of weaknesses. These include a failure to require positive action measures where necessary to accelerate progress towards equality, a limited range of remedies and a failure to harmonise the law with other pieces of legislation and thus ensure that the Law is understandable and usable by lawyers and judges. Since its entry into force in September 2012, the Law has not often been utilised by discrimination victims, possibly as a result of its awkward place within the Ukrainian legal framework.

In addition to the comprehensive anti-discrimination law, there are **two specific anti-discrimination laws** in Ukraine, focused on women and persons with disabilities respectively. The Law of Ukraine “On Equal Rights and Opportunities for Women and Men” has some strengths, including in particular the requirement that the government undertake “gender-related assessments” of other pieces of legislation to identify and amend gender discriminatory provisions. Beyond this, however, the law has a number of weaknesses and the prohibition of gender discrimination in the Law has had little, if any, impact, as illustrated by the evidence in section 2.1 of this report. The Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” has been substantially amended since its adoption, such that it now provides some measure of protection from discrimination on the basis of disability. While the approach of the law when adopted was firmly rooted in the “medical model” of disability, with most provisions providing various forms of social assistance to persons with disabilities, amendments have encouraged a shift towards the “social model” with provisions requiring reasonable accommodation and universal design in the public and private sector. Some court judgments, making reference to the Convention on the Rights of Persons with Disabilities, show the potential impact of the law, though such judgments are relatively uncommon.

Beyond the comprehensive and specific anti-discrimination laws, there are **standalone non-discrimination provisions in legislation** regulating cer-

tain areas of life such as employment, education and family law. These provisions are little used in practice and appear to be more symbolic than practical. Within the criminal law, there are offences in the Criminal Code which prohibit discrimination, the incitement of national, racial or religious hatred, and the importation of various works which cause social harm, including those that promote intolerance and discrimination on grounds of race, nationality or religion. While these go some way to meeting Ukraine's international obligations in this field, they could be strengthened by prohibiting incitement to hatred on further grounds, including sexual orientation, and through more effective enforcement by the police and prosecuting authorities. The Criminal Code also provides for aggravated offences where these are motivated by racial, national or religious intolerance and provides a general power for courts to increase sentences where racial, national or religious hatred was a motivating factor in the commission of an offence. Again, these provisions could be strengthened through inclusion of further protected characteristics and more rigorous use.

There is no comprehensive equality policy although, as of May 2015, the government was preparing a broader human rights strategy to include sections on non-discrimination and gender equality. There are, however, a number of **specific policies** in respect of gender, race and ethnicity, disability and the Roma. While certainly well-intentioned, it is difficult to find evidence of the impact and outcomes of the various policies, strategies and action plans, raising questions as to their efficacy.

The institutions and procedures in place to ensure the **implementation and enforcement** of the rights to equality and non-discrimination are relatively strong. Ukraine has a well-structured court system, and there are no significant obstacles to bringing a case of discrimination and, indeed, those who bring cases of discrimination are exempt from paying court fees (although not necessarily entitled to legal aid). A provision permitting the reversal of the burden of proof in discrimination cases was introduced in 2014, making it too early to assess its interpretation or impact. While Ukraine has not established a specialised body focussed on the protection and promotion of the right to equality, it does have a National Human Rights Institution (NHRI), the Ukrainian Parliament Commissioner for Human Rights (the Commissioner), whose remit includes discrimination. As an A-rated NHRI with an extremely broad range of powers in the field of equality and non-discrimination (as well

as within human rights more broadly), the Commissioner can be considered as meeting Ukraine's international human rights obligations. Though it is arguable that its remit is unachievably broad for one body, the fact that the Commissioner has prioritised tackling discrimination is very welcome.

Jurisprudence on equality and non-discrimination is limited, with a small number of cases decided by the Constitutional Court and lower courts which have interpreted the constitutional and legislative provisions. While this, in part, is a result of Ukraine operating a civil law system with less weight placed on the judgments and reasoning of courts, the decisions that have been made indicate – with some notable exceptions – a reluctance to make use of international standards and best practice in interpreting the rights to equality and non-discrimination.

This report's overall conclusion is that the system of laws, policies and practices in place to prevent discrimination in Ukraine remains a work in progress. While Ukraine has implemented a number of important reforms in recent years, bringing its framework largely into line with international standards, gaps and inconsistencies remain. More importantly, as both the analysis of patterns of discrimination and the assessment of the enforcement of the framework indicate, implementation remains poor. Strong legal protections on paper have not yet translated into a significant reduction in discrimination in practice. Thus, while Ukraine is certainly heading in the right direction, **there is much more to be done by the government of Ukraine to ensure that it fulfils its obligations to respect, protect and fulfil the rights to equality and non-discrimination.**

4.2 Recommendations

In light of the foregoing conclusions, the Equal Rights Trust offers to the government of Ukraine a set of recommendations whose is to enable Ukraine to meet its obligations under international law to respect, protect and fulfil the rights to equality and non-discrimination.

All recommendations are based on international law related to equality and the Declaration of Principles on Equality, a document of international best practice which sums up the most essential elements of international best practice related to equality.

The recommendations are presented below:

**Recommendation 1:
Strengthening of International Commitments Related to Equality**

Ukraine should ratify the following United Nations human rights instruments which are relevant to the rights of equality and non-discrimination:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and
- The Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure).

Ukraine should also make the necessary constitutional amendments so that it can ratify the Rome Statute on the International Criminal Court.

**Recommendation 2:
Constitutional and Legislative Reform**

Ukraine should undertake a review of certain provisions of the Constitution, as well as all legislation and policy, in order to (i) assess their compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party and (ii) amend, and where necessary, repeal existing laws, regulations and policies that conflict with the right to equality. The following provisions have been highlighted in this report as being either discriminatory in and of themselves or applied in a discriminatory manner, and so should be amended as a priority:

Constitutional Provisions

- Article 24, paragraph 1, which limits the personal scope of the right to equality only to citizens;
- Article 24, paragraph 3 which requires the state to take “special measures” in order to ensure “equality of the rights of women and men” but which ultimately results in legislation reinforcing paternalistic gender stereotypes and limiting the opportunities of both women and men;

- Article 36 which guarantees the right to freedom of association into political parties and public organisations only to citizens;
- Article 38 which guarantees the right to participate in the administration of state affairs, in national and local referendums, to freely elect and to be elected to the bodies of State power and local self-government, and equal access to the civil service and to the service in local self-government bodies only to citizens;
- Article 39 which guarantees the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations only to citizens;
- Article 46 which guarantees the right to social protection only to citizens;
- Article 51 which limits marriage only to opposite-sex couples;
- Article 54 which provides the right to freedom of literary, artistic, scientific, and technical creative activities, protection of intellectual property, copyright, and moral and material interests arising in connection with various types of intellectual activity only to citizens.

Legislative Provisions

Code of Labour Laws of Ukraine

- Article 33, paragraph 3 of which creates an exception for female but not male parents to employers' right temporarily to reassign staff members without their consent for a period of up to one month;
- Article 51, paragraph 4 of which allows employers to reduce the number of working hours for employees who are women with children under the age of fourteen years old or who have a disability, but not a father in the equivalent position;
- Articles 55 and 175 which prohibit employers from requiring women to work at night except in those sectors of the economy where there is a special need only as a temporary measure;
- Articles 55 and 176 which prohibit employers from requiring pregnant women and women with children under the age of three years old from working at night;
- Article 56 which permits pregnant women or women with a child under the age of fourteen years old or who has a disability to request part-time work, but does not grant the same permission for a father in the equivalent position; and which permits only

women but not men who are caring for a sick family member to request part-time work;

- Articles 63 and 176 which prohibit pregnant women and women with children under the age of three from working at night, at weekends, overtime or being sent on business trips;
- Articles 63 and 177 which require employers to obtain the consent of women with children aged between three and fourteen years old or who have a disability before requiring them to work overtime or to go on business trips;
- Article 174 which prohibits the employment of women to undertake heavy work, to work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. and which prohibits the employment of women to undertake work involving lifting and moving objects where the weight exceeds their limits;
- Article 178 which allows only for pregnant women and women with children under three years old to be transferred to another job which is less demanding;
- Article 179 which grants parental leave only for women;
- Article 182 which provides 56 days leave only for women who adopt a child from birth (70 days if the woman adopts two or more children);
- Article 182¹ which provides what where a woman has two or more children under fifteen years old, or a disabled child, or an adopted child, or is a single mother, or where a father is bringing up a child without a mother, they shall receive an additional seven days annual leave;
- Article 184 which prohibits the dismissal of pregnant women, women with children under three years old and single mothers of children who are under fourteen years old or have a disability;
- Article 185 which allows pregnant women and women with children under the age of fourteen to claim vouchers to sanatoriums and rest homes as well as material aid; and
- Article 186 which requires organisations with a significant proportion of women to establish nurseries or kindergartens.

Family Code of Ukraine

- Article 21 which defines marriage as between one man and one woman, thus excluding same-sex couples from marriage;

- Article 74 which provides that where a man and a woman live together as an unmarried couple, the property they acquire during the period of living together belongs to them as joint matrimonial property unless a written agreement between them provides otherwise, thus excluding same-sex couples;
- Article 211, paragraph 3 which prohibits same-sex couples from adopting children;
- Article 212, paragraph 12 which prohibits stateless persons from adopting children; and
- Article 213 which gives preferential treatment amongst adopters to Ukrainian citizens over foreign nationals.

Law of Ukraine “On the Civil Service”

- Article 4 which limits working in the civil service to Ukrainian citizens.

Law of Ukraine “On Citizenship of Ukraine”

- Article 9 which provides that the mandatory five-year term of residence in Ukraine in order to obtain citizenship does not apply to spouses of Ukrainian citizens, thus discriminating against same-sex couples, one of whom is a Ukrainian citizen.

Law of Ukraine “On Farming”

- Article 1 which limits establishing a farm to Ukrainian citizens.

Law of Ukraine “On Freedom of Conscience and Religious Organisations”

- Article 24 which imposes certain restrictions on religious activity by foreign citizens (but not stateless persons).

Law of Ukraine “On Immigration”

- Article 4 which provides for the establishment of a quota for spouses of immigrants, but provides that spouses of Ukrainian citizens can receive permits for immigration regardless of this quota, thus discriminating against same-sex couples, one of whom is a Ukrainian citizen.

Law of Ukraine “On Leave”

- Article 10, paragraph 7 which grants the right of employees to request annual leave prior to having worked for the employer for six months continuously in the first year of employment to women due to pregnancy, childbirth and after childbirth as well as for women with two or more children under 15 years of age or with a child with a disability, but not to fathers in the equivalent position;
- Article 10, paragraph 12 which grants the right of employees to request leave at any convenient time to women with two or more children under 15 years of age or with a child with a disability but not to fathers in the equivalent position;
- Article 19, paragraph 1 which grants an additional period of seven days’ paid annual leave to certain persons, namely women with two or more children under 15 years of age or a child with a disability, or who have adopted a child; single mothers, but not to fathers in the equivalent position; and
- Article 25, paragraph 1 which grants an additional period of 14 days’ unpaid annual leave, at their request, to certain persons, namely mothers with two or more children under 15 years of age, or with a child with a disability and fathers who are bringing up such children only where there is no mother (including where the mother is in hospital for a long period).

Law of Ukraine “On Local Government”

- Article 3 which limits employment in local government to Ukrainian citizens.

Law of Ukraine “On Military Duty and Military Service”

- Article 1 which limits employment in the armed forces to Ukrainian citizens.

Law of Ukraine “On the Militia”

- Article 10-21 which requires the militia to identify and report to healthcare institutions information on people who are at risk of AIDS,

and, at the request of a healthcare institution, to issue warrants for such persons, as well as those infected with HIV.

Law of Ukraine “On Notaries”

- Article 3 which limits employment as a notary to Ukrainian citizens.

Law of Ukraine “On Protection of the Population against Infectious Diseases”

- Article 24, paragraph 4, which prohibits persons with tuberculosis in active form and HIV from obtaining visas to enter Ukraine.

Law of Ukraine “On Service in Local Government”

- Article 17 which requires officials working in local government to be assessed once every four years unless they fall into one of the categories listed in paragraph 2. Paragraph 2 includes, inter alia, pregnant women and women who have worked for less than one year after returning from maternity leave, childbirth or childcare, but not men in the equivalent position.

Law of Ukraine “On State Support to Families with Children”

- Article 5, paragraph 2 and Articles 18-1 to 18-3 which provide for social assistance for single mothers but not single fathers.

Order of the Ministry of Health of Ukraine No. 479 of 20 August 2008

- The Order includes transsexuality on the list of diseases, the possession of which prevents a person from adopting a child, thus discriminating against persons on ground of gender identity.

Order of the Ministry of Health of Ukraine No. 60 of 3 February 2011

- The Order requires there to be surgery before a medical certificate certifying a change of sex can be issued and prohibits certain groups of persons from being able to undergo corrective surgery including

persons with children under the age of 18, gay men, lesbians and transvestites, persons with “sexually perverse tendencies” and persons with “morphological features which would make it difficult for them to adapt to their desired gender” such as being androgynous or have a sex disorder development.

**Recommendation 3:
Implementation and Enforcement of the Law of Ukraine
“On Principles of Prevention and Combating Discrimination in Ukraine”**

The Cabinet of Ministers and other relevant agencies should ensure the full and effective implementation of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, as amended in 2014, in particular, by:

- Amending the Law to explicitly include “sexual orientation” and “gender identity” in the list of protected characteristics;
- Harmonising other pieces of legislation, including the Civil Code and the Administrative Code, to ensure that the Law is properly enforceable and that appropriate remedies are available;
- Publishing guidance on the interpretation of the Law in the form of “Explanatory Notes” or otherwise, accessible for judges, lawyers, businesses, non-governmental organisations and victims (or potential victims) of discrimination; and
- Providing specialised training for judges and lawyers on the Law.

**Recommendation 4:
Reform, Implementation and Enforcement of Other Laws
Aimed at Prohibiting Discrimination**

The Cabinet of Ministers should introduce reforms to improve other pieces of legislation which aim to prohibit discrimination. For this purpose:

- The Cabinet of Ministers should undertake a comprehensive review of all legislation which prohibits discrimination including (i) the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, (ii) the Law of Ukraine “On Equal Rights and Oppor-

tunities for Women and Men”, (iii) the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” (iv) and standalone non-discrimination provisions in other pieces of legislation. The review should seek to harmonise the provisions so that the relationship between the different protections offered is clear and complementary, and should consider the repeal or amendment of provisions which have been, in practice, superseded by the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”;

- The Cabinet of Ministers and the Verkhovna Rada should introduce amendments to the Criminal Code such that provisions prohibiting the incitement of hatred on specific grounds and which set out aggravating factors for offences can be enforced in respect of offences motivated by hatred on the basis of other characteristics for which there is evidence that they motivate hate in Ukrainian society, e.g. sexual orientation.
- The Cabinet of Ministers should ensure that the final Human Rights Strategy includes strong, measurable actions and targets in respect of non-discrimination and is monitored and reviewed regularly to ensure that they are being implemented effectively.

Recommendation 5: Actions to Address Discrimination against Specific Groups

The state should take specific actions in order to address the discrimination and disadvantage faced by different groups in Ukraine, including all of those highlighted in Part 2 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Gender

- The Cabinet of Ministers and the Verkhovna Rada should amend all legislative provisions set out in Recommendation 2 above which discriminate on the basis of gender;
- As per Article 5 of the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, the Cabinet of Ministers should ensure

that all draft legislation, whether submitted by the Cabinet of Ministers or by individual deputies, is assessed for its compliance with the principle of gender equality, whether by the Ministry of Justice, the Central Scientific Experts Office or otherwise;

- The Cabinet of Ministers and the Verkhovna Rada should consider the adoption of legislation providing for specific positive action measures in those areas of employment where women are under-represented;
- The Cabinet of Ministers should enforce vigorously Article 17 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” and Article 11 of the Law of Ukraine “On Employment of the Population” which prohibit advertisements seeking candidates of only one gender as well as employers making different demands from employees based on their sex or requiring from them information about their personal life or plans to have children;
- The Cabinet of Ministers should take immediate steps to tackle the persistently high gender pay gap;
- The Cabinet of Ministers should ensure sufficient numbers of child-care centres and other facilities in order to allow parents with young children – irrespective of their gender – to work;
- Notwithstanding the generality of Recommendation 7 below, the Ministry of Education should provide education aimed at eliminating gender stereotypes and gender roles and at promoting gender equality in schools and at all ages;
- The Cabinet of Ministers should also consider informational and awareness-raising campaigns aiming to eliminate gender stereotypes regarding the role of men and women in society amongst the population at large;
- The Cabinet of Ministers should ensure civil servants and all other public officials, including the police and judges, receive specific training on gender equality, with ongoing refresher courses available;
- The Cabinet of Ministers should take immediate steps to tackle the high levels of domestic violence against women as well as its under-reporting, including through appropriate training for police officers and prosecutors;
- The Cabinet of Ministers and the Verkhovna Rada should consider the adoption of legislation providing for specific positive action measures, including quotas where appropriate, in order to address the

low representation of women in many areas of political and public life, including in the Verkhovna Rada and in local government.

Sexual Orientation and Gender Identity

- The Verkhovna Rada should reject all attempts to introduce legislation which discriminates on grounds of sexual orientation or gender identity, including any proposed legislation which would prohibit the “propaganda of homosexuality” amongst minors;
- The Ministry of Health of Ukraine should review all handbooks and other materials produced by the Ministry to ensure that references to sexual orientation and gender identity are in line with international standards and to remove any reference to homosexuality or transsexuality as diseases, disorders or perversions.
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies on working with lesbian, gay, bisexual and transgender persons so as to prevent all forms of discrimination. Any law enforcement agent found to have discriminated against a person on the basis of their sexual orientation or gender identity should face appropriate disciplinary proceedings.
- The Ministries of Education and Health of Ukraine should similarly introduce training for all public servants working in the education and health sector on working with lesbian, gay, bisexual and transgender persons.
- All state representatives should refrain from any homophobic or transphobic public statements.

Disability

- The Cabinet of Ministers should review all relevant national legislation with a view to completing the transition from a medical model of disability to a social model, with a focus on eliminating barriers faced by persons with disabilities.
- The Cabinet of Ministers should more rigorously enforce legal provisions requiring reasonable accommodation to be provided for persons with disabilities, particularly in access to infrastructure and to information.
- The Cabinet of Ministers should take greater efforts to enforce legal provisions and policies supporting persons with disabilities in obtai-

ning employment, including the requirement that employers take measures of reasonable accommodation for employees with disabilities.

- The Cabinet of Ministers should urgently reform all educational institutions, including higher education institutions and boarding schools, to ensure that students with disabilities are able to participate on an equal basis with others.

HIV Status

- The Ministry of Health of Ukraine should provide all medical staff with training on the prohibition of sharing an individual's HIV status with third parties under Article 13 of the Law of Ukraine "On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV";
- Where medical staff do disclose an individual's HIV status, the Office of Public Prosecutor should rigorously enforce Article 132 of the Criminal Code which makes such disclosure a criminal offence;
- The Ministry of Health of Ukraine should take steps to counter discrimination against persons living with HIV in healthcare facilities, both public and private;
- The Cabinet of Ministers should implement and encourage awareness-raising programmes and campaigns amongst the public on HIV and AIDS with the aim of countering prejudice and stigma towards those living with HIV/AIDS, including through school-age education.

Ethnicity, Nationality and Skin Colour

- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that all hate crimes against ethnic minorities and foreign nationals are properly investigated;
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies on preventing ill-treatment of ethnic minorities and foreign nationals;
- The Ministry of Internal Affairs of Ukraine should ensure that any law enforcement agent found to have ill-treated a person on the basis of their ethnicity, nationality or skin colour, or to have failed to protect persons with such characteristics from hate crime, should face appropriate disciplinary proceedings;

- The Cabinet of Ministers should take steps to ensure that Roma individuals are able to obtain identification documents and state services;
- The Cabinet of Ministers should take steps to tackle the high unemployment rate amongst Roma;
- The Cabinet of Ministers and the Ministry of Education and Science should take steps to ensure that every Roma child goes to school, that all Roma children are integrated within the education system and that they do not receive poorer quality education than their peers;
- If and when Crimea returns to the *de facto* control of the Ukrainian authorities, the Cabinet of Ministers and the Crimean authorities should take immediate steps to ensure that Crimean Tatars are allocated land on a fair and equitable basis;
- The Cabinet of Ministers and the Crimean authorities should take steps to improve the living standards of the Crimean Tatars and to reduce the level of poverty;
- The Cabinet of Ministers and the Crimean authorities should work closely with the Crimean Tatars to ensure a mutually acceptable arrangement for the use of the Crimean Tatar language in education and communication;
- The Cabinet of Ministers should promote Ukraine's history of peaceful co-existence and harmony between ethnic Ukrainians and ethnic Russians;
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that anti-Semitic acts are recognised as hate crime, rather than lesser offences.

Language

- The Cabinet of Ministers should develop, in consultation with members of the Verkhovna Rada and representatives of all of the country's oblasts, proposals to guarantee and protect the use of minority languages by persons resident in Ukraine, in line with its international legal obligations.

Religion

- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that all hate crimes aga-

inst Jehovah's Witnesses and other religious minorities are properly investigated;

- The Cabinet of Ministers should review its Decree adopted under the Law of Ukraine "On Alternative (Non-military) Service" to ensure that all those with a conscientious objection to military service can undertake alternative service;
- The Verkhovna Rada should review and amend the Law of Ukraine "On Mobilisation Preparation and Mobilisation" to allow for conscientious objectors to refuse to undertake military service when mobilised;
- The Cabinet of Ministers should review the operation of local authorities in registering religious organisations and entities and in allocating land to religious bodies, and adopt measures to ensure that localised minorities are not subject to discrimination;

Place of Origin and Displacement Status

- The Cabinet of Ministers should take measures to ensure the full enforcement of the Law of Ukraine "On the Rights and Freedoms of Internally Displaced Persons", which provides that internally displaced persons should be protected from discrimination on the basis of their status.

Children

- The Cabinet of Ministers should take immediate steps to end the institutionalisation of children, including orphans, "social orphans" and others;
- The Cabinet of Ministers should ensure the full implementation of the separate juvenile justice system established in 2008;
- The Cabinet of Ministers should take immediate steps to end the institutionalisation of children with disabilities, and to ensure that children with disabilities can access education on an equal basis with others;

Recommendation 6: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Ukraine. State authorities and the State Statistics Committee of Ukraine should

collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Ukrainian society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Ukraine should further ensure that such information is not used in a manner that violates human rights.

**Recommendation 7:
Education on Equality**

Ukraine should take action to raise public awareness about equality, and to ensure that all education establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

**Recommendation 8:
Prohibition of Regressive Interpretation**

In adopting and implementing laws and policies to promote equality, Ukraine should not allow any regression from the level of protection against discrimination that has already been achieved.