

EXECUTIVE SUMMARY

This report is published at a time of profound change and uncertainty in Ukraine. The country is caught in the crosscurrents created by powerful forces fighting for Ukraine's political identity. Will Ukraine end up as an ally and future member of the European Union, or a junior partner of a Russia which increasingly distances itself from the rest of Europe? The main line dividing people is Ukraine today runs between these opposing political orientations, and has its tragic reality in the actual frontline cutting through the east of the country. While not fully eclipsing the many other identity struggles which are the subject of this report, the armed conflict in Donbas and the preceding annexation of Crimea have to a large degree permeated all aspects of our research.

In assessing the enjoyment of the rights to equality and non-discrimination in Ukraine, this report finds that the country's progress towards achieving equality for all has been deeply influenced by 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 in 2013–2014, some parliamentarians were seeking support for Russian-inspired legislation to ban "homosexual propaganda".

Ukraine's position between two different political worlds is also reflected in the patterns of discrimination and inequality identified in the report. Most prominently, issues of language, and latterly ethnicity, have become key battlegrounds for those promoting different visions of Ukraine's future. Yet the report also finds that the rights of lesbian, gay, bisexual and transgender (LGBT) persons are another key issue in dispute in the process of Ukraine's nation building. Similarly, different approaches to addressing inequalities on the basis of gender and disability reflect the different social and legal traditions of Western Europe and the Commonwealth of Independent States, and thus the different visions of the two sides in the conflict.

Thus, the report finds that 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 government'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 unravelling of its accomplishments in the protection of equal rights.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in Ukraine and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Ukraine, its history and the current political and economic situation. **Part 2** discusses the principal patterns of discrimination and inequality affecting different groups in Ukraine. **Part 3** analyses the legal and policy framework as it relates to non-discrimination and equality. **Part 4** contains conclusions and recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

Conceptual Framework and Research Methodology

The conceptual framework of this report is the **unified human rights framework on equality**, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of

inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a. types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b. types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
- c. status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.

This report is the result of a two and a half year partnership between the Equal Rights Trust and the Ukrainian non-governmental organisation LGBT Human Rights Nash Mir Center (Nash Mir). Since 2012, the Equal Rights Trust and Nash Mir have worked in partnership on a project designed to combat discrimination and inequality in Ukraine. This report is one of the outcomes of the project.

During this period, the partners had extensive opportunities to consult and conduct research on patterns of discrimination and inequality in Ukraine. We commissioned research by non-governmental organisations and individuals on different groups experiencing discrimination, and engaged with representatives of these groups directly. We also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country's legal and policy framework related to equality. Prior to publication, this report was the subject of an extensive consultation, in which its findings and conclusions were exposed to scrutiny by experts and stakeholders from civil society, government and academia. We believe that as a result, the report's findings and conclusions have been significantly strengthened.

Country Context, History, Government and Politics

In addition to the conceptual framework, the first part of the report provides an overview of the demographic, economic, social, political and historical context in which discrimination and inequality manifest themselves in Ukraine.

Ukraine is the largest country wholly in Europe and the 46th largest country in the world, with a total area of 603,500 km². The capital city is Kyiv with a population of approximately 3 million people. The Autonomous Republic of Crimea was, as of May 2015, the subject of a territorial dispute between Ukraine and Russia and under the *de facto* control of the latter. Parts of two oblasts, Donetsk and Luhansk, were under the *de facto* control of pro-Russian separatists.

Ukraine is home to approximately 44.3 million people. The 2001 census revealed that ethnic Ukrainians made up 77.8% of the population, with Russians a sizeable minority (17.3%). Much smaller minorities include Roma, Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles and Jews. A 2014 study carried out by the Razumkov Centre showed that 76.0% of Ukrainians considered themselves religious, of whom 70.2% were Orthodox Christians. Of the remaining 28.8%, 16.1% were non-Orthodox Christians with very small numbers of Jews, Muslims and Buddhists.

The country's official language is Ukrainian, although the issue of language is both complex and contentious. According to the 2001 census, Ukrainian was the first language of 67.5% of the population with 29.6% of the population speaking Russian as a first language. In practice, most people in Ukraine are bilingual, with decisions about which is a "first" language appearing to be more a question of identity politics than linguistic necessity.

In 2013, Ukraine's Gross Domestic Product (GDP) was US \$177,431 million, ranking it in 55th place in the world on the GDP list produced by the World Bank. Ukraine's GDP per capita (purchasing power parity) in 2013 was US \$8,790 and its GNI per capita (purchasing power parity) in 2013 was \$8,970. The United Nations Development Programme ranked Ukraine in 83rd place in its Human Development Index (HDI) for 2014, with an HDI of 0.734. Ukraine's Gini Income coefficient for the period 2003–2012, measuring inequality in the distribution of wealth, was 25.6, the second lowest in the world. The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 3.6.

The territory occupied by modern-day Ukraine has been claimed by a number of powers over the centuries. It ultimately became the Ukrainian Soviet Socialist Republic (Ukrainian SSR), within its present borders, in 1954. The

Ukrainian SSR was one of fifteen constituent republics which formed the Soviet Union until its collapse in 1991. On 24 August of that year, Ukraine declared itself an independent state.

The presidential election which took place at the end of 2004 saw a fierce battle between pro-Russian Prime Minister, Viktor Yanukovich, and the pro-Western Viktor Yushchenko. Yanukovich was declared the winner by the Central Election Commission in November, but Yushchenko challenged the results and a series of protests took place, nicknamed the Orange Revolution. On 26 December, the Supreme Court of Ukraine annulled the results and ordered a revote. This time, Yushchenko was declared the winner and became President in January 2005.

Yushchenko's popularity diminished quickly. In the next presidential election in 2010, he garnered just 5.5% of the vote, and his rival, once again Viktor Yanukovich, succeeded him as President. Under President Yanukovich, the few democratic reforms of the Yushchenko period were largely undone. The new administration began to establish control over the courts and to prosecute its political rivals. In October 2010, the Constitutional Court annulled a series of 2004 constitutional amendments which had limited the powers of the President.

In November 2013, following a decision by President Yanukovich not to sign an Association Agreement with the European Union, a series of public protests began, initially in Kyiv at the Maidan Nezalezhnosti (Independence Square), but spreading across the more pro-European western and central regions of the country. The protests (known as EuroMaidan) quickly turned violent, with riots in January and February 2014 which resulted in dozens being killed and hundreds injured. The authorities initially tried to suppress the protests with force, before resorting to blockades.

The violence escalated. In Kyiv, unknown snipers shot dozens of protesters and militiamen. Support for the President and the government from deputies within the Verkhovna Rada and the Kyiv City Council plummeted. On 21 February 2014, President Yanukovich signed an agreement which envisaged the restoration of the 2004 Constitution, a process of constitutional reform and presidential elections by the end of the year. However, Yanukovich reneged on his position, leading the Verkhovna Rada to vote for his removal. Shortly

thereafter, Yanukovich fled the country. The Verkhovna Rada voted to replace Yanukovich with its Speaker, the governing Party of the Regions quickly collapsed and a new governing coalition was formed including representatives of the former opposition.

Discontent in the eastern parts of Ukraine, where people were more likely to prefer a pro-Russian orientation and where the strongest supporters of Yanukovich resided, followed these developments. In March 2014, a “referendum” was held in Crimea on whether the territory should remain part of Ukraine or become a federal subject within Russia. Official results showed almost 97% of voters preferring Crimea to become part of Russia, though this was widely questioned by international actors. Despite an international outcry, Crimea was annexed by Russia within days. Elsewhere, pro-Russian separatist movements rejecting the new administration in Kyiv seized control of local government buildings in a number of cities in the east. Local “referenda” established “People’s Republics” in the oblasts of Donetsk and Luhansk and a war began between local forces and the Ukrainian army.

In May 2014, a new presidential election was won by the pro-European Petro Poroshenko. On 27 June 2014, he signed the economic parts of the EU-Ukraine Association Agreement previously rejected by Yanukovich. The parliamentary elections held in October 2014 saw a five-party coalition of pro-European parties form a majority and the confirmation of Arsenii Yatsenyuk as Prime Minister.

The general human rights situation in Ukraine today is mixed. In 2015, Freedom House considered Ukraine to be “partly free”, receiving an overall freedom rating of 3.5 (with specific ratings of 3 for civil liberties and 3 for political rights).

Part 2: Patterns of Discrimination and Inequality

Part 2 of the report discusses what the Equal Rights Trust’s research identified as the principal patterns of discrimination and inequality in Ukraine. It is based on original direct testimony collected from a wide range of individuals, as well as interviews with experts. The report also includes research undertaken by authoritative sources in the last decade, and, where necessary, have referred to news reports. This part of the report does not seek to provide an

exhaustive picture, but rather an insight into what appear to be the most significant patterns of discrimination in the country.

This part of the report presents evidence of discrimination and inequality on grounds of (i) gender; (ii) sexual orientation and gender identity; (iii) disability; (iv) health status, particularly HIV status; (v) ethnicity, national origin and colour; (vi) nationality and citizenship; (vii) religion; (viii) language; (ix) status as an internally displaced person (IDP); and (x) age, with a focus on disadvantages faced by children. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

With respect to discrimination on the basis of **gender**, section 2.1 of the report finds that women are the principal victims of gender discrimination in Ukraine, experiencing discrimination and disadvantage resulting largely from the persistence of patriarchal and paternalistic social norms. Thus, despite a strong legal framework prohibiting discrimination on the basis of gender, a number of laws directly discriminate against women, many ostensibly seeking to “protect” them, but in fact limiting their ability to make choices, particularly in employment. Despite specific criminal laws, rates of domestic violence and trafficking of women remain high. Women are unable to participate in employment on an equal basis with men: our research identified evidence of discrimination in recruitment, unequal pay, vertical and horizontal segregation and sexual harassment in the workplace. Patriarchal norms are also reflected in public life, where women are severely underrepresented: less than 12% of deputies in the Verkhovna Rada currently are women and there are just two women in the Cabinet of Ministers.

Section 2.2 of the report examines discrimination on the basis of **sexual orientation** and **gender identity**, finding that lesbian, gay, bisexual and transgender persons in Ukraine experience severe and systematic discrimination and inequality, as a result of high levels of stigma and a weak legal protection framework. While Ukraine was the first former Soviet state to decriminalise same-sex sexual activity, in 1991, social intolerance has gradually increased since that time, particularly since the beginning of the century. Re-

cent surveys indicate that up to three-quarters of Ukraine's population have a negative attitude towards LGB persons, while transgender persons also experience stigmatisation. The Ukrainian parliament has consistently resisted calls to enact legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity, and a number of existing laws directly or indirectly discriminate against LGBT persons. There are significant problems with the law enforcement agencies, ranging from abuse, harassment, blackmail and extortion to a failure to protect from discriminatory violence. In this legal and social context, many LGBT persons choose not to disclose their sexual orientation or gender identity, because – as evidence presented in the report suggests – those who do this experience discrimination in employment, education and healthcare.

With respect to discrimination on the basis of **disability**, section 2.3 finds that although Ukraine is a party to the Convention on the Rights of Persons with Disabilities and has a relatively robust domestic legal framework in place to prohibit discrimination on the basis of disability, significant problems remain. While recent reforms have brought the law on disability into line with current best practice, the state displays a tendency to treat persons with disability as objects of social concern and welfare, rather than as autonomous rights-holders. Accessibility to public spaces and buildings remains a problem, despite the existence of clear legal obligations to ensure access and modify buildings and infrastructure. Persons with disabilities are unable to participate in employment on an equal basis with others, and rates of unemployment are very high, both because of direct discrimination and failure to make reasonable accommodation. Similarly, the government acknowledges that education remains inaccessible for many persons with disabilities. Finally, our research found that persons with disabilities experience discrimination and disadvantage in access to healthcare and to goods and services.

Section 2.4 of the report, examining discrimination on the basis of **HIV status**, finds that people living with HIV experience severe and widespread stigma and as a result are forced to either conceal their health status or experience exclusion in employment, education, healthcare and other areas of life. While Ukraine's specific anti-discrimination law does not explicitly prohibit discrimination on the basis of health status, legislation focused on preventing the spread of HIV does contain specific protections from discrimination on the basis of HIV status. However, some other laws directly discriminate on

the basis of HIV status, while those protections which do exist appear largely ineffective in practice. Research for this report found evidence of direct discrimination and harassment against people living with HIV in employment, healthcare and education.

Section 2.5 examines discrimination on the basis of **ethnicity, national origin** and **colour**, looking at the situation of five different minority groups: the Roma, Crimean Tatars, ethnic Russians, Jews and recent migrants. Of these, the **Roma** are rightly considered to be the most discriminated ethnic group in the country. They are at the receiving end of a number of discriminatory practices ranging from discrimination by state agents to high levels of unemployment, poverty and poor quality education and housing resulting from less favourable treatment. Roma are exposed to widespread social prejudice, with levels of intolerance higher towards them than towards any other ethnic group, and this corresponds to high levels of hate speech and hate crime. Prejudice also has an impact on interaction with state agents, and our research documented numerous cases of discrimination by law enforcement officials. For a range of historical and social reasons, many Roma lack identification documents, and many experience problems today in trying to secure such documents, as a result of discrimination by the relevant authorities. Lack of identification documents results in turn in difficulties in accessing social services and healthcare. The Roma also experience discrimination and inequality in education, employment and housing. In a recent development, we discovered that Roma IDPs are treated less favourably than other IDPs from the Donbas area.

Crimean Tatars are a Turkic ethnic group which was forcibly deported from Crimea in the early 1940s and returned there in the 1980s and 1990s. They face numerous, interwoven challenges: lack of access to land as a result of the seizure and redistribution of land during the period of their forced absence, high levels of hate speech and prejudice, including from the authorities, difficulties securing employment, barriers in using their language in education and lack of political representation. Since the annexation of Crimea, the *de facto* authorities have conducted large numbers of raids in search of weapons and “extremist” literature, routinely targeting Crimean Tatar properties.

Ethnic Russians are by far the largest ethnic minority in Ukraine, constituting almost one fifth of the population. In light of the conflict between pro-

Russian separatists and the Ukrainian state in the Donbass region of eastern Ukraine, the Equal Rights Trust sought evidence of discrimination against this group, in order to establish whether discrimination was a factor in creating or perpetuating the conflict. Interviews conducted for the report, together with research undertaken by other independent actors, found that relations between ethnic Russians and the majority were historically good, and remained good at the personal level even as the war raged in the east. While there were 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*. Rather than ethnicity, the dividing factor seems to have been **political opinion**: divergent geopolitical orientations to Russia and to the West and the related language preference among otherwise bilingual populations have been both the cause and the consequence of the armed conflict. Unsurprisingly, our research revealed 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 as late as April 2015. 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 present-day Russian state.

Ukrainian Jews have historically been subjected to severe repression, but are today relatively well-integrated into society. As illustrated in this section, Jewish community leaders consider Ukrainian Jews to be sufficiently integrated so that most consider themselves Ukrainian citizens first and foremost. Nevertheless, interviewees did identify anti-Semitic incidents, which are a cause for concern, irrespective of the efforts of some Jewish leaders to downplay such racist acts.

Section 2.5.5 presents evidence of hate speech and violent hate crime by skin-head youth groups against visible minorities in the country, primarily immigrants and students from non-European backgrounds defined by **skin colour** and non-Slavic features, though there are currently no official statistics on the prevalence of such acts. Ukraine has been criticised for its inadequate response to these crimes, with both the relevant laws and their implementation called into question. In addition to being victims of hate crime, recent immigrants are disproportionately likely to be stopped and detained by law enforcement agencies.

With respect to discrimination on the basis of **nationality** and **citizenship** discussed in section 2.6, we found a number of laws which exceed the permissible limits of state discretion in differentiating between citizens and non-citizens. International human rights law recognises a degree of state discretion in deciding whether and if so how to differentiate between citizens and non-citizens in certain areas of life, though states must act within the scope of permissible limitations. In the case of Ukraine, the state retains a number of laws which discriminate, without justification, against non-citizens. In particular, many legislative provisions restrict certain professions or professional activities to citizens. While it may be justified to limit access to certain professions and professional activities to citizens where there is a genuine occupational requirement, provisions limiting certain professions – such as auditor or founder of farm – to citizens are patently unjustified.

Section 2.7 examines **language**, a deeply contentious issue in Ukraine, with the question of how the two most widely-spoken languages – Ukrainian and Russian – should be treated in law and policy an issue of particular significance. Our research found that political tension surrounding the question of language identity and use is not strongly reflected in the experience of most Ukrainian citizens. The majority of Ukrainians can and do speak both languages and census and survey responses indicate that there is no clear correlation between a person’s ethnicity, their language identity and their language use. Most importantly, opinion polls indicate that even in the south eastern region which is home to the largest concentration of ethnic Russians, few people expressed concern about discrimination on the basis of language. However, it should be noted that language has become further politicised since the outbreak of armed conflict, and that there may be a growing tendency to associate language choice with political opinion and affiliation.

Discrimination on the basis of **religion** in Ukraine, as noted in section 2.8, is manifested in a range of patterns, each adversely affecting the adherents of one or more different religions, including both minority and larger faith groups. This section presents evidence of religious hate speech and hate crime affecting Jehovah’s Witnesses and of states officials mobilising men to fight the separatists in south east Ukraine, without due regard to their conscientious objection. We 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. Finally, our research reveals that minor-

ity churches in the occupied areas of Donetsk and Luhansk have experienced increased repression since the conflict there began, while in Crimea, Muslim Crimean Tatars have experienced an increase in religious harassment.

The existence of **internally displaced persons (IDPs)** is a new phenomenon in Ukraine, and it is still difficult to draw firm conclusions on the nature, scope and prevalence of discrimination against the group. Nevertheless, despite the existence of a strong domestic legal framework providing protection from discrimination and guaranteeing the enjoyment of rights, section 2.9 reviews emerging evidence that IDPs – particularly those from the Donbas region – are experiencing discrimination, largely as a result of prejudice against them.

Finally, section 2.10 focuses on two types of **disadvantage affecting children** in Ukraine. The first concerns groups of children whose disadvantage arises solely on the basis of their age. This group, which includes primarily orphans and children who have been removed from their parents, but also children in the criminal justice system, face particular disadvantages not shared by adults. The second concerns those children within other groups which are exposed to discrimination, such as children with disabilities and children living with HIV. Despite its clear obligations under the Convention on the Rights of the Child, there is significant evidence 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. This is a serious human rights problem in and of itself; of even greater concern are the poor conditions within Ukraine’s children’s institutions, and the poor quality of education for those residing in them. Ukraine has failed to take effective measures to establish a system of juvenile justice which is appropriate for the needs of children 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.

Part 3: Legal and Policy Framework Related to Equality

Part 3 of the report analyses the legal and policy framework related to equality in Ukraine in order to assess its adequacy to address the patterns of inequality and discrimination highlighted in the preceding part. It examines both Ukraine’s international legal obligations and the domestic legal and policy

framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality, before turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality, including an examination of the most significant specialised body whose functions are related to equality, the Ukrainian Parliament Commissioner for Human Rights. Finally, this part reviews judicial practice related to discrimination.

Section 3.1 of the report assesses Ukraine's **participation in international and European instruments**. It finds that Ukraine has a good record of participation in the major UN human rights treaties, having ratified seven of the nine core treaties, omitting only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ukraine also has a good record of allowing for individual complaints to be made to the relevant treaty bodies with the failure to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights being the most significant gap.

Ukraine also has a very good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the key Conventions relating to refugees and statelessness. Ukraine has also ratified all eight of the fundamental International Labour Organization Conventions and the 1960 UNESCO Convention against Discrimination in Education.

Ukraine has 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.

International treaties form part of national law in Ukraine, and take precedence in cases of conflict. The ECHR is in an even stronger position, with

legislation requiring the courts to apply the ECHR and the case-law of the European Court of Human Rights when deciding cases. However, there are concerns about the extent to which these provisions are respected in practice.

Section 3.2 analyses Ukraine's domestic legal system, starting with the **Constitution**, which was adopted in 1996. The Constitution guarantees, through Article 24, the rights to equality and non-discrimination. However, despite providing some degree of protection, Article 24 contains a number of weaknesses. Paragraph 1 guarantees only that *citizens* shall have "equal constitutional rights and freedoms and shall be equal before the law", thus excluding non-citizens from the guarantee of the right to equality. Paragraph 2 prohibits "privileges and restrictions" on an open list of enumerated grounds. So termed, paragraph 2 is unlikely to prohibit all forms of direct and 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. Paragraph 3 requires the state to take measures to ensure "equality of the rights of women and men", but in fact serves to reinforce stereotypical notions of gender. For example, by requiring the state to take measures to "make it possible for women to combine work and motherhood", paragraph 3 reinforces the notion that it is the mother's role to take care of children within a family. Further, to the extent that paragraph 3 requires the state to take positive action measures in respect of women, there is no requirement in respect of other groups who suffer disadvantage and inequality. Finally, the Constitution guarantees a significant number of human rights only in respect of citizens, many of which ought, under international law, to be guaranteed in respect of *all persons*.

The major pieces of **anti-discrimination legislation** in Ukraine are assessed in section 3.2.2. Most significantly, the Law of Ukraine "On Principles of Prevention and Combating Discrimination", adopted in 2012 and amended two years later, prohibits discrimination on a wide range of grounds in many areas of life. 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. There are, however, a number of problems. These

include a failure to require positive action measures where necessary to accelerate progress towards equality and a limited range of remedies. Moreover, there has been a failure to integrate the Law within the wider legislative framework posing challenges to victims on using the Law to enforce their right to non-discrimination.

In addition to the Law of Ukraine “On Principles of Prevention and Combating Discrimination”, Ukraine has two **specific anti-discrimination laws** – the Law of Ukraine “On Equal Rights and Opportunities for Women and Men” and the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”. While these laws purport to provide protection from discrimination on the basis of gender and disability respectively, they each have shortcomings. The former contains overly broad exceptions and is unclear on what remedies are available for breaches, though its requirement that legislation be analysed for its potential to discriminate on the basis of gender has been effective, with “gender-related assessments” leading to the amendment of a number of pieces of legislation. 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, amendments have encouraged a shift towards the “social model” with provisions requiring reasonable accommodation and universal design in the public and private sector. However, the Law has not been fully implemented with many barriers to equal participation remaining; this may, in part, be because the Law does not set out any specific mechanisms by which the obligations it imposes are to be enforced. In addition to these two laws, 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”, whilst not strictly anti-discrimination legislation, contains provisions which prohibit discrimination against an individual either because he or she has HIV or because he or she belongs to a group at risk of HIV infection. There is little evidence of these provisions being used in practice, however.

In addition to these pieces of legislation, there are a number of **non-discrimination provisions in other legal fields** which are reviewed in section 3.2.3. Given its broad scope, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, has, in practice, superseded such

provisions which are found in legislation in areas including family law, employment, education, healthcare, social security, immigration and sport. Our research found that such provisions have rarely been utilised by victims of discrimination and are largely symbolic. The criminal law contains a number of provisions which create offences of inciting hatred against particular groups and considering offences motivated by hostility as aggravated as well as further offences of certain forms of discrimination. Whilst these provisions go some way to meeting international best practice, they remain problematic. For example, the aggravated forms only apply where the offence was motivated by hostility on the basis of race, national origin or religion, and not any other characteristics. Further, our evidence suggests that they are little used in practice, with prosecutions under the provisions seldom brought.

Section 3.3 examines **government policies** and finds that, whilst the state has introduced a number of plans and policies in respect of many groups which are vulnerable to discrimination – including women, Roma, and persons with disabilities – little assessment has been made of the effectiveness of these plans and policies, making it difficult to determine to what extent they have had a positive impact. More broadly, the continuation of discrimination against many of these groups which is evidenced in Part 2 of the report calls into question the efficacy of these policies.

Finally, section 3.4 analyses the **implementation and enforcement of laws and policies** related to equality. It finds that generally, the Ukrainian legal system enables individuals to bring complaints of discrimination to court, although the failure to integrate and harmonise anti-discrimination legislation within the wider legislative framework makes this more difficult than it need be. On a positive note, persons bringing cases of discrimination are exempt from paying court fees, the Civil Code provides for a reversal of the burden in proof in discrimination cases, and Ukraine has a strong and independent human rights and equality body – the Ukrainian Parliament Commissioner for Human Rights – with broad powers and a good record on highlighting discrimination as part of its work.

Our analysis of Ukrainian **jurisprudence** paints a mixed picture. There are only a small number of cases decided by the Constitutional Court and the lower courts involving discrimination. While some cases indicate a strong, progressive approach to ensuring equality, others, particularly decisions of

the Constitutional Court, fail to engage in any detailed analysis of what the rights to equality and non-discrimination require, and the approach of the Court on some issues has been inconsistent and unclear.

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, and brought its framework largely into line with international standards, gaps and inconsistencies remain. More importantly, enforcement and implementation remain poor.

Part 4: Conclusions and Recommendations

Part 4 of the report presents its conclusions and makes recommendations to the Ukrainian government. It asserts that Ukraine's strong legal protections on paper have not yet translated into a significant reduction in discrimination in practice. This conclusion is supported both by the extensive evidence of discrimination on various grounds which is presented in part 2, and the assessment of the framework's enforcement and implementation in part 3. 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.**

Section 4.2 of the report presents the Equal Rights Trust's recommendations, whose purpose is to strengthen protection from discrimination and to enable Ukraine to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations in eight areas:

- Strengthening of international commitments related to equality;
- Constitutional and legislative reforms to amend or repeal discriminatory laws;

- Implementation and enforcement of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”;
- Reform, implementation and enforcement of other laws aimed at prohibiting discrimination;
- Actions to address discrimination against specific groups;
- Data collection on equality;
- Education on equality; and
- Prohibition of regressive interpretation, derogations and reservations.