

# 1. INTRODUCTION

## 1.1 Purpose and Structure of This Report

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** presents patterns of discrimination and inequality, highlighting evidence of discrimination and inequality on the basis of a range of characteristics: gender; sexual orientation or gender identity; disability; HIV status; ethnicity, national origin and colour (including an examination of the status of the Roma, Crimean Tatars, Jews and ethnic Russians); nationality and citizenship; language; religion; place of residence and status as an internally displaced person; and age (with a focus on the disadvantages faced by children).

**Part 3** begins by reviewing the main international legal obligations of Ukraine in the field of equality and non-discrimination, within the frameworks of the United Nations (UN) and Council of Europe human rights systems. It then discusses Ukrainian national law related to equality and non-discrimination, starting with the Constitution before examining both specific anti-discrimination legislation and non-discrimination provisions in other legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

**Part 4** contains the report's conclusions and recommendations, which are based on the analysis of patterns of inequality and discrimination examined in Part 2 and the assessment of Ukrainian legislation and state policies in Part 3.

## **1.2 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***

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. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has guided efforts to develop equality legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*. In 2011, the Parliamentary Assembly of the

Council of Europe adopted a Recommendation calling on the Council of Europe member states, including Ukraine, to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the **right to equality**:

*The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.<sup>4</sup>*

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination, as traditionally understood. The right to equality has among its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the intersections of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus, the unified framework makes *de facto* inequalities, whether or not they result from discrimination, a relevant subject for this report.

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4 Declaration of Principles on Equality, The Equal Rights Trust, London, 2008, Principle 1, p. 5.

The Declaration construes the right to non-discrimination as subsumed in the right to equality.<sup>5</sup> Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

*Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*

*Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*

*Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*

*Discrimination may be direct or indirect.*

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5 *Ibid.*, Principle 4, p. 6.

**Direct discrimination** occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

**Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

*An act of discrimination may be committed intentionally or unintentionally.*<sup>6</sup>

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and criteria for the inclusion of further grounds, according to which

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6 *Ibid.*, Principle 5, p. 6–7.

“candidate grounds” should meet at least one of three listed criteria.<sup>7</sup> Thus, the definition provides a foundation for tackling the full complexity of a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified framework acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The definition of discrimination, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of gender; sexual orientation or gender identity; disability; health status; ethnicity, national origin and colour; nationality and citizenship; language; religion; and age. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by Romani women – which do not fall within one specified ground, but which it is felt need to be covered because they are important forms of multiple discrimination.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and

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7 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”

equality law<sup>8</sup> and European Union Law.<sup>9</sup> They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state's obligation to respect, protect and fulfil the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination and to fulfil the right to non-discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation provided in Principle 13 of the Declaration:**

*To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.*

*Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.<sup>10</sup>*

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8 See, for example, United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10.

9 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 4; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 2.

10 See above, note 1, Principle 13, p. 10–11.

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.<sup>11</sup> Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.<sup>12</sup> Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments,<sup>13</sup> whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment”.<sup>14</sup> Principle 3 states:

*To be effective, the right to equality requires positive action.*

*Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*<sup>15</sup>

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11 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes the denial of “reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

12 See above, note 4, p. 39.

13 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106 (XX), 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180, 1979, Article 4(1).

14 See above, note 4, p. 32.

15 See above, note 1, Principle 3, p. 5.

The notion of positive action plays an important role in the unified framework on equality, and, therefore, in the approach taken by this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as explained, *inter alia*, in General Comment No. 3 of the CESCR and General Comment No. 31 of the Human Rights Committee. As stated in the commentary on the Declaration:

*By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.<sup>16</sup>*

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16 See above, note 4, p. 38.

## ***Application of the Unified Human Rights Framework on Equality***

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Ukrainian context. In respect of certain grounds, it has not been possible to include every group vulnerable to discrimination and inequality on that ground. For example, the section on national and ethnic minorities does not examine the situation affecting all national or ethnic minorities, but instead looks at the groups which have historically suffered the most severe forms of discrimination, such as Crimean Tatars, Roma and Jews, as well as the largest group (ethnic Russians) and the most visible minorities (recent immigrants).

Presenting patterns of discrimination and inequality alongside each other also requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups and disaggregated data on the position of different groups in particular areas of life, which was available for some areas, but limited for others. For example, there is a lack of statistical data on the levels of participation of lesbian, gay, bisexual and transgender persons in employment, making it difficult to establish the levels of substantive inequality in this area. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims or interviews with professionals working on behalf of particular groups. The evidence obtained through field research has been assessed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as representative of Ukrainian reality as possible. In doing so, the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which

encompasses all areas of life regulated by law. The report seeks to cover, in respect to the selected groups and categories of people, their experience of inequality across a range of areas of life, such as interactions with the state authorities, employment, education and healthcare. The report also looks at legislative provisions which are discriminatory, or which have a discriminatory impact upon particular groups of people. However, in some cases there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area of life, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains little evidence of discrimination against older persons on the basis of age.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality by looking at the element of “participation on an equal basis with others in economic, social, political, cultural or civil life”, thereby extending beyond experiences of discrimination.

The **fourth implication** of this approach is the presentation of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality, which results in the report’s basic logical structure. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of these rights. As protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights, we seek to match an assessment of the lived experience of discrimination and inequality with a review of Ukraine’s legal and policy framework, in order to establish how well the state has met its obligation.

The analysis of patterns of discrimination in Part 2 of the report makes clear that the existing laws and policies designed to tackle discrimination and inequality in Ukraine are insufficient. Part 3 of this report assesses the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimina-

tion proceedings, and other elements of enforcement of equality rights. While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, implementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore ensuring that the conclusions and recommendations in Part 4 are relevant and robust.

### ***Research Methodology***

This report is the result of a long engagement between the Equal Rights Trust and 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, which is one of the outcomes of this project, was developed in several stages.

In Spring 2013, a short study was prepared by Nash Mir, providing a preliminary outline of the major patterns of discrimination and inequality in Ukraine, based upon existing research and reports. In Autumn 2013, the Equal Rights Trust and Nash Mir enlisted a number of researchers who were tasked with undertaking research in relation to the grounds identified as the most significant in terms of discrimination in Ukraine (gender, sexual orientation and gender identity, disability, health/HIV status, age, national or ethnic origin, religion and language). The members of the research team were: the International Women's Rights Centre La Strada-Ukraine, which covered discrimination on the basis of gender; the Kharkiv NGO "Institute of Applied Humanitarian Research" focusing on discrimination on the basis of age; Public Youth Organisation Klub Vzeyemodopomohy Zhyttia+, which researched discrimination on basis of health and HIV status; Kharkiv Regional Foundation Hromadska Alternativa, focusing on discrimination on the basis of disability; Lyudy Bukovyny (Chernivtsi oblast) and LGBT Union You Are Not Alone (Zhytomyr oblast), examining multiple discrimination on grounds sexual orientation, gender identity and disability; Poltava oblast Media Club, looking at discrimination on the basis of national or ethnic origin and focusing on the Roma in particular; and Public Organisation "Human Rights Centre Postup" (Luhansk oblast), which had to examine discrimination on the basis of na-

tional or ethnic origin. At a later stage, further research was commissioned on discrimination and inequality affecting children (undertaken by Mariya Yasenovska) and ethnic Russians and Jews (undertaken by Kirył Kaścian).

During the research process, Ukraine was experiencing sweeping political and social change and this had a significant impact on the report (see Scope and Limitations of this Report, below). For example, one of the research organisations, Human Rights Centre Postup, based in Luhansk oblast, was unable to complete its work in full. Other researchers continued to work in extremely difficult conditions.

The research was conducted through interviews, focus groups and roundtables with organisations working for those exposed to discrimination in Ukraine as well as with victims of discrimination themselves. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld out of respect for their wishes for anonymity. Information on the identities of all persons whose names have been withheld is kept on file by the authors.

Research for Part 2 of the report also included desk-based research of existing published sources, helping to identify and elaborate the major patterns of discrimination in Ukraine. This involved a review of relevant literature on discrimination and inequality in Ukraine, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media institutions. Wherever possible, statistical data was relied on to improve understanding of inequalities.

Legal research on law and policy for Part 3 was undertaken by the Equal Rights Trust and Nash Mir. Research on Ukraine's international legal obligations benefited from the United Nations Treaty Collection database<sup>17</sup> and the website of the Office of the High Commissioner for Human Rights.<sup>18</sup> Research

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17 United Nations, *United Nations Treaty Series Online Collection*, available at: <https://treaties.un.org/pages/ParticipationStatus.aspx>.

18 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

on Ukrainian laws, including the Constitution and national legislation, consisted of reviewing the primary sources, accessed via the website of the Verkhovna Rada (parliament) of Ukraine. Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites. Research on the role, functions and operations of the Ukrainian Parliament Commissioner for Human Rights was undertaken by review of the relevant legislation, together with a review of the reports of the Parliament Commissioner and meetings with officials at the Parliament Commissioner.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. In early 2015, the Equal Rights Trust visited Ukraine to present and discuss a draft of the report with interested parties from civil society, government, academia and other fields. In these meetings, and in correspondence thereafter, the report was subjected to critical evaluation by a range of stakeholders, with the aim of validating its findings and conclusions. The comments, criticisms and other feedback from these stakeholders were incorporated into the draft.

As part of its validation process, in February 2014, drafts of this report were provided to the Ministry of Social Policy, the Ministry of Justice and the Ministry of Foreign Affairs with a list of questions and an invitation for comments and feedback. Only the Ministry of Social Policy provided comments on the draft, both in writing and through a representative at a roundtable on 26 February 2014. In addition, the Equal Rights Trust met with a representative of the Ministry of Foreign Affairs. No response was received from the Ministry of Justice. The Equal Rights Trust also wrote to the Constitutional Court of Ukraine with a list of questions to which answers were received. While the Equal Rights Trust was unable to meet with a representative of the Constitutional Court, the Trust did meet with Professor Mykola Kozyubra, a former judge of the Constitutional Court and Head of the Department of General and Public Law at the National University of "Kyiv-Mohyla Academy". Finally, the Equal Rights Trust also met with a representative of the Ukrainian Parliament Commissioner for Human Rights, the Head of the Non-Discrimination Unit at the Secretariat of the Ukrainian Parliament Commissioner for Human Rights. The Equal Rights Trust has sought to incorporate all feedback received and to present the position of the government and other state bodies on the issues discussed in the report both through specific feedback and based on policies

and public statements, including in Ukraine's state party reports to the UN treaty bodies.

### ***Scope and Limitations of this Report***

In respect to the report's time frame, Part 2 is limited to approximately the last ten years, and the emphasis is on more recent events and cases, as much as possible. Part 3 captures the status quo related to laws and policies as of May 2015 and it should be noted that as frameworks on equality are evolving fast globally as well as in Ukraine, the presentation of the Ukrainian framework, while not ephemeral, will become obsolete within less than a decade, in particular as a result of developing judicial practice.

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Ukraine itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the Ukrainian context.

The research for this report was constrained, to some extent, by the lack of disaggregated statistical data pertaining to the situation of certain groups and in certain areas of life. Consequently, certain issues which would usually fall within the scope of a report addressing inequality and discrimination do not feature in the report at all. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. For example, while the report discusses the experience of some groups in the education system, it has not been possible to examine all groups' experiences in this area of life.

These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups.

Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

The crisis which started in November 2013 following President Viktor Yanukovich's decision not to sign an Association Agreement between Ukraine and the European Union and the subsequent conflict in Ukraine has resulted in two significant changes in the political geography of Ukraine. The first is the annexation of Crimea by Russia in March 2014 following a "referendum" in Crimea which supported the autonomous region becoming a federal subject of the Russian Federation. The "referendum" was criticised for having violated Ukrainian constitutional law and the annexation itself was condemned by a United Nations General Assembly Resolution.<sup>19</sup> As of May 2015, a small number of states recognise Crimea as a federal subject of Russia, but the vast majority of states do not. While Crimea is *de facto* under Russian control, this report treats Crimea as part of Ukraine in all respects.

The second change of the Ukrainian political map was caused by the war in Donbas which, as of May 2015, is ongoing. By this time, two oblasts – Donetsk and Luhansk – are partly under the *de facto* control of pro-Russian separatists. "Referenda on independence" were held in both oblasts in May 2014 with both results reportedly showing overwhelming support for independence. These referendums were widely criticised by outsiders and no state has recognised either Donetsk or Luhansk as independent states. As with Crimea, while parts of the two oblasts are not under the *de facto* control of the Ukrainian government, this report treats both oblasts as part of Ukraine in all respects.

### 1.3 Country Context

Ukraine is a large country located in Eastern Europe, bordered to the north by Belarus, to the east by Russia, to the southeast by the Black Sea, to the southwest by Romania and Moldova, and to the West by Poland, Slovakia and

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19 United Nations General Assembly, Resolution No. 28/262. *Territorial integrity of Ukraine*, UN Doc. A/RES/68/262, 1 April 2014.

Hungary. It is the largest country wholly in Europe and the 46<sup>th</sup> largest country in the world, with a total area of 603,500 km<sup>2</sup>. It is divided into 27 entities: 24 oblasts, two cities with special status (Kyiv and Sevastopol) and the Autonomous Republic of Crimea. The capital city is Kyiv with a population of approximately 3 million people.

As noted above in section 1.2, the Autonomous Republic of Crimea is, as of May 2015, the subject of a territorial dispute between Ukraine and Russia and is under the *de facto* control of the latter. Parts of two oblasts, Donetsk and Luhansk, are under the *de facto* control of pro-Russian separatists.

Ukraine is home to approximately 44.3 million people, although its population has decreased from a high of over 52 million people in the early 1990s, as a result of higher death rates than birth dates and emigration. The birth rate in 2013 was 11.1 births per 1,000 people;<sup>20</sup> the death rate for the same year was 14.6.<sup>21</sup> Life expectancy at birth is 71.2 years, although there is a sizeable gap between life expectancy for men (66.3 years) and women (76.2 years).<sup>22</sup>

The 2001 census revealed that ethnic Ukrainians made up 77.8% of the population, with Russians a sizeable minority (17.3%). Much smaller minorities in Ukraine include Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Poles (0.3%) and Jews (0.2%).<sup>23</sup> The distribution of Ukrainians and Russians, who together comprise the vast majority of the population, is not geographically uniform throughout Ukraine. Ethnic Ukrainians dominate in large parts of the country, particularly the northern and western regions, while ethnic Russians are found in greater numbers in the eastern and southern regions. Crimea is the only region where ethnic Russians outnumber ethnic Ukrainians.

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20 World Bank, *Data: Birth rate, crude* (per 1,000 people), available at: <http://data.worldbank.org/indicator/SP.DYN.CBRT.IN> (as of May 2015).

21 World Bank, *Data: Death rate, crude* (per 1,000 people), available at: <http://data.worldbank.org/indicator/SP.DYN.CDRT.IN/countries> (as of May 2015).

22 World Bank, *Data: Ukraine*, available at: <http://data.worldbank.org/country/ukraine>.

23 State Statistics Committee of Ukraine, "About number and composition population of UKRAINE by All-Ukrainian population census 2001 data", available at: <http://2001.ukrcensus.gov.ua/eng/results/general/nationality>.

A 2014 study carried out by the Razumkov Centre showed that 76.0% of Ukrainians considered themselves religious, up from 57.8% in 2000.<sup>24</sup> A further 7.9% were unsure whether they were believers or not, down from 22.5%.<sup>25</sup> Of those considering themselves religious, 70.2% were Orthodox Christians (17.4% of the population belonged to the Ukrainian Orthodox Church Moscow Patriarchate (UOC MP), 22.4% to the Ukrainian Orthodox Church – Kyiv Patriarchate (UOC KP), 0.7% to the Ukrainian Autocephalous Orthodox Church, 28.1% “just Orthodox” and 1.4% who did not know).<sup>26</sup> Of the remaining 28.8%, 16.1% were non-Orthodox Christians (7.8% belonged to the Ukrainian Greek Catholic Church (UGCC), 1.0% were Roman Catholic, 1.0% were Protestant and 6.3% were other Christians) with very small numbers of Jews (0.1%), Muslims (0.2%) and Buddhists (0.2%). One in eight people – 12.5% of the population – did not consider themselves as affiliated with any particular religion.<sup>27</sup> The religious population is not evenly spread across Ukraine. Orthodox Christians belonging to the UOC MP form the majority in most parts of the country save for the western regions and Kyiv; the UOC KP forms the majority of Orthodox Christians in the western regions and in Kyiv; the UGCC dominates only in the three western oblasts covering the historical region of Galicia. Roman Catholics are mostly Poles, living in the west. The Muslim population in Ukraine mostly comprises Crimean Tartars.

The country’s official language is Ukrainian, although as section 2.7 of this report shows, 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.<sup>28</sup> In practice, most people in Ukraine speak both languages fluently, with decisions about which is a “first” language appearing to be more a question of identity politics than linguistic necessity. As with ethnicity, those whose mother tongue is Ukrainian dominate in the northern and western regions,

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24 Razumkov Centre and Konrad Adenauer Stiftung, *Ukraine 2014: Socio-Political Conflict and the Church, Positions of Religious Figures, Experts and Citizens*, 2014, p. 29.

25 *Ibid.*

26 *Ibid.*, p. 31.

27 *Ibid.*, p. 30.

28 State Statistics Committee of Ukraine, “About number and composition population of UKRAINE by All-Ukrainian population census 2001 data”, available at: <http://2001.ukrcensus.gov.ua/eng/results/general/language>.

while those who speak Russian as a first language dominate in the eastern and southern regions.

After falling sharply in the 10 year period following the collapse of the Soviet Union, Ukraine's economy grew quickly from 2000 to 2008 with growth in 2007 of 7%.<sup>29</sup> However, Ukraine was greatly affected by the 2008 economic crisis, with the economy shrinking by 15% in 2009 before recovering in the subsequent years.<sup>30</sup> In 2013, Ukraine's Gross Domestic Product (GDP) was US \$177,431 million, ranking it in 55<sup>th</sup> place in the world on the GDP list produced by the World Bank.<sup>31</sup> 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.<sup>32</sup>

The United Nations Development Programme ranked Ukraine in 83<sup>rd</sup> place in its Human Development Index (HDI) for 2014, with an HDI of 0.734.<sup>33</sup> 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 after Sweden.<sup>34</sup> The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 3.6.<sup>35</sup>

## 1.4 History, Government and Politics

The territory occupied by modern-day Ukraine has been claimed by a number of powers over the centuries. Originally home to a variety of East Slavic tribes as part of the powerful Kievan Rus' federation in the 9<sup>th</sup> to the 13<sup>th</sup> centuries, the land was incorporated into the Kingdom of Galicia–Volhynia in the 13<sup>th</sup> and 14<sup>th</sup> centuries and then the Grand Duchy of Lithuania in the 14<sup>th</sup> century, before being incorporated into the Polish–Lithuanian Commonwealth in 1569.

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29 World Bank, *World Databank, World Development Indicators*, available at: <http://databank.worldbank.org/data/views/reports/tableview.aspx>.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, 2014, p. 161.

34 *Ibid.*, p. 169.

35 *Ibid.*

A Cossack revolt that began in the Ukrainian lands in 1648 under the leadership of Bohdan Khmelnytskyi eventually led to the formation of the first Ukrainian national state on the territory of modern day central Ukraine. In 1649, this state was recognised by the Polish king John II Casimir as an autonomous part of the Polish–Lithuanian Commonwealth and, in 1654, the Cossack government concluded a treaty with the Tsar Alexis I of Russia recognising his supreme authority over the Cossack state in exchange for preservation of its autonomous status and protection. However, following a thirty year war between Russia, Poland, Turks and Cossacks known as “The Ruin” (1657 to 1686), the territory of present day Ukraine was divided between Russia (taking the lands to the east of the Dnieper River as well as Kyiv) and Polish-Lithuanian Commonwealth (taking the lands to the west of the Dnieper River) as part of the Eternal Peace Treaty of 1686. Self-government in these territories was ultimately abolished, and the Ukrainian language and culture suppressed. Despite the quasi-state’s brief existence as an autonomous territory, it laid the fundamentals of the modern Ukrainian nation. When the Polish-Lithuanian Commonwealth fell in the 18th century, those territories held by Poland were divided between Russia and the Austro-Hungarian Empire.

Crimea, meanwhile, had been fought over by various powers over the centuries, eventually becoming a Turkic vassal state (the Crimean Khanate) and part of the Ottoman Empire from the mid-15<sup>th</sup> to the late 18<sup>th</sup> century. In 1783, the Crimean Khanate was conquered by Catherine the Great of Russia, and became part of the Russian Empire.

The February Revolution in 1917 inspired many ethnic groups within the Russian Empire to demand greater autonomy and independence. Following the October Revolution that year, and the fall of the Russian Provisional Government, the Kyiv Uprising of November 1917 sparked a struggle for power which would last until 1921: the Ukrainian War for Independence which was part of the larger Russian Civil War, the period during which the Bolsheviks led by Lenin and Trotsky fought and defeated all categories of opponents and confirmed Soviet rule throughout Russia. During this period, two short-lived entities emerged: the Ukrainian People’s Republic (1917–1920) and the Western Ukrainian People’s Republic (1918–1919). The two formally merged into a single state, which shortly thereafter found itself under Bolshevik control and became the Ukrainian Soviet Socialist Republic (Ukrainian SSR), while

small neighbouring territories were divided between Poland, Romania and Czechoslovakia. In 1946, Czechoslovakia ceded the historical region of Carpathian Ruthenia to the Ukrainian SSR, which became the Zakarpattia oblast. Crimea, however, remained part of the Russian Soviet Federative Socialist Republic the largest and dominant republic within the USSR, until 1954, when it was transferred to the Ukrainian SSR.

The Ukrainian SSR was one of fifteen constituent republics which formed the Union of Soviet Socialist Republics (USSR) until its collapse in 1991. While Ukraine was a constituent of the USSR, any development of a distinct Ukrainian national identity was suppressed and any attempt at the creation of a Ukrainian independence movement eliminated. There have been allegations that the Great Famine of 1932–33 which resulted from forced collectivisation and deprivation of peasants of their own produce and which killed up to seven million people was a deliberate strategy of Joseph Stalin to suppress independence movements in Ukraine. In 2005, then Ukrainian President Viktor Yushchenko appealed, unsuccessfully, to the international community to recognise the Great Famine as Soviet-imposed genocide.<sup>36</sup>

Between 1941 and 1944, much of Ukraine was occupied by Nazi Germany. Initially, many Ukrainians cooperated with the Nazis, in part due to aspirations for independence and anger towards the Soviets over the famine. However, by 1944, when the Red Army arrived in Ukraine, the population largely welcomed the Soviets as liberators and 4.5 million Ukrainians joined the Red Army. World War II took a heavy toll on Ukraine: between 1941 and 1945, around 3,000,000 ethnic Ukrainian and other non-Jewish victims were killed by the Nazis, along with between 850,000 and 900,000 Jews.

In 1953, Joseph Stalin died, and a period of de-Stalinisation took place across the USSR. A year later, as noted above, Crimea was transferred from the Russian Soviet Federative Socialist Republic to the Ukrainian SSR. In a reverse of Soviet policy, a process of Ukrainianisation followed with development of the Ukrainian language and culture. This process was short-lived and from 1962 until the early 1980s, under the leadership of Leonid Brezhnev, the USSR sought to forge a single “Soviet people (narod)” made up of numerous nationalities (natsional’nosti). Mikhail Gorbachev took the leadership of the USSR in

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36 BBC News, “Ukraine demands ‘genocide’ marked”, *news.bbc.co.uk*, 25 November 2005.

1985 and launched the era of “perestroika” and “glasnost”, but the new liberal policies never took roots within the Ukrainian SSR due to opposition from the leader of the Communist Party of Ukraine, Volodymyr Shcherbytskyi. In 1986, a nuclear accident at the Chernobyl Nuclear Power Plant in the Ukrainian SSR killed 31 persons and the clean-up operation affected the health of the 600,000 people (liquidators) who took part.

On 24 August 1991, Ukraine declared itself an independent state. The Declaration of Independence was supported by over 92% of voters in a referendum held in December of that year. Leonid Kravchuk was elected as Ukraine’s first President. He served a single term before suffering defeat in 1994 to Leonid Kuchma, who led the new state until 2005.

The presidential election which took place at the end of 2004 saw a fierce battle between Kuchma’s pro-Russian Prime Minister, Viktor Yanukovych, and the pro-Western Viktor Yushchenko. Yanukovych 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 (orange being the prominent colour of Yushchenko’s campaign). 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, appointing the popular and charismatic Yulia Tymoshenko as Prime Minister.

Yushchenko’s popularity diminished quickly and his relationship with Tymoshenko soured. In the next presidential election in 2010, he garnered just 5.5% of the vote, and his rival, once again Viktor Yanukovych, 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 prosecute its political rivals. Former Prime Minister Yulia Tymoshenko and members of her government were sentenced to imprisonment under dubious criminal charges of corruption brought before newly-appointed judges. Courts at all levels consistently began to issue decisions based upon the wishes of the government. In October 2010, the Constitutional Court annulled a series of 2004 constitutional amendments which had limited the powers of the President.

Following the parliamentary elections in October 2012, the Higher Administrative Court deprived a number of deputies of their seats, despite the fact that they had already taken the oath as members of the Verkhovna Rada and had thus gained immunity from prosecution without the permission of the Verkhovna Rada. Such a situation had never occurred before and the legal basis and reasoning of the Court's decisions were highly contentious. In January 2013, another example of the increasing restrictions on political freedoms occurred the Higher Administrative Court, following proceedings brought by the Kyiv City State Administration, decided that organisers of a peaceful public assembly had to inform the city administration about such an assembly at least 10 days prior to the event, despite this being contrary to the Constitution. The authorities increasingly began to use the courts as a means of prohibiting peaceful assemblies.

In November 2013, President Yanukovich decided not to sign an Association Agreement with the European Union which would have resulted in closer cooperation. This sparked a series of protests, initially in Kyiv at the Maidan Nezalezhnosti (Independence Square), but quickly 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 state authorities initially tried to suppress the protests with force, before resorting to blockades. In response to police brutality, the protesters increased their demands, calling for those authorities found guilty of violence to be held liable, for the persecution of peaceful protesters to cease, and for those officials in charge of the crackdown to be dismissed.

However, violence escalated quickly – 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 with a number of international mediators to resolve the crisis. This agreement envisaged the 2004 Constitution restored, a process of constitutional reform initiated and presidential elections by the end of the year. However, Yanukovich refused to sign a Resolution of the Verkhovna Rada which would have restored the 2004 Constitution. The following day, the Verkhovna Rada voted to remove Yanukovich from the post of President. Shortly thereafter, Yanukovich fled the country, disappearing for a week before surfacing in Rus-

sia. The Verkhovna Rada voted to replace Yanukovich with its Speaker, Oleksandr Turchynov of the Batkivshchyna party as acting President until fresh presidential elections could be held.

The governing Party of Regions quickly collapsed and a new governing coalition was formed in the Verkhovna Rada, composed of pro-democracy and unaffiliated deputies. The new government included representatives of the former opposition and was headed by Arsenii Yatsenyuk, of the Batkivshchyna party, who was former Minister of Economy, Minister of Foreign Affairs and Chairman of the Verkhovna Rada. Meanwhile, Yulia Tymoshenko, was released from prison on 28 February 2014.

Discontent in the more pro-Russian eastern parts of Ukraine, which had been the strongest supporters of Yanukovich, 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. Although official results showed almost 97% of voters preferring Crimea to become part of Russia, the United Nations General Assembly adopted a Resolution on 27 March 2014 stating that the referendum had “no validity” and could not “form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol”.<sup>37</sup> Despite an international outcry, Crimea was annexed by Russia within days. 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 held and won by the pro-European Petro Poroshenko. On 27 June 2014, he signed the economic parts of the EU-Ukraine Association Agreement. 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.

At present, Ukraine is a unitary state with a semi-presidential system of government. Legislative power is vested in the unicameral Verkhovna Rada.

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37 See above, note 19.

The President is the head of state<sup>38</sup> and Commander in Chief of the Armed Forces, elected by popular vote for five year terms for a maximum of two consecutive terms.<sup>39</sup> Article 106 of the Constitution sets out an extensive list of powers and duties of the President, including: representing Ukraine in international relations; declaring a state of emergency; and appointing parts of the membership of the Constitutional Court and other state bodies. As of May 2015, the President was Petro Poroshenko. He was previously Minister of Foreign Affairs from 2009 to 2010, Minister of Trade and Economic Development in 2012 and, from 2007 to 2012, he was head of the Council of Ukraine's National Bank.

The Cabinet of Ministers is “the highest body in the system of bodies of executive power”<sup>40</sup> and comprises the Prime Minister, the First Vice Prime Minister, three Vice Prime Ministers and Ministers. While the Prime Minister, the Minister of Foreign Affairs and the Minister of Defence are appointed by the Verkhovna Rada under on the President's nomination, all other members of the Cabinet of Ministers are nominated by the Prime Minister and approved by the Verkhovna Rada.

Local state administrations are responsible for executive power in oblasts, districts and in Kyiv and Sevastopol with legislation setting out the extent of that power.<sup>41</sup>

The Verkhovna Rada (literally the “Supreme Council”) comprises 450 deputies elected every five years,<sup>42</sup> whereby 225 are elected in single-member constituencies using the first-past-the-post electoral system, and 225 are elected through proportional representation with national lists and an electoral threshold of 5%. In May 2015, only 423 out of the 450 seats in the Verkhovna Rada were filled, as in October 2014 no elections were held in Crimea, Sevastopol, and most parts of the Donetsk and Luhansk oblasts which were in control of Russia or pro-Russian forces.

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38 Constitution of Ukraine, Article 102.

39 *Ibid.*, Article 103.

40 *Ibid.*, Article 113.

41 *Ibid.*, Article 118.

42 *Ibid.*, Articles 75 and 76.

The general human rights situation in Ukraine 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).<sup>43</sup> The scores have remained relatively stable in recent years despite some improvements in the human rights situation: while the situation improved under President Yushchenko between 2004 and 2010, these improvements were largely reversed under his successor, Viktor Yanukovich. In its 2015 report, Freedom House highlighted various concerns including: business magnates and the state having influence over the media, the censorship of pro-Russian television channels and the raiding of pro-Russian journalists’ offices; continued political influence over the judiciary; and “corrupt bureaucrats, tax collectors, and corporate raiders.”<sup>44</sup>

While not under control of the Ukrainian authorities, the human rights situation in Crimea and Donbas has deteriorated significantly since the crisis and conflict. The UN Human Rights Mission in Ukraine has reported “political pressure and intimidation against Crimean residents opposing the de facto authorities in Crimea and in particular Crimean Tatars and human rights activists.”<sup>45</sup> This pressure and intimidation includes legal proceedings being brought against individuals involved in protests against the referendum in March 2014,<sup>46</sup> including journalists.<sup>47</sup> Peaceful assembly, free movement within Crimea and the ability of certain religious groups to register have all been limited.<sup>48</sup> In Donbas, the UN Human Rights Mission in Ukraine has reported various violations of human rights, including possible incidents of summary, extrajudicial or arbitrary executions, illegal and arbitrary detention, enforced disappearance, and torture and ill-treatment by both pro-Russian and Ukrainian armed forces; and attacks on journalists.<sup>49</sup>

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43 Freedom House, *Freedom in the World 2015: Ukraine*, 2015.

44 *Ibid.*

45 Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015*, p. 3.

46 *Ibid.*, p. 23.

47 *Ibid.* See also Coynash, H., “Wave of Repression against Independent Crimean Journalist”, *Kharkiv Human Rights Protection Group*, 13 March 2015.

48 See above, note 45, pp. 23–25.

49 *Ibid.*, pp. 7–17.