2. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in Ukraine. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Ukraine and translate them into concepts that can be dealt with in the frameworks of human rights and equality law. It is based on original direct testimony collected from a wide range of individuals, as well as interviews with experts. We have also analysed research undertaken by authoritative sources in the last decade, and, where necessary, have referred to news reports. We have sought to corroborate all facts and provide accurate attribution of all statements.

This part of the report does not seek to provide an exhaustive picture of all of the observed patterns of discrimination. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant discrimination grounds in the country. 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.

The research found substantial 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; and (ix) age, including disadvantages faced by children.

2.1 Discrimination on the Basis of Gender

Ukraine is required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which it ratified in 1981 as the Ukrainian Soviet Socialist Republic. Ukraine also has specific obligations under Article 3 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure the equal rights of both men and women to the enjoyment of all of the rights set forth in the Covenants.
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Further, under Article 26 of the ICCPR, Ukraine is required to ensure that the law “shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) sex”. Finally, the European Convention on Human Rights (ECHR) requires Ukraine to prohibit discrimination based on sex in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

Out of a total population of around 45.4 million people resident in Ukraine, around 24.3 million, or 53.7%, are women.⁵⁰

**The Legal and Policy Framework**

Ukraine has a relatively strong legal and policy framework designed to combat discrimination on the basis of gender when compared to other groups exposed to discrimination. This framework is analysed and assessed in Part 3 of this report. Discrimination on the basis of gender is prohibited both by the Constitution and the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.⁵¹ Ukraine also has specific legislation designed to promote gender equality: the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”.⁵² In 2005, a Presidential Decree was issued aimed at improving the work of central and local government in respecting of ensuring equal rights for women and men⁵³ and, in 2013, the Cabinet of Ministers adopted a State Programme on Ensuring Equal Rights and Opportunities of Women and Men until 2016.⁵⁴

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51 Закон України "Про засади запобігання та протидії дискримінації в Україні" (Відомості Верховної Ради, 2013, № 32, с. 412), as amended by the Закон України “Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації” (Відомості Верховної Ради, 2014, № 27, с. 915).

52 Закон України "Про забезпечення рівних прав та можливостей жінок і чоловіків" (Верховної Ради України, 2005, № 52, с. 561), as amended between 2012 and 2014.


54 Кабінет Міністрів України, Постанова від 26 September 2013 р. № 717, “Про затвердження Державної програми забезпечення рівних прав та можливостей жінок і чоловіків на період до 2016 року”.


Despite these constitutional and legislative provisions, and the policy measures taken, discrimination on the basis of gender remains a significant problem in Ukraine and takes a variety of forms. It is overwhelmingly women who suffer the disadvantage of gender-based discrimination; consequently, this chapter focuses almost exclusively on the situation of women in the country.

International measurements of the overall disadvantage experienced by women in Ukraine consistently show that women face discrimination in many important areas of life, albeit with a much greater impact in some areas than others. The United Nations Development Programme’s Gender Inequality Index of 2014, which measures “the extent to which national achievements in reproductive health, empowerment and labour market participation are eroded by gender inequality”,\(^55\) gives Ukraine a score of 0.326 ranking it 83\(^{rd}\) out of 187 countries measured.\(^56\) The World Economic Forum’s 2014 Global Gender Gap Report, which measures the gender gap in economic participation, political life, education and healthcare, ranks Ukraine 56th out of 142 countries with a score of 0.706.\(^57\) These figures, while somewhat selective, show the notable gap between men and women in various areas of life, although, as noted above, each area needs to be looked at in turn in order to understand the precise nature and level of the disadvantage experienced. Notwithstanding the varied forms of discrimination against women in Ukraine, most, if not all, have a common root in traditional stereotypes. As has been noted by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee):

\[T\]he persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and in the society at large, (...) are root causes of women’s disadvantaged position in political life, labour market and other areas.\(^58\)


\(^{57}\) World Economic Forum, *The Global Gender Gap Report 2014*, p. 358. Opposite to the UNDP’s scoring system, a score of 0 represents absolute inequality between men and women; a score of 1, absolute equality.

**Discriminatory Legal Provisions**

Article 2(f) of the CEDAW requires Ukraine “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Despite this, a number of legislative provisions continue to discriminate against women. These largely take two forms: the first, provisions which prevent (or limit) the ability of women to undertake certain types of work; the second, provisions which purport to give advantages or preferences to women through different forms of state assistance but in fact reinforce negative gender stereotypes.

Article 4 of the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, adopted in 2005, required all existing legislation to be subjected to a “gender-related assessment” (defined as an “analysis of the current legislation and draft legal acts, resulting in an opinion on their compliance with the principle of equal rights and opportunities for women and men”) and, in April 2006, the Cabinet of Ministers issued a Decree requiring the Ministry of Justice to develop and approve the method by which legislation would undergo a gender-related assessment. In May 2006, the Instructions on how to conduct gender-related assessments were published by the Ministry of Justice. The Instructions provide that all draft legislation would be assessed from 1 June 2006 onwards, and existing legislation would be assessed from 1 January 2007 onwards.

The requirement to assess legislation and draft legislation for its compatibility with the principles of gender equality has been taken seriously by the Ministry of Justice. The Ministry has issued guidelines on how to conduct gender-related assessments on both existing legislation and draft legislation which require assessment both against the CEDAW and against other relevant inter-

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59 Кабінет Міністрів України, Постанова від 12 Aprіl 2006 р. № 504, “Про проведення гендерно-правової експертизи”.

60 Міністерство Юстиції України, Наказ, 12 May 2006, № 42/5, “Деякі питання проведення гендерно-правової експертизи”.
national treaties.\textsuperscript{61} Each year, the Ministry of Justice publishes a list of laws to be reviewed during the year, and issues reports of each assessment making recommendations for amendments to the legislation if necessary.

As of May 2015, the Ministry of Justice had conducted gender assessments of 38 pieces of legislation.\textsuperscript{62} Of these, 10 were considered to contain provisions which discriminated on the basis of gender. Of these, four have since been amended to remove the gender-discriminatory provisions, while six have not yet been amended.

\begin{table}[h]
\centering
\caption{Number and Conclusion of “Gender-Related Assessments Carried out by the Ministry of Justice”}
\begin{tabular}{|c|c|c|c|c|}
\hline
Year & Non-Discriminatory on the Basis of Gender & Discriminatory on the Basis of Gender and Amended & Discriminatory on the Basis of Gender and Not Amended & Total \\
\hline
2007 & 6 & 1 & 3 & 10 \\
2008 & 2 & 2 & 0 & 4 \\
2009 & 0 & 1 & 0 & 1 \\
2010 & 0 & 0 & 1 & 1 \\
2011 & 2 & 0 & 1 & 3 \\
2012 & 5 & 0 & 1 & 6 \\
2013 & 7 & 0 & 0 & 7 \\
2014 & 6 & 0 & 0 & 6 \\
\hline
Total & 28 & 4 & 6 & 38 \\
\hline
\end{tabular}
\end{table}

The reviews suffer from a significant weakness in that both the Constitution and the Law of Ukraine “On Equal Rights and Opportunities for Women and Men” contain broad exceptions to the prohibition of discrimination on the basis of gender (see Part 3 of this report). Thus, many provisions which


are, in fact, discriminatory on the basis of gender and which are thus in contravention of international human rights law were assessed as not being discriminatory. Furthermore, not all of the provisions found to discriminate on the basis of gender have been amended. Of the 10 laws found to contain discriminatory provisions, six remain unamended and are briefly discussed below.

*Law of Ukraine “On Leave”*63

- Article 10, paragraph 7 of the Law sets out the circumstances in which an employee may request annual leave prior to having worked for the employer for six months continuously in the first year of employment. The first item of paragraph 7 grants this right to women who need such leave due to pregnancy, childbirth and after childbirth and to women with two or more children under 15 years of age or a child with a disability.
- Article 10, paragraph 12 sets out the circumstances in which an employee may request leave at any convenient time. The fourth item of paragraph 12 grants this right to women with two or more children under 15 years of age or with a child with a disability.
- Article 19, paragraph 1 grants an additional period of seven days paid annual leave to certain persons, namely women with two or more children under 15 years of age, women with a child with a disability, or women who have adopted a child; single mothers; fathers raising children without a mother (including where the mother is in hospital); and persons who have custody of children.
- Article 25, paragraph 1 grants an additional period of 14 days unpaid annual leave, at their request, to certain persons, namely (i) mothers and (ii) fathers who bring up children without a mother (including where the mother is in hospital for a long period), where they have two or more children under 15 years of age or a child with a disability.

All of these provisions discriminate unjustifiably on the basis of gender, a conclusion reached by the assessment which considered all parents (whether the

mother or the father) who had two or more children under the age of 15 or a child with a disability should enjoy the same entitlements to leave.

*Law of Ukraine “On State Support to Families with Children”*  
- Articles 18-1 to 18-3 provide for social assistance for single mothers but not for single fathers.

By treating single fathers differently from single mothers, this provision discriminates unjustifiably on the basis of gender. The assessment reached the same conclusion and recommended that all single parents (whether single mothers or single fathers) should enjoy the same entitlements to social assistance.

*Law of Ukraine “On Service in Local Government”*  
- Article 17, paragraph 1 of the Law requires officials working in local government to be assessed once every four years unless they fall into one of the categories listed in paragraph 2. Paragraph 2 includes, *inter alia*, pregnant women and women who have worked for less than one year after returning from maternity leave, childbirth or childcare.

While pregnant women are in a unique situation, by treating women who have returned to work after having a child differently from fathers who have returned to work after their child has been born, the provision discriminated unjustifiably on the basis of gender. The assessment reached the same conclusion, considering that the provision violated International Labour Organization (ILO) Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. The assessment concluded that the Law should be amended to include both women and men returning to work following leave to care for a child.

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64 Закон України “Про державну допомогу сім'ям з дітьми” (Відомості Верховної Ради України, 1993, № 5, c. 21), as amended between 1994 and 2015.

65 Закон України “Про службу в органах місцевого самоврядування” (Відомості Верховної Ради України, 2001, № 33, c. 175), as amended between 2003 and 2015.
**Code of Labour Laws of Ukraine**

- Article 33, paragraph 2 grants employers the right to reassign staff members temporarily without their consent for a period of up to one month. However, paragraph 3 prohibits this where the employee is a pregnant woman, a woman with a child with a disability or with a child under six years old;
- Article 51, paragraph 4 allows employers to reduce the number of working hours for employees who are women with children under the age of fourteen years old or who have a disability;
- Articles 55 and 175 prohibit employers from requiring women to work at night, except as a temporary measure in those sectors of the economy where there is a special need;
- Articles 55 and 176 prohibit employers from requiring pregnant women and women with children under the age of three years old to work at night at all;
- Article 56 permits a pregnant woman, women with a child under the age of fourteen years old or women with a child who has a disability to request that she work part-time;
- Articles 63 and 176 prevent pregnant women and women with children under the age of three years old from working at night, at weekends, overtime or being sent on business trips;
- Articles 63 and 177 require employers to obtain the consent of women with children aged between three and fourteen years old or who have a disability before requiring them to work overtime or to go on business trips;
- Article 174 prohibits the employment of women to undertake heavy work, to work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. Article 174 also prohibits the employment of women to undertake work involving lifting and moving objects where the weight exceeds their limits;
- Article 178 allows for pregnant women and women with children under three years old to be transferred to another job which is less demanding;

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• Article 179 grants maternity leave for women for 70 days prior to childbirth and 56 days after childbirth (or 70 days if the mother gives birth to more than one child or has a difficult birth);
• Article 182 provides 56 days leave for women who adopt a child from birth (70 days if the woman adopts two or more children);
• Article 182\(^1\) provides that where a woman has two or more children under fifteen years old, or a disabled child, or an adopted child, or is a single mother, or where a father is bringing up a child without a mother, they shall receive an additional seven days annual leave;
• Article 184 prohibits the dismissal of pregnant women, women with children under three years old and single mothers of children who are under fourteen years old or have a disability;
• Article 185 allows pregnant women and women with children under the age of 14 to claim vouchers to sanatoriums and rest homes as well as material aid;
• Article 186 requires organisations with a significant proportion of women to establish nurseries, kindergartens, rooms for nursing infants and rooms for personal hygiene for women.\(^67\)

All of these provisions treat women more favourably than men. While unique and favourable treatment for women during pregnancy and immediately after childbirth may be justified, the blanket favouring of mothers of young children or children with disabilities over fathers in the same situation is unjustifiable, as is the prohibition of women (regardless of whether they are pregnant or have children) from undertaking certain forms of work cannot be justified.

The assessment initially considered that all of these provisions fell within the exceptions to the prohibition of discrimination set out in Article 24 of the Constitution and Article 6 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”, as they judged that all involved either special protection measures for women during pregnancy, childbirth and child raising or specific requirements for the protection of women and men related to the protection of their reproductive health.

\(^{67}\) By virtue of Article 186\(^1\), some of these guarantees (namely those in Articles 56, 176, 177, 179, paragraphs three to eight, 181, 182, 182\(^1\), 184, 185 and 186) also apply to fathers raising children without a mother (including where the mother is in hospital for a prolonged stay) and to guardian or foster parents. However, they do not apply to fathers where the mother is not absent.
However, the assessment went on to note that both the CEDAW and ILO Convention 156 Concerning Workers with Family Responsibilities require that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”\(^68\) and referred to the requirements under Articles 5 and 11(2)(c) of the CEDAW.\(^69\) On that basis, the assessment concluded that some, but not all, of the provisions (namely all but Articles 174, 175, 178, 179 and 186) should be amended so as to provide equivalent guarantees to fathers.

- Article 56, paragraph 1 also permits a woman who is caring for a sick family member to request that she works part-time.\(^70\)

The restriction of this provision to women carers only constitutes an unjustified restriction on the basis of gender, a conclusion also reached by the assessment which recommended its extension to all employees, regardless of gender.

*Criminal Executive Code of Ukraine*\(^71\)

- Article 141, paragraph 5 of the Criminal Executive Code provides that the children of women prisoners can be transferred to her family with the mother’s consent; or transferred to other persons with the

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\(^68\) Convention on the Elimination of All Forms of Discrimination against Women, Preamble; ILO Convention No. 156 Concerning Workers with Family Responsibilities, Preamble.

\(^69\) Article 5 requires that States Parties take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases. Article 11(2)(c) requires that: “In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (...) (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”.

\(^70\) By virtue of Article 186, this guarantee also applies to fathers raising children without a mother (including where the mother is in hospital for a prolonged stay) and to guardians foster parents. However, it does not apply to fathers where the mother is not absent.

mother’s consent and the agreement of the child’s guardian or trustee; and that otherwise, at the age of three, they be transferred to children’s institutions.

The preferential treatment to mothers in prison as opposed to fathers in prison discriminated justifiably on the basis of gender, as was the conclusion the assessment which recommended that the provision be amended so that the father’s consent was obtained before children were transferred to relatives.

**Law of Ukraine “On Education”**

- Article 56 of the Law sets out various responsibilities of teachers and teaching staff. Paragraph 5 provides that teachers must educate children and young people to respect their parents, women, the elderly, traditions and customs, the national, historical and cultural values of Ukraine, the Ukrainian state and social order and the historical and cultural environment of the country.

The assessment considered that other legislation on education emphasised the importance of equal opportunity for women and men and gender equality, before concluding that the inclusion of “women” but not men in paragraph 5 was inconsistent with these principles and should be deleted. It is unclear, however, what the purpose and effect of the provision is in so far as it relates to women. While if interpreted as providing education on the equal worth of women in society and on the importance of equal opportunities for men and women, such a provision would help to eliminate the stereotypes which limit opportunities for women (as well as men) in Ukrainian society. However, if interpreted as suggesting that respect for women requires their special treatment and protection, in effect perpetuating the stereotypes, such a provision would, indeed, be inconsistent with the principle of gender equality.

As stated above, many provisions of other pieces of legislation are, in fact, discriminatory on the basis of gender and are thus in contravention of international human rights law but were not considered as being discriminatory during the assessment. Arguably the most significant among these are Articles

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174 and 175 of the Code of Labour Laws\textsuperscript{73} which, while purporting to provide special protection for women, in fact restrict women’s opportunities to work on an equal basis with men. As noted above, Article 174 prohibits women from undertaking heavy work, work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. Women are also prohibited from undertaking work involving lifting and moving objects where the weight exceeds their limits. Similarly, Article 175 prohibits women from working at night save in those sectors of the economy where there is a special need and where it is for a temporary period only.

While arguably well intentioned, such provisions have been criticised by the CEDAW Committee as they have “the sole effect of restricting women’s economic opportunities, and [are] neither legitimate nor effective as a measure for promoting women’s reproductive health”;\textsuperscript{74} and “create obstacles to women’s participation in the labour market”.\textsuperscript{75}

Outside of the assessment process described above, some other attempts have been made to challenge certain discriminatory legislative provisions. In 2014, the Ukraine Parliament Commissioner for Human Rights applied to the Constitutional Court for an official interpretation of Article 24 of the Constitution in respect of particular legislative provisions. The Commissioner argued that on the basis of Article 24 of the Constitution and Article 3 of the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, two legislative provisions were discriminatory against men: Article 182\textsuperscript{1} of the Code of Labour Laws and Article 19 of the Law of Ukraine “On Leave” – both of which provide an additional seven days of annual leave to mothers who have two or more children under 15 years old, or a disabled child, or an adopted child, but not to fathers in the same circumstances. The Constitutional Court, however, refused to hear the application on the basis that the Commissioner was, in fact, not asking the Court to provide an inter-

\begin{itemize}
\item \textsuperscript{73} See above, note 66.
\item \textsuperscript{75} United Nations Committee on the Elimination of Discrimination against Women, \textit{Twenty-Sixth and Twenty-Seventh Sessions Report, Concluding Observations: Ukraine} UN Doc. A/57/38, 2 May 2002, Para 293.
\end{itemize}
pretation of Article 24, but to expand the provisions cited to provide equal-
ity between women and men. Article 85, paragraph 3 of the Constitution
grants the Verkhovna Rada the competence to make legislation and Article
92, paragraph 6 lists as within the legislative competence of the Verkhovna
Rada “the fundamentals of social protection”, “the principles of the regu-
lation of labour and employment”, “marriage” and “family, the protection of
childhood, motherhood and fatherhood”. As such, the Court concluded that
it was being asked to act outside its jurisdiction.76

**Gender-Based Violence**

Gender-based violence has been recognised by the CEDAW Committee as “a
form of discrimination that seriously inhibits women’s ability to enjoy rights
and freedoms on a basis of equality with men”.77 Two of the most perva-
sive and pernicious forms of gender-based violence which affect women in
Ukraine are trafficking in women and domestic violence.

**Trafficking in Women**

The trafficking of persons in Ukraine is a significant human rights issue, with
the country being source, transit and destination country for men, women
and children.78 The International Organization for Migration (IOM) has
worked with victims of trafficking in Ukraine since 2000; in the absence of a
centralised national data collection system used by the authorities, the IOM’s
statistics are the most widely used, including by government.79 Between 2000

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76 Ухвала Конституційного Суду України про відмову у відкритті конституційного
ровозложення у справі за Конституційним поданням Уповноваженого Верховної Ради
України з прав людини щодо офіційного тлумачення положень статті 24 Конституції
України у впевнень з положеннями статті 21, частини першої статті 1821 Кодексу
законів про працю України, частини першої статті 19 Закону України "Про відпустки",
статті 3 Закону України "Про забезпечення рівних прав та можливостей жінок і

77 United Nations Committee on the Elimination of Discrimination against Women, *General


79 Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *Report
concerning the implementation of the Council of Europe Convention on Action against Trafficking
in Human Beings by Ukraine*, GRETA(2014)20, Adopted on 4 July 2014, Published on 19
September 2014, p. 11.
In the Crosscurrents

and March 2015, the IOM assisted 11,086 victims of trafficking in Ukraine, although the total number of victims is likely to be significantly higher: the IOM estimates that, since independence in 1991, over 120,000 men, women and children have been victims of human trafficking. Since 2004, the gender of the victims has been recorded and monitored and over two thirds of the victims have been women. Where the purpose of trafficking is sexual, the overwhelming majority of victims are women: 99% of the victims assisted since 2007 were women (2,190 compared to 25 men).

While victims from various countries are trafficked into or through Ukraine, victims who are themselves Ukrainian are trafficked not only to other countries, mostly in Europe and Asia, but within Ukraine itself. The women most vulnerable to being trafficked are young, single women with low or very low living standards. They often have limited access to employment opportunities and are invariably targeted by recruiters who are themselves Ukrainian through fraud, coercion, and debt bondage.

Beginning in the late 1990s, the Ukrainian authorities have taken a number of steps to address human trafficking, including trafficking in women.

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82 See above, note 80. The full table shows that the proportion of women victims assisted has decreased from over 80% in the first three years to less than 50% in more recent years, however, as noted below, amongst victims of trafficking for sexual purposes, women make up almost 100% of victims:

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</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>540</td>
<td>713</td>
<td>761</td>
<td>849</td>
<td>625</td>
<td>596</td>
<td>693</td>
<td>471</td>
<td>414</td>
<td>447</td>
<td>189</td>
<td>91</td>
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<td>86%</td>
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<td>77%</td>
<td>64%</td>
<td>57%</td>
<td>44%</td>
<td>48%</td>
<td>44%</td>
<td>64%</td>
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<tr>
<td>Men</td>
<td>86</td>
<td>115</td>
<td>176</td>
<td>272</td>
<td>195</td>
<td>177</td>
<td>392</td>
<td>352</td>
<td>531</td>
<td>482</td>
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<td>14%</td>
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<td>19%</td>
<td>24%</td>
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<td>36%</td>
<td>43%</td>
<td>56%</td>
<td>52%</td>
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83 See above, note 80.

84 See above, note 78, p. 391.


86 See above, note 78, p. 391.
As well as general criminalisation of trafficking through Article 149 of the Criminal Code (which criminalises trafficking for sex and labour), the government adopted a series of Action Plans from 1999 onwards and, in 2011, the Verkhovna Rada adopted the Law of Ukraine “On Combating Trafficking in Human Beings”\(^\text{87}\) with the aim of reducing the level of trafficking and providing support to victims. It would appear that the legislative and policy efforts made by the government have had a significant impact upon the scale of trafficking in women. The number of victims identified and assisted by IOM has fallen steadily in recent years, from 581 in 2007 to 52 in 2014.\(^\text{88}\) Despite this, non-governmental organisations have stated that the efforts of government are still insufficient. In 2010, despite recognising “the efforts made by the State party to address the issue of trafficking in women and girls”, the CEDAW Committee noted with concern that “the root causes of trafficking are not sufficiently addressed, funding of shelters remains scarce and that, in general, resources allocated to combat trafficking are still inadequate”.\(^\text{89}\) In 2012, a report by La Strada Ukraine considered that these problems were still relevant, two and a half years after the CEDAW Committee had issued its concluding observations.\(^\text{90}\)

**Domestic Violence**

Statistics on the incidence of domestic violence in Ukraine reveal a high degree of prevalence. In 2011, the Ministry of the Interior reported 162,768 complaints of domestic violence.\(^\text{91}\) International Women’s Rights Centre “La Strada-Ukraine” estimated in 2013 that 90% of victims of domestic violence were women.\(^\text{92}\) While the breakdown of complaints by the gender of the complainant is not available, in 2011, a total of 81,304 men and 5,876 women

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88 See above, note 77.
89 See above, note 58, Para 30.
92 Панчишин, О., “60% українських дітей до 14 років страждають від насилища в сім’ї”, Zaxid.net, 25 April 2013.
were placed under police supervision.\textsuperscript{93} Even accounting for a small proportion of these incidents occurring in same sex relationships, the fact that over 93\% of the complaints were made against men indicates that that women are likely to be the victims in the overwhelming majority of cases. In 2013, a similar number of complaints were made: 160,730.\textsuperscript{94} Figures on the gender of the complainant are available for all complaints made during the first six months of the year (65,797): 58,039 by women (88\%), 7,346 by men (11\%), and 412 by children (1\%).\textsuperscript{95}

With a total adult female population of approximately 21 million, a recent average of 160,000 complaints of domestic violence per year and 90\% of these being made by women, this would indicate 1 in 145 adult women making a complaint of domestic violence each year. However, civil society actors argue that this number of official complaints is only the tip of the iceberg. La Strada Ukraine estimated that the number of complaints reflects only 10–15\% of the total number of incidents.\textsuperscript{96} Many victims state that even when they report domestic violence to the state authorities, their complaints are not taken seriously.\textsuperscript{97}

There is evidence that the conflict in Donbas has led to an increase in the number of incidents of domestic violence. While La Strada received an average of 580 calls a month in 2014, the vast majority of which related to domestic violence, for the first three months of 2015, the figure was closer to 900.\textsuperscript{98} La Strada considers this increase to be due to men fighting in Donbas and returning with post-traumatic stress disorder, noting:

\textsuperscript{93} This figure is calculated on the basis that the reported cases were from opposite-sex couples. Given the reluctance of same-sex couples to live openly and the harassment LGBT individuals face by the police, it is safe to assume that a very low proportion, if any, of the complaints were made by partners in openly cohabiting same-sex couples.


\textsuperscript{97} See above, note 94.

Women call and tell us that they were married for 15 years, that they had a good family, and that their husbands were never violent, never hit or insulted them. Then they left for the war and returned completely changed. They are violent. They beat the children. They beat their wives and drink. These women don’t know what to do because they don’t recognize the husbands they had before the war in these men.99

In 2001, in response to concerns over the level of domestic violence in the country, the Law of Ukraine “On Prevention of Violence in the Family”100 was adopted. It was the first specific legislation seeking to combat domestic violence adopted anywhere in the former Soviet Union. The Law provides for various preventative measures, including official warnings for those who are believed to have committed domestic violence but where it has not been possible to charge the person with an offence.101 Their details are then stored by the police on a special register. If a person commits domestic violence after an official warning has been issued, they can be sent to a crisis centre to undertake rehabilitation or issued with a protective order which prevents them from carrying out certain activities such as contacting the victim or going to the victim’s home.

Article 8 of the Law requires there to be a shelter for those affected by domestic violence in all major cities. In practice, however, there is not even one in each of the oblasts: as of 1 January 2015, a total of 19 shelters had been established.102 Those that do exist are often ineffective, with limited psychological and legal assistance provided. It has been reported that assistance centres in Kyiv have refused to provide their services to victims who were not registered as residents of the city.103 The CEDAW Committee has expressed its concern over

99 Ibid.

100 Закон України “Про попередження насильства в сім'ї” (Відомості Верховної Ради України, 2002, № 10, с. 70), as amended between 2007 and 2012.

101 Ibid., Article 10.

102 Information obtained from the Ministry of Social Policy of Ukraine, March 2015. Letter held on file by Nash Mir.

103 See above, note 91.
[T]he obstacles encountered by women in their access to these services owing to the official registration requirement, age limits and the fact that these centres lack appropriate funding and are not available in all regions.\textsuperscript{104}

\textbf{Employment}

Ukraine is obligated to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights” by virtue of Article 11 of the CEDAW. Further, Ukraine is required by Article 3 together with Article 6(1) of the ICESCR to ensure the equal right of men and women to enjoy “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. Despite these obligations, women in Ukraine face significant discrimination and disadvantage in many aspects of employment, including: discriminatory recruitment practices, lower pay than men for comparable work, difficulties in returning to the workplace following maternity leave, and sexual harassment in the workplace.\textsuperscript{105}

Overall, the unemployment rate among women is lower than that among men. The figures from 2013 show that while the unemployment rate for men was 8.0\%, for women it was 6.2\%.\textsuperscript{106} This figure, however, masks a significant inequality in the employment market: while the labour force participation rate for men for 2013 was 71.6\%, for women it was just 58.9\%,\textsuperscript{107} indicating that a much greater proportion of women were outside the labour force than men. The figures for 2014 show similar results: the unemployment rate for men

\textsuperscript{104} See above, note 58, Para 28.

\textsuperscript{105} In 2010, the CEDAW Committee expressed its concern over “the real situation of women in the labour market, in particular about high rates of unemployment affecting women, important wage discrepancies between women and men, occupational segregation and the persistent gender-based discriminatory attitudes among public and private employers, including discriminatory recruitment practices and sexual harassment at the workplace”. (See above, note 58, Para 34).


\textsuperscript{107} \textit{Ibid.}
rose to 10.8% and for women to 7.5 %, but the labour force participation rate for women was 51.9% whereas for men it was 61.8%, again indicating that a much greater proportion of women are out of the labour force than men.108

*Discrimination in Recruitment*

*Article 11(1)(b)* of the CEDAW requires Ukraine to ensure, on a basis of equality of men and women, “the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment”.

Evidence gathered for this report indicates that the experiences of women in the recruitment process vary significantly and that the disadvantages women face are multi-faceted. Advertisements which call only for female or male applicants, despite being prohibited by law, are commonplace; and women, particularly young women, are asked personal questions about their marital status and plans regarding children during job interviews, with employers reluctant to hire women seen as a “risk”. While job advertisements which seek only female applicants might seem to discriminate only against men, in fact, such practices contribute to the overall disadvantaged position of women in the workplace. First, such advertisements reinforce stereotypes that there are jobs that only women should do and, in turn, jobs that men should do. Secondly, as such jobs tend to be lower paid and less prestigious, they can distort the labour market in favour of men by pushing women into those jobs and encouraging more men in higher paid, more prestigious jobs. Such a distortion of the labour market ultimately limits women’s freedom of choice in employment and such advertisements have been criticised by, *inter alia*, the Committee on Economic, Social and Cultural Rights.109

Job advertisements which impose requirements as to the sex of the applicant are officially prohibited. *Article 17* of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”110 prohibits job advertise-
ments which seek only women or men, save where the position can only be performed by persons of a particular sex. Article 17 also prohibits employers from making different demands from employees based on their sex or requiring from them information about their personal life or plans to have children. The 2013 Law of Ukraine “On Employment of the Population”\(^{111}\) prohibits, in Article 11, advertisements seeking candidates of only one gender and amends the Law of Ukraine “On Advertising” accordingly.\(^{112}\) The State Labour Inspectorate is empowered to investigate such advertisements and fine employers who break the law with fines of up to 10 times the minimum wage.\(^{113}\)

Despite this, there is evidence that many job advertisements in official job magazines continue to include requirements regarding the sex of the candidates, particularly for jobs as receptionists or in the textiles sector, indicating that the law is not being properly enforced.\(^{114}\) Researchers for this report analysed the magazine “Offer a Job” for the period May 2012 to December 2013 and found:

- There were many job advertisements where the sex and age of the eligible candidates for the vacant position are indicated;
- The most common job advertisements where only women were eligible were those for accountants, assistant accountants, curtain designers, embroiderers, ironers, sewers, secretaries, office managers, secretary-referents, housekeepers, bookbinders, cloth binders, dishwashers, managers in printing or logistics, telephone dispatchers or operators, goods-wrappers and dancers;
- On occasion, only women were eligible for positions as: director’s assistant (often with limitation in age up to 35 years old), pharmacy manager, shoe or dress store manager and estate agent;

\(^{111}\) Закон України "Про зайнятість населення" (Відомості Верховної Ради, 2013, № 24, с. 243), as amended between 2013 and 2015.

\(^{112}\) See Article 24\(^1\) of Закон України “Про рекламу” (Відомості Верховної Ради України, 1996, № 39, с. 181), as amended between 1998 and 2014.

\(^{113}\) The minimum wage in Ukraine in 2014 was 1,214 hryvnia per month (approximately 52 euro) unless the person has a disability in which case it is 949 hryvnia per month (approximately 42 euro), as per Закон України "Про Державний бюджет України на 2014 рік" (Відомості Верховної Ради, 2014, № 35, c. 1180), thus permitting a maximum fine of 12,140 hryvnia (approximately 520 euro).

• Rarely, but on occasion, only women were eligible for positions as PC operators, laboratory assistants, physician assistants, commercial director assistants;
• The most common job advertisements where only men were eligible were those for security guards, printers, chemical engineers, production managers, positions in delivery services, bartenders, watchmen, inspectors, couriers, drivers, re-fuellers, delivery men, loaders, chief engineers, directors, technicians, tools repair professionals;
• In some cases, marital status was specified alongside the sex and age sought, for example: “Married women with school-age children are preferred”.

The website of the magazine “Vogue Ukraine”, for example, included the following advert:

_Vogue Ukraine offers the opportunity to join our team! We are looking for an editor assistant – a purposeful and active girl with experience of the positions of secretary or office-manager and with proficient English. Responsibilities include maintaining the office functioning, organising negotiations and business trips, translating and preparing presentations._

115

Gender stereotypes appear even in standard information materials giving information on the educational, qualification and physical requirements for different positions developed by the State Employment Office of Ukraine.116 These materials are available in central and regional state employment offices. A review of these materials revealed that many reflect gender stereotypes, potentially restricting access for women to a large number of professions which are highly paid and popular in the job market.117 These information materials recommend that women focus on jobs such as childcare, cleaning or making artificial flowers.118 In order to justify the difference in access to

115 Ла Страда-Україна, Звіт за результатами моніторингу. Гендерна дискримінація, 2014, prepared for this report.

116 Ibid.

117 Ibid.

118 Ibid.
certain professions for men and women, the information materials use reasons such as “women are more emotional/more inclined to aesthetics/physically weaker than men”.

Image 1: Examples of Job Advertisements Specifying the Required Gender of the Applicant

As noted above, even where women are able to apply for positions without facing such restrictions, some potential employers question women about their marital status and plans regarding children so as to avoid hiring women considered a “risk”. Calls to La Strada Ukraine’s national hotline on preventing domestic violence, human trafficking and gender discrimination, as well as media reports, indicate that women are often not hired for positions on the basis of their marital status and age. Research

119 Ibid.
undertaken by the Ukrainian Social Workers League revealed that almost one third of parents were not hired due to their having a child and the possibility of requiring leave, because of pregnancy, or because they were the parent of a small child. As it is only mothers, and not fathers, who are entitled to maternity and other forms of parental leave (with some exceptions), in practice, it will very frequently be women who are not hired. The League also found that 15% of parents were fired for one or more of these reasons.

Women interviewed by the Equal Rights Trust for this report spoke of their own experiences. For example, Halyna was a 25 year old woman in Kyiv. She had higher education in economic and public service, together with advanced English. She attended a job interview for a position of Logistics Manager in the head office of an IT company in Kyiv. Among the first questions asked by the Human Resources Director were ones relating to her marital status and children. At this time, Halyna had a three-year-old child. The questions in the interview then largely related to who would look after the child in case of illness, etc., as irregular working hours were required in the position. Halyna was told that annual leave was only 10 days per year and there was no provision for sick leave. Halyna was required to justify and provide written evidence that she was in good health and had relatives who could look after her child. She was forced to hide the fact that her child had poor health and required regular medical examinations and treatment. Internal communications within the team included sexist remarks and sexual jokes. Halyna was ultimately forced to quit her position.

Ksenia was 22 years old, single and without children. She had undertaken higher education. She attended a job interview for a position in a private company. One of the first questions related to her marital status. She was informed that she


\[121\] Ibid.

\[122\] Equal Rights Trust interview with Halyna, 10 February 2014, Kyiv. 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.
was required to provide a written commitment not to take maternity leave for 2 years as the company did not pay for such leave. Were this to happen, she would be required to resign of her own volition or else she would be dismissed for absenteeism or misconduct (she was informed that a reason would be found).123

Unequal Pay

Article 7(a)(i) of the ICESCR requires Ukraine to ensure

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

Measurement of the gender pay gap is notoriously difficult, and estimates of the actual pay gap in Ukraine vary, though all show that women are paid less than men. Since 2012, the State Statistics Committee has published annually the average monthly wage for men and women. This data shows a significant and indeed increasing gender pay gap.

<table>
<thead>
<tr>
<th></th>
<th>Men (hryvnia)</th>
<th>Women (hryvnia)</th>
<th>Pay Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>3,429</td>
<td>2,661</td>
<td>22.4%</td>
</tr>
<tr>
<td>2013</td>
<td>3,711</td>
<td>2,866</td>
<td>22.8%</td>
</tr>
<tr>
<td>2014</td>
<td>3,979</td>
<td>3,037</td>
<td>23.7%</td>
</tr>
</tbody>
</table>

This rise in recent years should be seen in the context of a history of much larger gaps: the gender pay gap in 1991 was around one third;124 between 2000 and 2005 it ranged from 29.1% to 31.4% before beginning to fall.125

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123 Equal Rights Trust interview with Ksenia, 11 February 2014, Kyiv.
By comparison, the average gender pay gap in the European Union in 2013 was approximately 16.4%.[126]

The government of Ukraine has sought to explain this difference as “not due to discrimination in setting wages” but resulting:

\[F\]rom the greater percentage of men in management posts, which offer higher pay, and from men’s more frequent assignment to jobs characterized by difficult or harmful or particularly difficult or harmful working conditions and to night work, on which the pay is also higher.[127]

This explanation gives further cause for concern, as the state appears to be seeking to justify continued pay disparity by reference to discriminatory laws outlined above which limit women’s freedom of choice in employment. As noted above, the CEDAW Committee has stated that women should not be prevented from undertaking work – irrespective of the level of difficulty, or the level of harmful or hazardous working conditions – which is available to men. Similarly, while it may be true that there are more men in senior management posts than women, this does not justify the differential in remuneration between men and women, but instead indicates the state’s tolerance of continued hierarchies in employment on the basis of sex.

One woman, Valentyna, spoke to Equal Rights Trust of her experience. Valentyna was 27 years old, married and the mother of one child. She had completed higher economic and financial education and was given a job at Nadra Bank. When she was hired, there were two similar vacancies in the organisation and she and a man were hired to fill them. Despite a perfect work record, she later discovered that her male colleague had been paid a higher salary than her, despite their positions being similar. When she challenged the bank’s director, she was told that “men took no maternity leave” and so the higher salary was a “bonus for riskless behaviour”. A few months later she left her position.[128]

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126 European Commission, “Equal Pay Day: Gender Pay Gap stagnates at 16.4% across Europe”, europa.eu, 28 February 2014. The figure of 16.4% masks significant variations across the European Union: in Slovenia, for example, the gap is just 2.5%, whereas in Estonia it is 30.0%.


128 Equal Rights Trust interview with Valentyna, 11 February 2014, Kyiv.
Maternity Leave

Article 11(2) of the CEDAW requires Ukraine to take various measures to prevent discrimination against women on the grounds of maternity and to ensure “their effective right to work”. These measures include (a) prohibiting, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave; (b) introducing maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; and (c) encouraging the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

As noted above, the legislative provisions in Ukraine providing for maternity leave do not – with some limited exceptions – permit equivalent leave to be taken by fathers. As such, upon the birth of a child, it will invariably be the mother who will take time off work as it is only she who is entitled to paid maternity leave. Coupled with the legislative provisions, traditional attitudes towards women in Ukraine mean that women undertake the vast majority of housework and childrearing. In this context, the CEDAW Committee has raised concerns that “the lack of childcare facilities constitutes an obstacle to the full exercise of women's right to work”. The combination of these factors means that it is far more difficult for a woman to sustain a career if she has children.

The government has made some attempts to try to improve the situation of women who are put at a disadvantage by taking maternity and childcare leave. In 2013, the Ministry of Social Policy announced that women taking maternity leave would be eligible for vouchers for training, re-training or professional development, up to a value of 11,600 hryvnia (approximately 490 euro). In addition, in 2013, the Law of Ukraine “On Introduction of Amendments to Some Laws of Ukraine Regarding Awarding and Indexation of

130 See above, note 58, Para 34.
131 Ukrinform, “Young mothers to be eligible to subsidized employment – Korolevska”, ukrinform.ua, 12 August 2013.
Patterns of Discrimination and Inequality

Pension”\textsuperscript{132} came into force. The new legislation amends the Law of Ukraine “On Obligatory State Pension Insurance”\textsuperscript{133} and changes the means by which pregnancy and childbirth allowance for women on maternity leave is funded. While, prior to this, the allowance had been funded entirely by the state, the amendments made the recipients of the allowance insured for the purposes of the state pension insurance scheme. As a result, working women and their employers are now required to contribute to the system of mandatory state social insurance which includes pension insurance (the Unified Social Tax). Working women are required to pay 2\% of the total amount of the allowance to the state budget while employers have to contribute 33.2\%. While this benefits women by including the period of paid maternity leave taken (either 126 or 140 days) in the calculation of their length of service and seniority, some have raised concerns that this could lead to a reduction in the official salaries of pregnant women, an increase in the shadow economy, and women becoming less competitive in the labour market in general.\textsuperscript{134} Others have suggested that the new legislation will result in companies not hiring women, or firing them to avoid paying what has been dubbed a “pregnancy tax”.\textsuperscript{135}

In addition, it should be noted that while the current legislative and policy regime on parental leave fosters gender discrimination and puts women at a disadvantage in the workplace, these provisions also disadvantage men, resulting in fathers being unable to take paid paternity leave upon the birth of a child.

\textit{Armed Forces}

There is evidence of employment discrimination against women specifically in the armed forces. The number of positions which are open to women in the Ukrainian army is small. In addition, there is evidence of sexist comments being made by senior members of the armed forces, such as Deputy Military Commissioner of Sumy oblast, Ihor Zakrevskyi, who stated:

\begin{flushleft}
\textsuperscript{132} Закон України “Про внесення змін до деяких законів України щодо призначення та індексації пенсії” (Відомості Верховної Ради, 2014, № 11, с. 135).
\textsuperscript{133} Закон України “Про загальнообов’язкове державне пенсійне страхування” (Відомості Верховної Ради України, 2003, № 49–51, с. 376), as amended between 2004 and 2015.
\textsuperscript{134} Послезавтра, “«Налог на беременность» усилит тенизацию экономики на 10 процентов – эксперт”, poslezavtra.com.ua, 17 July 2013.
\textsuperscript{135} Мальк, И., “Налог на ‘декретные’: Дискриминация женщин и тенизация зарплат”, UBR, 23 July 2013.
\end{flushleft}
By law, we can offer women service in the army. But today there are only vacancies as commanders of tank, tank mechanics and drivers. I cannot imagine a woman in such work (...) If you were lucky to be born as a man, you have your entire life to prove to the other half of humanity who were fortunate to be born a woman that you are a real man. There is no better way to prove this than to test yourselves in difficult military conditions.\(^\text{136}\)

Olesya told the Equal Rights Trust her story. Olesya was a senior specialist at the Department of Military Policy in the Ministry of Defence. She had eight years of experience working at the Ministry and had gained distinction as “the best specialist”. Nonetheless, the newly-appointed Chief of the department dismissed Olesya alongside other women in the department from their positions without any reason. She was later offered another position, lower in prestige and salary. The Chief of the department explained that Olesya could not have the position of a senior specialist since she had no experience of military service. Following this, Olesya worked in a position within the Ministry but in another department. There, an inspection of her performance was initiated for no reason. Following the inspection, the Chief of the department threatened Olesya that if she did not resign, he would initiate another inspection and create unbearable conditions for her work.\(^\text{137}\)

**Sexual Harassment**

Evidence collected by NGOs indicates that sexual harassment of women in the workplace is widespread, despite having been prohibited by the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”\(^\text{138}\) since 2006. There are no official statistics collected on the incidence of sexual harassment, but women’s organisations estimate that one in four women in Ukraine will experience sexual harassment at work.\(^\text{139}\) One story is N.’s. N was the head of a section within a department of the Ministry of Defence with the

\(^{136}\) Новини Закарпаття, "До української армії відмовляються брати закарпатських жінок", transkarpatia.net, 21 February 2013.

\(^{137}\) Equal Rights Trust interview with Olesya, 18 February 2014, Kyiv.

\(^{138}\) See above, note 52.

\(^{139}\) Коваленко, Н. and Шерстюк, Н. "Від сексуальних домагань на роботі страждають чверть українських жінок (правозахисники)", Радіо Свобода, 31 May 2010.
rank of colonel. After a period of sick leave she met with her boss. He invited her to his office, allegedly to discuss work-related issues. When they were alone, he started to remove items of clothing and sexually harass her. She refused his advances, but did not inform the police as she feared this would make the situation worse. Following this, he started to use his seniority in order to put pressure on her and force her to quit her job. He prohibited other employees from communicating with her, forced them to submit complaints against her, launched an inquiry against her with no basis, refused to provide leave, pressed her psychologically, and was aggressive in his tone towards her, making it difficult for her to do her job. Finally under the premise of restructuring the department, he removed her from the staff without offering her another position elsewhere.\textsuperscript{140}

It appears that, as of May 2015, there has only been one case of sexual harassment considered by a court. Svitlana Pomilyaiko of Kharkiv regularly informed the management of the factory where she worked that the head of the design bureau made sexual advances towards her. In response to her complaints, the administration fired her, officially for being four minutes late to work. Svitlana took her complaint to the court. She was reinstated in her position, but was unable to prove the real reason for her dismissal.\textsuperscript{141}

\textit{Political Life}

Women are grossly underrepresented in political life and decision-making in Ukraine and this has been a repeated concern of both the Human Rights Committee (HRC) and the CEDAW Committee for many years. In 2001, the HRC noted that “the level of representation of women in Parliament (...) remains low”,\textsuperscript{142} and, in 2013, raised concerns “about the continued under-representation of women in decision-making positions in the public and political sphere, in particular in Parliament and Government”.\textsuperscript{143} Similarly, the CEDAW Committee raised concerns in 1996 over “the low representation of

\textsuperscript{140} Equal Rights Trust interview with N., 18 February 2014, Kyiv.


\textsuperscript{143} Ibid.
women in high-level elected and appointed bodies, including as members of Parliament" and again in 2010 over the same issue.\(^{145}\)

Following the parliamentary election in 2014, of the 420 deputies elected, just 49 were women.\(^{146}\) At 11.7\%, the proportion of women in the Verkhovna Rada elected in 2014 is barely higher than the figure for the 2012 elections (9.7\%). While this represents some progress since the 2007 and 2002 elections (where the proportion of women was 8.4\% and 5.4\% respectively) women remain heavily underrepresented. Approximately 25\% of the candidates on party lists were women (an increase of 6\% compared to 2012), but only around 13\% of candidates in the single-member constituencies were women.\(^{147}\)

In response to the low representation of women in the Verkhovna Rada, in 2013, the Verkhovna Rada adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation on Elections”\(^{148}\) which came into force on 1 February 2014. Among other changes, the Law amends the Law of Ukraine “On Political Parties in Ukraine” to insert a requirement that party lists at elections include at least 30\% women.\(^{149}\) However, the Law does not contain any means by which compliance with the requirement can be monitored and enforced and, indeed, at the 2014 election, only around 25\% of candidates on the party lists were women.\(^{150}\)

\(^{144}\) See above, note 74, Para 285.

\(^{145}\) See above, note 55, Para 32.


\(^{148}\) Закон України “Про внесення змін до деяких законодавчих актів України щодо вдосконалення законодавства з питань проведення виборів” (Відомості Верховної Ради, 2014, № 22, с. 794).

\(^{149}\) Article 8, paragraph 10 of Закон України Про політичні партії в Україні (Відомості Верховної Ради України, 2001, № 23, с. 118), as amended between 2003 and 2015, reads: “[T]he size of the quota, which determines the minimum level of representation of women and men in the list of candidates of parties for deputies of Ukraine in the nationwide constituency shall be not less than 30 per cent of the candidates on the list.”

\(^{150}\) See above, note 147.
Women are similarly underrepresented in government. As of May 2015, there were just two women in the Cabinet of Prime Minister Arsenii Yatsenyuk: Minister of Finance, Natalie Jaresko, and Minister of the Cabinet of Ministers, Hanna Onyshchenko.

The figures for women’s representation in local government are somewhat better, and it is interesting and symptomatic that the share of women increases in reverse proportion to proximity to the top central power structures. As of 2013, women made up 12% of all deputies in the oblast councils, 23% of deputies in district councils, 28% of deputies in city councils, 46% of deputies in town councils and 51% of deputies in village councils.\(^{151}\)

One notable exception to the general absence of women from high positions in politics is Yulia Tymoshenko. First elected to the Verkhovna Rada in 1996 and originally a key ally of Viktor Yushchenko, she was a key figure during the Orange Revolution and was appointed as Prime Minister under President Yushchenko in January 2005. That year, Forbes Magazine named her as the third most powerful woman in the world.\(^{152}\) In September 2005, she and her government were dismissed and she returned to opposition. Following the parliamentary elections of 2007, the party of which she was the leader (Yulia Tymoshenko Bloc) became the second largest party in the Verkhovna Rada and she was once again appointed as Prime Minister. In January 2010, she stood as a candidate at the presidential election and received 45.5% of the vote in the second round, being narrowly beaten by Viktor Yanukovych. This was nevertheless the highest number of votes ever received by a female presidential candidate.

A few weeks after the 2010 presidential elections, Tymoshenko’s government was dismissed. In May of the same year, criminal charges were brought against her for abuse of power and embezzlement relating to a contract she had made with GazProm – the Russian gas supplier – while Prime Minister; charges many considered to have been politically motivated. In October 2011, she was found guilty and sentenced to seven years’ imprisonment. She was


released in February 2014, after the Verkhovna Rada retrospectively amended the legislative provisions which formed the basis for her charges. She once again stood for President in the May 2014 election, again finishing second, but this time with just 12.8% of the vote.

While examples of women achieving high success in political life such as Yulia Tymoshenko are rare, examples of sexist and misogynistic comments by men at the highest levels are common. In 2010, presidential candidate (and, ultimately, President) Viktor Yanukovych rejected proposals for a debate with his opponent, Yulia Tymoshenko, saying, “if she is to be treated as a woman, let her demonstrate her whims in the kitchen”.153 In early 2012, in the context of legislative proposals for quotas for women in the Verkhovna Rada, the then Chairman of the Rada, Volodymyr Lytvyn, stated that,

_Society will not abide by such laws unless we get rid of that which is our tradition and stems from our Christian mentality: Man is the higher being, as woman was made from Adam’s rib. Consequently, she is the lesser being._154

Former Prime Minister Mykola Azarov has been quoted as saying, “[w]ith all respect to women, conducting reforms is not women’s business.”155

The relative absence of women from political life and decision-making has not always been a permanent feature of Ukrainian politics: in 1978, in its first state party report to the UN Human Rights Committee, the Ukrainian SSR was able to boast that over 35% of deputies in the Supreme Soviet of the Ukrainian SSR were women, as well as almost 48% of all deputies in the local So-

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From 1984 until 1990, the Chair of the Presidium of the Verkhovna Rada was a woman: Valentyna Shevchenko.

**Sexism in Advertising and Media Imagery**

Sexist and misogynistic images of women in product advertisements and media imagery are rife. Women in such advertisements are invariably eroticised or objectified, or portrayed in sexist or misogynistic contexts, reinforcing gender stereotypes. In 2010, the CEDAW Committee raised concerns over the “sexist representation of women in media and advertisement campaigns”.

Image 2: Advertisement of a financial services company, ShvydkoHroshi, on Kyiv subways trains, August 2012

In 2011, the Ukrainian Marketing Association produced the Standards for Advertising Free from Gender Discrimination. To ensure compliance with the Standards, the Industrial Gender Committee on Advertising was established to consider (either on its own initiative or following a complaint) sexist advertising. The statistics, however, suggest that the Committee is largely inef-

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158 See above, note 58, Para 24.

159 Ukrainian Marketing Association, *Standards of Advertising Free from Gender Discrimination*, 2011, available at: [http://www.uam.in.ua/upload/medialibrary/344/344e8e2c1f85fdce7297d7042e1a8a56.pdf](http://www.uam.in.ua/upload/medialibrary/344/344e8e2c1f85fdce7297d7042e1a8a56.pdf).
ffective in tackling the scourge of sexist advertising. The Committee’s website states that, as of May 2015, the Committee had only received 70 complaints and considered 68 of them. Of these, 54 were found to have been discriminatory and 12 were subsequently changed.

**Image 3: An advert for ProfiGaz**

![Image of an advert](image)

**Conclusions**

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 dis-

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Patterns of Discrimination and Inequality

crimination 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 are women and there are just two women in the Cabinet of Ministers.

2.2 Discrimination on the Basis of Sexual Orientation and Gender Identity

Under Article 2(1) of the ICCPR and Article 2(2) of the ICESCR, Ukraine is required to ensure the enjoyment of all rights under these Covenants without discrimination on grounds which include sexual orientation and gender identity. In addition, Ukraine is required, by virtue of Article 26 of the ICCPR, to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including the grounds of sexual orientation and gender identity. Further, the ECHR requires Ukraine to prohibit discrimination based on sexual orientation and gender identity in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12

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161 In respect of the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights has stated that the term “other status” used in Article 2(2) includes both sexual orientation and gender identity (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 32). In respect of the ICCPR, the Human Rights Committee has interpreted the term “other status” used in Article 2(1) (and Article 26) to include sexual orientation (see, for example, Young v Australia, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003). While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concern that discrimination on the basis of gender identity (and, indeed, sexual orientation) was not prohibited in Ukraine and urged Ukraine to prohibit such discrimination (United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 8).

162 Young v Australia, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003; United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013. As noted above, While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concern that discrimination on the basis of gender identity (and, indeed, sexual orientation) was not prohibited in Ukraine and urged Ukraine to prohibit such discrimination (United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 8).
to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.\textsuperscript{163}

As in other countries, the number of lesbian, gay, bisexual and transgender (LGBT) persons in Ukraine is unknown. The high level of stigma faced by LGBT persons in Ukraine means that the majority keep their sexual orientation and gender identity hidden.\textsuperscript{164} As a result, estimates of the number of LGBT persons in Ukraine are extremely difficult to make. Estimates from other countries of the number LGBT people, however, suggest that the total number falls somewhere between 1.6\% and 6.0\% of the population\textsuperscript{165} which, in Ukraine, would represent between 734,400 and 2,754,000 people.

The high levels of stigma and prejudice and the failure of the legal framework to provide protection from discrimination has resulted in particularly high levels of discrimination against individuals on the basis of their sexual orientation or gender identity. In 2011, Nash Mir undertook a comprehensive survey of LGBT people and the various forms of discrimination which they faced. The survey revealed that 89\% of respondents whose same sex sexual orientation or minority gender identity (e.g. as trans, or intersex) was known by others had faced discrimination or some other violation of human rights on at least one occasion, during the preceding three years.\textsuperscript{166}

Discrimination against LGBT persons takes place in almost every area of life; however, LGBT organisations in Ukraine consider it to be most fre-

\begin{flushright}
\begin{enumerate}
\item See, for example, \textit{Karner v Austria} (Application No. 40016/98), 24 July 2003, where the European Court of Human Rights stated that different treatment on the basis of sexual orientation required “particularly serious reasons by way of justification” (Para 37); in \textit{P.V. v Spain}, (Application No. 35159/09), 30 November 2010, the European Court of Human Rights held that transsexuality was covered by Article 14 of the European Convention on Human Rights.
\item TCH, "Украинских геев травят милиция и 'почетные' гомофобы, ru.tsn.ua, 28 February 2013.
\item See, for example, Office for National Statistics, \textit{Integrated Household Survey, January to December 2013: Experimental Statistics}, 2014, p. 3, which reported that 1.6\% of the adult population in the United Kingdom identified as lesbian, gay or bisexual (LGB) (the report did not include identification on the basis of gender identity). The government of the United Kingdom estimates that the total LGB population is actually 6.0\%: Govan, F., "Six per cent of population are gay or lesbian, according to Whitehall figures", \textit{The Telegraph}, 12 December 2005. In the United States of America, 3.4\% of the adult population identified as lesbian, gay, bisexual or trans: Gates, G. J. and Newport, F, "Special Report: 3.4\% of U.S. Adults Identify as LGBT", \textit{Gallup}, 18 October 2012.
\end{enumerate}
\end{flushright}
quently encountered in employment, education, healthcare and treatment by law enforcement agencies.

**Social Attitudes towards LGBT Persons**

In 1991, at the time of independence, Ukraine became the first former Soviet country to decriminalise same-sex sexual activity. Almost 25 years later, however, prejudice and intolerance towards LGB persons remains prevalent. Indeed, studies reveal a notable increase in negative attitudes towards LGBT persons in Ukraine from 2002 onwards. A survey undertaken by Nash Mir in 2007, for example, showed increased levels of intolerance towards LGB people and low levels of support for full legal equality between LGB and heterosexual persons.\(^{167}\) Whereas in 2002, 42.5% of respondents agreed that LGB people should have the same rights as all other persons in Ukraine, by 2007, this figure had fallen to 34.1%.\(^{168}\) The proportion of respondents who agreed that same-sex couples should be able to have their relationships legally recognised fell from 18.8% to 15.8% and the proportion of respondents who agreed that LGB people should be able to raise children fell from 21.5% to 17.1%.\(^{169}\) A decrease in tolerance between 2004 and 2010 has also been noted by the Netherlands Institute for Social Research.\(^{170}\)

A survey from 2010 produced by the Gorshenin Institute showed that 72% of Ukrainians had a negative attitude towards sexual minorities and just 13% had a positive attitude.\(^{171}\) A separate sociological study undertaken in 2010 found that even in Kyiv – supposedly more liberal than other parts of the country – 66.5% of respondents considered that homosexuality was a perversion or a mental disease.\(^{172}\)

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168 Ibid.

169 Ibid.


172 ВсеНовости, “Опрос: 66,5% києвлян назвали гомосексуалізм извращением и психическим заболеванием”, vsenovosti.info, 28 September 2010.
A further study by the Gorshenin Institute, in 2011, showed that 78.1% of the population considered that sexual relations between two persons of the same sex were unacceptable in all circumstances; another study from the same year by Kyiv International Institute of Sociology showed that 39% of respondents believed that LGB people should be isolated from society. In 2013, a GfK study showed that 80% of respondents opposed any recognition of relationships between same-sex couples.

This apparent increase in negative attitudes towards LGB persons has coincided with a rise in the levels of religious observance and the increased influence of the churches after the collapse of communism (see section 2.8 of this report). In recent years, all of the major churches in Ukraine have made homophobic statements, particularly in response to legislative proposals. The consistent homophobic messages from the major churches, coupled with their increasing influence in society, indicates that the churches have been one significant factor in fostering increased homophobia and transphobia in Ukraine.

In 2011, for example, Sviatoslav, the Supreme Archbishop of the Ukrainian Greek Catholic Church, compared homosexuality with murder. In the same year, the Ukrainian Greek Catholic Church and the Roman Catholic Church published a joint appeal against “propaganda of homosexuality”. In 2013, Sviatoslav welcomed, on behalf of the church, a draft law prohibiting “propaganda of homosexuality” and condemned a proposed anti-discrimination law. In 2012, Filaret, the Patriarch of the Ukrainian Orthodox Church – Kyiv Patriarchate, also supported the proposed prohibition of “propaganda of homosexuality”. In 2013, under his instructions, the Local Council of the

174 Kyiv International Institute of Sociology, Human Rights in Ukraine, Xenophobia Level, Attitude towards Various Social Groups and Regional Tolerance, 2011, p. 16.
176 Tochka.net, “Блаженнейший Святослав о мире с МП”, news.tochka.net, 8 November 2011.
177 Української Греко-Католицької Церкви, “Звернення Католицького Єпископату України: Синоду Української Греко-Католицької Церкви та Конференції Римсько-Католицької Церкви в Україні”, 9 February 2012.
178 Інститут релігійної свободи, “Глави церков закликають ВР відхилити законопроект № 2342 щодо дискримінації”, irs.in.ua, 13 May 2013.
Kyiv Patriarchate adopted a declaration “On negative attitudes towards the sin of sodomy (homosexuality), its propaganda in society, and so-called gay marriage” which stressed that:

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\text{[T]he Church is troubled by the attempts to pass legislation through the Ukrainian Parliament prohibiting so-called discrimination on the basis of ‘sexual orientation’ and appeals to the deputies to refrain from adopting such legislative initiatives.}^{180}
\]

The head of the Ukrainian Orthodox Church (Moscow Patriarchate), Metropolitan Volodymyr, officially supported a draft law banning “propaganda of homosexuality” and, in March 2013, the Synod of the Ukrainian Orthodox Church (Moscow Patriarchate) called for a draft anti-discrimination law not to be adopted.\(^{181}\)

Almost all of the many public demonstrations and appeals opposing the adoption of anti-discrimination legislation or calling for the enactment of draft laws prohibiting “propaganda of homosexuality” have involved religious slogans or have been connected with the activities of religious organisations.

State authorities and politicians also have a history of discriminating against LGBT people, in particular with respect to their freedom of expression and assembly. In 2013, the organisers of the Equality March held alongside the LGBT Forum Festival “KyivPride 2013” agreed the time and location of the march with the Kyiv City State Administration (KCSA). However, five days before it was scheduled to take place, the Administration changed its decision and requested that the District Administrative Court of Kyiv issue an injunction preventing any march from taking place; the injunction was granted by the Court.\(^{182}\) Eventually, the Administration allowed the march to proceed in an alternative location. In 2014, the same march was cancelled, with the new mayor of Kyiv, renowned

\(^{180}\) Української Православної Церкви Київського Патріархату, Декларація Помісного Собору про негативне ставлення до гріха sodomії (гомосексуалізму), 27 June 2013.

\(^{181}\) Української Православної Церкви, “Звернення Священного Синоду УПЦ з приводу проекту Закону «Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації в Україні»”, 18 December 2013.

\(^{182}\) Новин Києва, “Суд заборонив гей-парад у День Києва”, topnes.kiev.ua, 23 May 2013.
boxing champion Vitalii Klychko, stating that it was not the appropriate time for “entertainment” in the country.\(^{183}\)

Outside of Kyiv, local authorities’ discriminatory treatment of LGBT people is even more pronounced. In May 2012 the mayor of Donetsk, Oleksandr Lukianchenko, stated that the local authority would object to any application to hold an LGBT parade, saying, “[o]urs is a city of working people; other thoughts, other inclinations, another intellectual baggage, this comes from having nothing to do”.\(^{184}\)

In 2013, ahead of the expected signature of the EU-Ukraine Association Agreement, the level of homophobic discourse amongst politicians and activists diminished somewhat. Indeed, throughout 2013 and early 2014, not only was there a noticeable reduction in the number of homophobic and transphobic comments made by politicians, but a small number (primarily from the Ukrainian Democratic Alliance for Reform (UDAR), Batkivshchyna, but also some from the Party of Regions) expressed cautious support for the prohibition of discrimination on the ground of sexual orientation (although there was no mention of gender identity).\(^{185}\) Apparently, the enthusiasm for aligning itself with the EU was the main driver of this trend.\(^{186}\)

In early 2013, the Ukrainian government, then dominated by the Party of Regions, produced a draft law which would amend the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” to include sexual orientation as a protected characteristic, albeit only in the context of employment, consistent with the European Union Directive on Equal Treatment in Employment and Occupation.\(^{187}\) The draft law was proposed as part of the implementation of the Action Plan for Visa Liberalisation. The government submitted the draft law to the Verkhovna Rada for further debate, but refrained from any public discussion of it. Following the decision,

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\(^{183}\) Ukrinform, “Klitschko against gay parade in Kyiv”, ukrinform.ua, 4 July 2014.


\(^{185}\) See, for example, Globa, B., “The EU-Ukraine tango on gay rights”, EU Observer, 25 October 2013.

\(^{186}\) See, for example, Ibid., where leader of the UDAR party, Vitalii Klychko, is quoted as expressing support for prohibition of discrimination on the basis of sexual orientation as “a step towards European values”.

in November 2013, not to sign the EU-Ukraine Association Agreement, then Prime Minister Mykola Azarov publicly declared several times that Ukraine was “not ready” for such reforms. Indeed, Azarov made a number of incorrect statements about the nature and scope of the legislative change required by the European Union, stating for example that same-sex marriage would have to be legalised, in an apparent attempt to encourage homophobia and to discredit the Association Agreement and pro-Europeanism in Ukraine. None of the parliamentary parties instructed their deputies to vote in favour of the new draft anti-discrimination law; instead, the Party of Regions, UDAR and Batkivshchyna allowed their deputies a free vote. The Communist Party and Svoboda opposed the inclusion of sexual orientation as a protected ground.

There were many attempts to incite homophobia during the EuroMaidan protests in Kyiv in 2013 and 2014, and to associate the protestors with LGBT activists, in an apparent attempt to discredit the protestors. People were hired and paid to pose as activists, falsely pretending to be part of LGBT organisations with their flags side-by-side with the pro-European protesters. In fact, Ukrainian LGBT organisations had deliberately refused to participate in the protests openly on the basis that right-wing political organisations involved in the protests would find this unacceptable and that this might provoke aggression.

Not until 2014 did any prominent Ukrainian politician publicly support equality for LGBT persons or condemn the homophobia, transphobia, discrimination and violence faced by LGBT persons. The closest that politicians had come beforehand to making positive statements towards LGBT persons were through vague references to “European standards” and the need to live side-by-side with others.

188 See, for example, Української Правди, “Азаров розказав мітингарям від ПР про одностатеві шлюби”, pravda.com.ua, 14 December 2013.
189 Ibid.
The Legal and Policy Framework

As discussed in more detail in Part 3 of this report, Ukraine has a weak legal and policy framework in place to combat discrimination on the basis of sexual orientation and gender identity, compared to other grounds of discrimination. These characteristics are not included as explicitly protected grounds of discrimination in the Constitution or the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”. However, both instruments use open-ended lists of grounds, with an explicit list of characteristics followed by the words “or other characteristics”, thus allowing for the possibility for these grounds to be protected through judicial interpretation. Such an interpretation would be consistent with the treaty bodies’ interpretation of the term “other status” under both the ICCPR and the ICESCR, instruments to which Ukraine is party.

Moreover, in May 2014, the High Specialised Court of Ukraine for Civil and Criminal Cases issued a letter to the heads of the courts of appeal in which it referred to international instruments to which Ukraine was party, as well as the general anti-discrimination provisions in Ukrainian legislation, before expressing its opinion that discrimination based on sexual orientation in employment is prohibited. It should be noted that this letter was issued in the context of the negotiation of the EU-Ukraine Action Plan for Visa Liberalisation, a condition of which was that Ukraine prohibit discrimination on the basis of sexual orientation in employment, and that the letter does not carry the same weight as legislation. However, the High Specialised Court is the highest court with jurisdiction in civil and criminal cases with decisions appealable only in limited circumstances to the Supreme Court, and Ukrainian legal experts have indicated that the existence of this letter would make it difficult for another court to conclude that sexual orientation is not prohibited ground, at least in the area of employment.

192 See above, note 51.
193 See above, note 161.
194 Вищий Спеціалізований Суд України з Розгляду Цивільних і Кримінальних Справ, 7 Май 2014, № 10-644/0/4-14, Про належне забезпечення рівності трудових прав громадян при розгляді спорів, що виникають у сфері трудових відносин.
195 Nash Mir, “Paving the way to changes: slow yet significant developments in anti-discrimination legislation in Ukraine”, gay.org.ua, 19 May 2014.
Nonetheless, it should be noted that at present there are no precedents or binding interpretations of these or any other non-discrimination provisions which would indicate that the Ukrainian authorities consider these grounds to be included within the term “other characteristics” or its equivalents.

In May 2014, with the aim of fulfilling Ukraine’s requirements under the EU Association Agreement, the newly appointed government submitted a new draft anti-discrimination law to the Verkhovna Rada. This draft law, which was adopted soon thereafter, did not prohibit all forms of discrimination on the basis of sexual orientation, though the government did commit to prohibit discrimination based on sexual orientation in employment in future, explicitly referring to the need to comply with the Association Agreement. In December 2014, the Ministry of Social Policy of Ukraine published a draft of a new Labour Code which included sexual orientation in the list of grounds upon which discrimination would be prohibited. As of May 2015, the draft had not been submitted to the Verkhovna Rada.

Ahead of the Presidential election in May 2014, Amnesty International Ukraine and a number of other Ukrainian human rights organisations analysed the election programmes of the political parties and surveyed the candidates, in particular, on the issue of prohibiting discrimination on the grounds of sexual orientation and gender identity in Ukraine. Only one candidate, Petro Poroshenko, supported such prohibition, not only in employment but in all areas of life.

The state authorities have not taken any legislative or other action to combat homophobia or transphobia and initiatives undertaken by civil society organisations have been ignored. In recent years, some non-governmental organisations, together with the Council of LGBT Organisations of Ukraine, have appealed to the President, the Prime Minister, government ministers


198 Amnesty International Ukraine, “‘Переможець отримає велику відповідальність’ – Результати аналізу правозахисниками програм кандидатів у Президенти”, amnesty.org.ua, 19 May 2014. Poroshenko was ultimately successful, winning the election.
and deputies of the Verkhovna Rada with recommendations and proposals on how to combat homophobia and transphobia. Specifically, they have called for inclusion of the current scientific understanding of sexual orientation and gender identity in the curricula of secondary schools and universities, in training programmes and in continuing professional development courses for teachers, school psychologists and law enforcement staff. The Ministry of Education has not responded to the proposals, while the Ministry of Internal Affairs sent an official reply to the Council of LGBT Organisations of Ukraine stating that it believed that the programmes already in place were sufficient and that there was no need to change them.

The Ukrainian authorities have not condemned the repeated homophobic statements of religious leaders and other figures. Some public officials, particularly deputies of the Verkhovna Rada and local authorities, have frequently made openly homophobic remarks. In 2012, for example, a deputy from the Party of Regions, Serhii Kyi, stated that “all these gay parades must be scattered, burnt down with red-hot iron”.

The only state institution which has sought to defend the rights of LGBT persons in Ukraine – albeit not forcefully – is the Ukrainian Parliament Commissioner for Human Rights, currently Ms. Valeriya Lutkovska. Her 2013 Annual Report on the State of Observance and Protection of the Rights and Freedoms of Person and Citizen in Ukraine was the first such report to include information on discrimination against and persecution of LGBT persons while the 2014 report contained a separate section on LGBT discrimination. The Commissioner has also made several legislative proposals on combating discrimination and violence against LGBT persons. These proposals have

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200 Ministry of Internal Affairs of Ukraine, Letter #10/5-4350 of 15 June 2012, on file with Nash Mir.


202 Уповноважений Верховної Ради України з прав людини, Щорічна Доповідь про стан дотримання та захисту прав і свобод людини в Україні: 2013, 2013.

203 Уповноважений Верховної Ради України з прав людини, Щорічна Доповідь про стан дотримання та захисту прав і свобод людини в Україні: 2014, 2014. Since April 2012, the Commissioner has been Ms. Valeria Lutkovska.
received support neither from the Verkhovna Rada nor any of the political parties in Ukraine.

**Discriminatory Legal Provisions**

Many provisions in Ukrainian law discriminate on grounds of sexual orientation. Article 51 of the Constitution and Article 21 of the Family Code define marriage as a union between one man and one woman, thus excluding same-sex couples from marriage. Article 74 of the Family Code provides that where unmarried man and woman live together as a couple, the property they acquire during the period of cohabitation is held as joint common property, unless a written agreement between them provides otherwise. This provision excludes, and thus also discriminates against, same-sex couples who cohabit in the same way but do not acquire joint property rights. Article 211, paragraph 3 of the Family Code explicitly prohibits same-sex couples from adopting children, stating that “[a]doptive parents cannot be persons of the same sex”.

The exclusion of same-sex couples from the definition of marriage creates consequential difficulties for these couples in various fields. Article 9 of the Law of Ukraine “On Citizenship of Ukraine”, for example, provides that the mandatory five-year term of residence in Ukraine in order to obtain citizenship does not apply to spouses of Ukrainian citizens. However, as there is no recognition of same-sex couples in Ukrainian law, this provision indirectly discriminates against same-sex couples, one of whom is a Ukrainian citizen. Similarly, Article 4 of the Law “On Immigration” provides for the establishment of a quota for spouses of immigrants, but provides that spouses of Ukrainian citizens can receive permits for immigration regardless of this quota, again indirectly discriminating against same-sex couples, one of whom is a Ukrainian citizen.

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Article 212, paragraph 1, subparagraph 8 of the Family Code prohibits the adoption of children by persons suffering from diseases specified on a list produced by the Ministry of Health. An order of the Ministry of Health (No. 479 of 20 August 2008) includes transsexuality on the list of diseases, thus directly discriminating against persons on ground of gender identity.\textsuperscript{207} The consideration of transsexuality as a disease is highly problematic and out of step with current international best practice.\textsuperscript{208} Such classification is not only anachronistic but results in discriminatory treatment in various areas of life, such as adoption, where disease is considered relevant.

Nevertheless, despite its failure to repeal or amend laws which directly and indirectly discriminate on the basis of sexual orientation and gender identity, Ukraine has resisted pressures to pass the kind of legislation limiting the freedom of expression and association of LGBT persons which has been introduced in Russia. Although a number of draft laws prohibiting the “promotion of homosexuality” have been proposed in recent years, none have passed into law.\textsuperscript{209} Such proposals were not universally unpopular, however: even the State Committee for Television and Radio Broadcasting of Ukraine initially supported one of the proposals before later reversing its position.\textsuperscript{210}

\textit{Treatment by Law Enforcement Agencies}

LGBT persons in Ukraine face significant problems when interacting with the law enforcement agencies. Problems include the agencies’ non-compliance with legal procedure; abuse, threats, blackmail and extortion; and the refusal to protect LGBT persons from homophobic or transphobic crimes.

\textsuperscript{207} Міністерство Охорони Здор'я України, Наказ, 20 Август 2009, № 479, “Про затвердження Переліку захворювань, за наявності яких особа не може бути усиновлювачем”.

\textsuperscript{208} World Professional Association for Transgender Health, \textit{WPATH ICD-11 Consensus Meeting}, 2013.

\textsuperscript{209} See, for example, Проект Закону про внесення змін до деяких законодавчих актів (щодо захисту прав дітей на безпечний інформаційний простір), 0945 of 12 December 2012 and Проект Закону про заборону спрямованої на дітей пропаганди односімейних сексуальних стосунків, 1155 of 24 December 2012.

A survey undertaken by Nash Mir in 2011 on the problems faced by the LGBT community in Ukraine in the preceding three years showed that the most significant problems faced when dealing with the police were insults and psychological pressure (39% of respondents whose sexual orientation was known to the police having experienced this); personal searches not in accordance with the correct legal procedure (38%); blackmail and threats to disclose their sexual orientation (24%) and the unlawful taking of photographs and fingerprints (20%). Failure to intervene to prevent violence and other crimes is also a problem. On 6 July 2012, for example, a group of aggressive young men wearing symbols of the far-right nationalist Svoboda party disrupted a picket of LGBT activists in front of the Ministry of Foreign Affairs, in full view of a police squad who were present. The police failed to intervene against the aggressors, even after a direct appeal for help from the picketers.

**Case Study: Oleksandr**

On 20 October 2013, at around 7 pm, Oleksandr was returning home along Komarov Street in Kyiv. He heard a whistle and swearing behind him. Turning around, he noticed two officers from a patrol service (traffic police) running towards him. He stopped and waited as they approached him. They did not introduce themselves and demanded that he turn his pockets out. They then took his phone and began to look through his contact list. After that, they took his passport, telephoned their “base” and enquired as to whether he was wanted by the police or was the suspect of a crime. Having received confirmation that he was “clean”, the officers took his passport data and accused him of being in an intoxicated state. Oleksandr explained that he had had a bottle of beer at a friend’s home, had no intention to disturb the public order and was simply going home. The officers laughed at him, told him that he had not been drinking beer but had been “jerking off on him like all the queers do”. Oleksandr protested and said that he was not gay but the officers told him that everyone knew about his sexual orientation. They then told him that he had probably been “jerking off and looking for other queers”. Oleksandr con-

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211 See above, note 166.

212 Українські Новини, “Націоналісти зірвали акцію геїв у центрі Києва”, ukranews.com, 6 July 2012.

213 Equal Rights Trust interview with Oleksandr, Kyiv, 5 December 2013.
In the Crosscurrents

tradicted them and they threatened that they would take him to the police department, that he would confess everything, that he was looking for sexual partners nearby, was masturbating and corrupting children.

In his passport, the officers found a reference from a psychiatric facility stating that Oleksandr had been disabled from childhood. They mocked him. He begged to be released, but the abuse and mockery continued, with the officers threatening that they would “drive him to the office and he would learn there how queers should be treated”.

Two passers-by, a young man and a woman, tried to intervene on behalf of Oleksandr, arguing that he was not disturbing public order. The patrols service workers then began to threaten these two people as well, demanding that they mind their own business and go on their way. The man was threatened that he too would be taken to the police department. Ultimately, the officers demanded that Oleksandr sign a document on administrative infringements (for being drunk in public) with a written acknowledgment that he had no complaints against the officers. When he did so, through fear of their threats, the officers released him.

Sometimes even the police themselves use violence against people on the basis of their sexual orientation. Oleksandr, a 24 year old gay man, and his two gay friends were subjected to humiliation and intimidation by the police in Ivano-Frankivsk, a city in western Ukraine. In April 2014 the three men were at a local gay cruising ground, the Veterans of Foreign Wars Park, when they were approached by two police officers who told them to go to their car. There, the officers began to insult the men because of their sexual orientation saying that since the park was named after fallen soldiers, “queers are forbidden to be here at all”. One of the officers took out a rubber baton and hit Oleksandr in the chest saying that he would rape each of them with this baton if he saw them in the park again. The police officers told the men that they were not to gather in the park, or they would be taken to the police station and hurt. 214

In recent years, a new pattern has appeared in the Ukrainian police’s activities towards LGBT persons: the police have moved beyond the unlawful col-

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214 Equal Rights Trust interview with Oleksandr, Chernivtsi, 12 March 2015.
lection and use of information on local LGBT communities that come to their attention and begun proactively searching for gay men through the internet.

Case Study: Serhii

In September 2013, at around 8 am, the doorbell at Serhii’s flat in Chernivtsi rang. He opened the door and saw three persons in civilian clothes. One introduced himself as a lieutenant-colonel of the police. He asked Serhii about a report he had made to the police of his computer being stolen. Serhiy confirmed that he had submitted such a report and was told by the man that he should attend their offices in person to provide details of the theft. Serhii agreed to do so.

While in the company of the men at the police department’s offices, the lieutenant-colonel switched on Serhiy’s computer and opened his VKontakte page. (VKontakte is a Russian-language social networking website). Serhii recognised his VKontakte page, though he had posted neither any personal information nor his photograph on it. The lieutenant-colonel enquired as to whether it was Serhii’s page, saying that they had tracked his account through his IP address. Serhii confirmed that he had created the account. Another police officer then asked him to enter his account using his password. Serhii said that he had not had the account for very long and could not remember the password. The lieutenant-colonel stated that Serhii’s account contained pornographic videos and that he was going to be charged with the possession and dissemination of pornography.

Serhii told the men that he wanted to telephone his friends to tell them that he had been taken to the police department and had been accused of a crime. The second police officer snatched his telephone and told him that he could not call anyone. Serhii argued that he had not disseminated any videos and had not used his account for a long time. The officer shouted at him, threatening to put him in prison and make everyone there aware that he was “queer”. Serhii told the men that he was not gay, but the lieutenant-colonel told him that they knew everything about him, including that he was gay, that he had been in a relationship with a man, and which other gay men he associated with. Serhii denied the accusation stating that although he did know some gay men, he was not gay himself. The second police officer

demanded that he provide the contact details of the gay men he knew. Serhii responded that he did not have their details as he had just been drinking with them on a few occasions. The men continued to threaten him with imprisonment if he did not confess to disseminating pornography.

The men took Serhii to the district police department. There, he was brought to the offices of an investigator who presented him with a copy of the Criminal Code, open to the provisions prohibiting the production and dissemination of pornography, saying: “Look at what you’ll do time for!”. Serhii argued that he had neither produced nor possessed any pornography and that he had definitely not disseminated anything. The investigator threatened that the prosecutor would come to provide the evidence. When the prosecutor arrived, he had a folder containing screenshots from Serhii’s VKontakte page. Serhii explained that he had created the page a long time ago, but had not used it for a year or posted any materials there. The investigator ordered Serhii to leave the room and wait in the corridor. After an hour, the investigator told him to wait for the lieutenant-colonel, who then returned and took him back to the local police offices, while again demanding the details of gay men in Chernivtsi. Again, Serhii denied that he had any contacts or associations with gay men. At about 6 pm, 10 hours after first being detained, Serhii was released.

There is evidence that information gathered in this way is used by the police to blackmail gay men, extorting money in return for not initiating criminal or administrative proceedings, and forcing them to collaborate with the police to identify new victims among the local LGBT community. For example, in November 2011, Ihor, a resident of Zhytomyr, had proceedings initiated against him under Article 181 of the Code of Administrative Offences, which prohibits prostitution. In October 2011, the police had entered into correspondence with Ihor using a dating website for gay men. This method was unlawful, in that the police had proceeded without registering any investigation. They encouraged conversation about sexual intercourse in exchange for money, offering to meet him and pay for sex. At the meeting, Ihor was detained. The police unlawfully copied contact numbers from his telephone, photographed him and asked for information on places where gay men meet. They also said that unless he collaborated and agreed to act as an informer, they would continue with the proceedings for administrative responsibility. Ihor refused. Despite the fact that he had not received any money for “prostitution” (under the law, the exchange of money is required for the offence to take place), the Administrative Commis-
sion of Zhytomyr Municipal Executive Committee found him guilty. The original penalty of a fine was changed by the Commission to a warning and, as such, Ihor decided not to appeal the verdict.  

There are also cases in which policemen enter websites as clients, correspond with gay men, expose them and attempt to extort money. There have been at least four reported cases in Makiyivka and Donetsk where gay men were blackmailed into paying between 3,000 and 12,000 hryvnia (approximately 130 to 552 euro) to prevent their sexual orientation from being made known to their colleagues and relatives. In another case, a young man told the police that it was fine for them to disclose his identity, as his colleagues already knew about his sexual orientation. He was still forced to pay 450 hryvnia (approximately 18 euro) and was charged with the dissemination of pornography.

It is extremely difficult for people to prove their innocence when accused by the police; in the case of LGBT persons, the difficulties are compounded by widespread homophobia. Fearful of their sexual orientation being disclosed, LGBT persons rarely seek to defend themselves. In 2012, monitoring by Nash Mir documented 33 cases where LGBT persons had experienced rights violations by law enforcement agencies, finding that in only six of those cases did the victim make any complaint about the police actions, and in only two of those cases was there a partial success.

**Employment**

One third of respondents (34%) to a survey conducted by Nash Mir in 2011 indicated that they had faced harassment in employment due to their sexual orientation. In addition to harassment, 36% stated that they had been either denied employment or fired and 26% stated that they had been either forced to leave their work or had worked in a hostile environment.

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216 Nash Mir Interview with Ihor, Zhytomyr, 7 November 2011.
219 See above, note 210, p. 16.
220 Ibid.
Evidence collected for this report indicates that even those with an excellent professional reputation and who have been able to conceal their private lives risk persecution at the workplace if their sexual orientation becomes known by their colleagues.

**Case Study: Roman**

Roman worked in the Chernivtsi Taxation Inspectorate from the start of his working life, reaching the position of Head of the Operational Control Department. In October 2010, the Head of the Inspectorate called him and asked him questions about his private life. He asked Roman why he was not married yet. Roman told him that it was simply because he had not yet found the woman with whom he wished to spend his life. The Head of the Inspectorate interrupted him, telling him that he knew that he was a “fag” and that the Inspectorate knew this as well. He told Roman that he should quietly retire because “such people cannot be in the public service”. Roman said that rumours could not be grounds for dismissal and that he was professionally qualified and sufficiently experienced to do his job. He asked whether the administration had any concerns with his performance. The Head of the Inspectorate said, “Not yet, but they will appear, if needed”. He threatened Roman that if he did not resign, the Inspectorate would “fabricate the crime” and that, following his dismissal, he would find himself in prison.

Roman had been employed for 15 years by this point, so decided to remain in his position and not to challenge his superior. Following this incident, the attitude of his supervisors changed: he was treated unfavourably, received complaints regarding his work and was spoken to in an aggressive manner. In early December 2010, he received a call from a friend who worked in the internal security service and who told him that “the hunt for him” had begun and that he would be dismissed under a provision of the Criminal Code. Roman subsequently resigned.

There have been cases where lesbian, gay or bisexual workers suffer harassment from homophobic co-workers, while the employer supports those responsible for the harassment. In some cases, the best outcome was that the administration tried to settle the issue by transferring the victim to other

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221 Equal Rights Trust interview with Roman, Chernivtsi, 28 February 2014.
fields of work in order to isolate them from former colleagues – a manifestly inadequate response to allegations of harassment, but one which at least offers some protection for the victim.

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**Case Study: Petro**

Petro is a bisexual man in Chernivtsi who worked as part of the crew of an international railway. He had good relations with all the co-workers. Although he tried to develop romantic relationships with women, he also had occasional relationships with a male colleague, Ivan. Although the relationship was strictly sexual, Ivan had a family and feared that others would discover what he was doing. In summer 2010, the train upon which they were working was at rest. Petro and Ivan separated from their colleagues, closed themselves in one of compartments and went to sleep. They woke up to hear the voices of their colleagues who had opened the compartment doors and found Petro and Ivan lying together. They mocked Petro and Ivan, calling them “queers”, “homosexuals” and “perverts”. The mockery continued during the evening: male colleagues made homophobic remarks and insulted them. The two were called in by their manager who informed them that the crew were aware of their relationship and that she was personally disgusted by gay men. She told them that they should transfer to another crew as she could not have such workers. If they refused, they would be fired. The two men filed applications to transfer to other crews.

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Given the difficulties they face in defending their rights, LGBT persons rarely resort to legal proceedings if they are subjected to discrimination. For example, in November 2011, Tetyana, a resident of Pavlohrad in Dnipropetrovsk oblast, was forced to resign from her job after she refused sexual advances from her director and informed him that she was a lesbian. Her director made homophobic remarks to her, including in front of her co-workers. He refused to pay her salary for her final month of employment and refused to return her employment records back to her. She filed a claim with the prosecutor and managed to obtain final monthly pay and her records book. However, she was unable to prove discrimination as the only

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222 Equal Rights Trust interview with Petro, Chernivtsi, 20 February 2014.
witnesses, her co-workers, were too afraid to testify against their director while still working for him.\textsuperscript{223}

\textbf{Education}

About one third of LGBT persons questioned by Nash Mir in a 2011 survey reported problems in education due to their sexual orientation (31\% of those whose sexual orientation was known or suspected in their educational establishment).\textsuperscript{224} The most frequently reported problems were the biased attitude of teachers (34\% of respondents) and a lack of protection from harassment by fellow students (25\%).\textsuperscript{225} Evidence collected for this report indicates that where students are “outed” at school, the school administration does little or nothing to protect them from homophobic abuse from other students, and, on occasion, members of staff would join in the harassment and persecution. One gay man from Donetsk oblast who wished to remain anonymous, recounted his experience:

\begin{quote}
They got to know about me in the headmaster’s office and immediately called my home. They told my mother about me and informed her that I would be expelled. Then they started failing me in the examinations and eventually expelled me. After having left the headmaster’s office my classmates ostracised me and demonstrated their prejudiced attitude towards me; they must have been told that I am gay, and these students just rejected me.\textsuperscript{226}
\end{quote}

There is also evidence of educational establishment administrations trying to isolate students from any contact with LGBT students. In October 2013, the head of one of departments at Kherson State University forbade her students from undertaking an internship at a non-governmental organisation, as she found out that it worked on preventing transmission of HIV among men who

\begin{flushleft}
\textsuperscript{223} Nash Mir interview with Tetyana, 7 November 2011, Pavlohrad.
\textsuperscript{224} See above, note 206, pp. 16–17.
\textsuperscript{225} Ibid.
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have sex with men. In addition, in conversation with the leader of the organisation, she made offensive comments about such organisations and people with whom they worked.\textsuperscript{227}

\textit{Healthcare}

The 2011 survey conducted by Nash Mir found that in 28\% of cases where a member of medical staff knew or suspected their patient’s sexual orientation, discrimination on the basis of sexual orientation had been thought to have occurred.\textsuperscript{228} The most significant problems were prejudiced attitudes and humiliation (reported by 24\% of victims), the disclosure of private information on sexual orientation (or HIV status) (18\%), the refusal of medical care (12\%) and even attempts to compulsorily “treat” homosexuality (8\%).\textsuperscript{229}

Discovery of a patient’s sexual orientation is particularly common when the person is HIV positive. Even amongst medical professionals working with this group, there is evidence of high levels of prejudice towards LGBT patients. One activist who wished to remain anonymous spoke of his impressions of doctors working with LGB persons living with HIV/AIDS.

\begin{quote}
I was invited as a representative of vulnerable groups with whom doctors [in HIV/AIDS centres] work. My impressions were highly negative. Personal and religious biases were clearly in evidence amongst the doctors. When the issues of female sex workers and injecting drug users were discussed, the debate was not heated. But when I started to talk about the gay community, there was active criticism and indignation. One said “What have you come here for?” I wanted to tell them that their work must be of high quality and that, in practice, their clients could be different. It seemed as though this was the first time that they had met a gay person who spoke publicly and did not conceal his sexual orientation, and this shocked half the seminar’s participants. I would not
\end{quote}

\begin{footnotes}
\textsuperscript{227} Equal Rights Trust interview with Vitalii Zakharchuk, Kherson, 26 November 2013.
\textsuperscript{228} See above, note 210, p. 90.
\textsuperscript{229} Ibid., p. 91.
\end{footnotes}
like to receive services from these doctors or even take an HIV test. In my opinion, doctors over the age of 40 should have to re-train in order to get rid of stereotypes from the Soviet era. Then something will change in our healthcare system.\(^{230}\)

Unfortunately, to date, the Ministry of Health has ignored all requests from Ukrainian LGBT organisations to improve the qualifications of medical staff on issues related to sexual orientation and gender identity. This is particularly disappointing given the forecast increase in the HIV infection rate among men who have sex with men.\(^{231}\) Research undertaken by Nash Mir revealed that in Ukrainian medical universities, there are still handbooks that define homosexuality as a mental disease or a sexual perversion, despite the fact that homosexuality was excluded from the national classification of diseases in 1999, in line with WHO standards.\(^{232}\) As such, it is not surprising that instead of receiving qualified medical treatment, LGBT patients are sometimes subjected to experiments designed to “treat homosexuality”, despite the fact that this is formally impossible, such as a young gay man from Donetsk oblast who wished to remain anonymous and who told Nash Mir, “On February 2011, my doctor insisted that I should pass a course of treatment of homosexuality, and prescribed some injections and medicine that I did not take.”\(^{233}\)

**Specific Issues Affecting Transgender Persons**

Homophobia and transphobia are closely linked in Ukraine, with the result that many of the problems affecting LGB persons which are described above also impact upon transgender persons. However, our research has found a number of problems which specifically affect transgender persons in Ukraine, many of which are even less visible to society than those affecting

\(^{230}\) Nash Mir interview with an anonymous LGBT activist from Lviv, 10 March 2011. The Equal Rights Trust regrets that this advocate for LGBT rights is making an ageist statement.

\(^{231}\) Український центр контролю за соціально небезпечними хворобами, Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року, p. 16.

\(^{232}\) Наш Світ, ЛГБТ-Вектор України: Становище ЛГБТ в Україні (листопад 2011–2012 р.), 2013, p. 22. See also Миністерство Охорони Здоров’я України, Наказ, 8 October 1998 р. № 297 “Про перехід органів і закладів охорони здоров’я України на Міжнародну статистичну класифікацію хвороб і споріднених проблем охорони здоров’я десятого перегляду”.

\(^{233}\) See above, note 231, p. 8.
LGB persons. There is no official information on the numbers or experiences of transgender persons in Ukraine, but the NGO Insight conducted a study in 2010 which found that without exception, all transgender Ukrainians face problems of discrimination on the basis of their gender identity.234

Most significantly, it is not possible to secure official recognition of a sex change (and the corresponding change of name in official documents) without complex and costly surgical procedures. Although the relevant legislation – the Law of Ukraine “Fundamentals of Legislation of Ukraine on Healthcare”235 – contains no requirement for there to be surgery before a medical certificate certifying a change of sex can be issued, such a requirement has been introduced through secondary legislation.236 As such, a transgender person who does not wish to undergo corrective surgery, or whose financial position or health condition makes such surgery impossible, is forced to live with official identity documents which do not match their gender. Such is the case for one young transgender person from Kyiv oblast who told:

*I have a beloved partner, a family, and I feel alright, and I am happy with my sexual life. I do not need surgery as much as others do (...) I only want to change my documents. I think this would be good for me.*237

Even a transgender person who has received permission for, and has the means to undergo, corrective surgery may be forced to live for years with official documents stating their previous gender and corresponding name, as there are lengthy waiting times for sex change procedures. For example, a young transgender man from Kyiv oblast who wished to remain anonymous told Nash Mir:

*I cannot get a regular job as my appearance is entirely male and my documents indicate that I am female. I can-

235 Article 51 of Закон України “Основи законодавства України про охорону здоров'я” (Відомості Верховної Ради України, 1993, № 4, с. 19), as amended between 1993 and 2015.
236 Міністерство Охорони Здоров'я України, Наказ, 3 February 2011, № 60, “Про удосконалення надання медичної допомоги особам, які потребують зміни (корекції) статевої належності”.
237 See above, note 234, p. 37.
not go abroad because law enforcement officers doubt the validity of my documents. Consequently, it leads to difficulties with law enforcement agencies. I have had a couple of such cases.\textsuperscript{238}

In addition to these problems, the aforementioned order of the Ministry of Health contains a number of prerequisites before a person can undergo a sex change, some of which are both unreasonable and discriminatory. A change of sex, for example, is prohibited if:

- The person has children under the age of 18;
- The person is homosexual or a transvestite;
- The person has any “sexually perverse tendencies”;
- The person has morphological features which would make it difficult for them to adapt to their desired gender (such as being androgynous or have a sex disorder development);
- Hormonal or surgical intervention is not possible due to pre-existing conditions; or
- Corrective surgery would be incompatible with the scope of sex change procedures recommended by the Commission on Change (Correction) of Sex of the Ministry of Health.\textsuperscript{239}

A further significant problem is the lack, and sometimes the complete absence, of qualified medical professionals, and the unsatisfactory level of their training outside Kyiv, together with the high cost of corrective surgery that transgender persons are required to pay themselves.\textsuperscript{240} In addition to the fact that medical specialists in the regions do not have the professional skills needed to deal with problems common to transgender persons, transgender patients can face discriminatory, offensive and aggressive atti-

\textsuperscript{238} Ibid., p. 46.
\textsuperscript{239} On 19 January 2015, the District Administrative Court of Kyiv held that two of the indications which prevent an individual from undergoing a sex change (namely that they live with a child under the age of 18 and that there has been a “gross violation of social adaptation” such as unemployment, homelessness, alcoholism, drug addiction or anti-social behaviour) were incompatible with the right to a private life as guaranteed under Article 32 of the Constitution. However, the provisions remain in force pending an appeal by the Ministry of Health. Nash Mir, \textit{From Despair to Hope: LGBT situation in Ukraine in 2014}, 2015, p. 5.
\textsuperscript{240} Іванченко, С., \textit{Ситуація трансгендерів в Україні}, 2010, pp. 33–34.
tudes from these specialists. The testimony of a young transgender person from Luhansk oblast who wished to remain anonymous is typical:

First, I was sent to an ordinary endocrinologist and he directed me to the Head in order to be examined by the Board. There were about five or six people, and they undressed me and made me do physical exercises. I was questioned about morality. She tried to talk about God, asking “what about God?” She pushed me, saying that I was stupid and did not understand what I did, that God would punish me and I would never be a normal man. She tried to change my mind by any means. When she noticed on my documents that I was an orphan and that my mother had recently died, she told me, “That is why your poor mother could not endure it and died”. I had a deep trauma after my mother’s funeral. And then such a (...) doctor starts telling me something about this (...) that was horrible! How dare she judge me and say such things. What if I had lost my wits and hung myself as nobody needed me?241

There is also evidence of transgender persons facing similar discrimination and harassment to LGB persons in sectors such as education. Between November 2014 and January 2015, a 20 year old transgender woman from Dnipropetrovsk oblast (N.) was studying at Dniprodzerzhynsk State Technical University. N. was subjected to repeated harassment and attacks by other students, due to her appearance. She told the Equal Rights Trust “First, they set fire to my hair. Right in the classroom. The teacher pretended not to notice. The classmates pushed me with their shoulders in the hallway, and often kicked me.” On one occasion, one of the aggressors “put out cigarettes on my hands and several times hit me in the stomach”. When N. complained to the rector, she was told, “You must change. They do not like people such as you. You’re just sick.” As a result, N. left the university.242

241 See above, note 234, p. 44.
Equal Rights Trust research indicates that since November 2013, the situation of LGBT persons in Crimea (now under the de facto control of Russia) and parts of Donetsk and Luhansk oblasts (under the control of pro-Russian separatists) has grown even more dangerous, with the authorities expressing virulently homophobic views and increasing levels of violence against LGBT people.

For example, in Crimea in May 2014, legislation started operating which prohibits any public displays of LGBT activities under the pretext of prohibiting “propaganda of homosexuality amongst minors”.\textsuperscript{243} Public events organised by LGBT organisations have been banned in Simferopol and Sevastapol.\textsuperscript{244} In September 2014, the “Prime Minister of Crimea”, Sergei Aksyonov, referred to gay people in a speech, stating that “we in Crimea do not welcome such people”, adding that if any LGBT people tried to organise any kind of gathering, “our police and self-defence forces will react immediately and in three minutes will explain to them what kind of sexual orientation they should stick to”.\textsuperscript{245} Many LGBT people have now left Crimea.\textsuperscript{246}

In June 2014, in Donetsk, militants of the separatist “Donetsk People’s Republic” attacked a gay club, robbing and beating people inside.\textsuperscript{247} In Luhansk, there have been reports that the self-proclaimed “Luhansk People’s Republic” has sought to criminalise same-sex sexual activity with imprisonment of between two and five years.\textsuperscript{248} Many LGBT people have fled the region.\textsuperscript{249}

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\textsuperscript{244} РоСбАЛТ, “Власти Крыма и Севастополя отказали ЛГБТ в проведении четырех акций”, rosbalt.ru, 16 April 2014.
\textsuperscript{246} Shuster, S., “Crimea’s Gay Community Moves Out as Russian Homophobia Sets In”, Time, 15 October 2014.
\textsuperscript{247} Kyiv Post, “Ukraine News One: Donetsk gay club attacked by separatists”, kyivpost.com, 1 June 2014.
\textsuperscript{249} Bateson, I., “Ukraine’s LGBT community: Trapped between warring sides”, Al Jazeera, 12 March 2015.
\end{flushleft}
**Conclusions**

LGBT persons in Ukraine experience severe and systematic discrimination and inequality, as a result of high levels of stigma and a weak legal 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. Recent 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 legislature has consistently resisted calls to enact legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity, and on the contrary adopted a number of 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 evidence collected for this report suggests that those who do this experience discrimination in employment, education and healthcare.

2.3 Discrimination on the Basis of Disability

Ukraine is required to prohibit all forms of discrimination against persons on the basis of disability, by virtue of its obligations under the Convention on the Rights of Persons with Disabilities (CRPD) which it ratified in 2010. Further, the Committee on Economic, Social and Cultural Rights (CESCR) has stated that discrimination on the basis of disability in the enjoyment of the rights guaranteed by the ICESCR is prohibited by virtue of the term "other status" in the non-discrimination provision, Article 2(2).\(^{250}\) Further, the ECHR requires Ukraine to prohibit discrimination based on disability in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other rights set forth by law.\(^{251}\)

The Ministry of Social Policy in Ukraine estimates that there are 2,831,726 persons with disabilities in Ukraine, or 6.2% of the total population.\(^{252}\) Of these,

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251 See, for example, *Glor v Switzerland* (Application No. 13444/04), 30 April 2009.

252 See above, note 102.
168,280 are children under the age of 18, around 2% of the total child population. However, an absence of monitoring, imperfections in data collection and the unwillingness of some persons with disabilities to register their disability all mean that the actual figure is likely to be higher. Indeed, the World Health Organization (WHO) estimates that around 15% of all people live with some form of disability, of whom 2–4% experience significant difficulties in functioning. This would suggest an actual population of around 6,700,000 persons with disabilities and between 900,000 and 1,800,000 persons with significant difficulties in functioning.

**Legal and Political Framework**

The approach towards disability, and persons with disabilities, in Ukraine today must be seen in the context of Ukraine’s history as part of the USSR, where disability was largely of interest to the state in relation to its impact upon the capacity of individuals to work, such capacity being considered the most important determinant of one’s value to society. Persons with disabilities who were unable to work or who were less able to work were grouped into hierarchical “categories of invalids.” As Sarah Phillips has noted:

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256 Phillips, S. “‘There are no Invalids in the USSR!’: A Missing Soviet Chapter in the New Disability History”, *Disability Studies Quarterly*, Vol. 29, No. 3, 2009. Ukraine continues to use this terminology. The most commonly used term for a “person with a disability” is “інвалід” (equivalent to the term “инвалид” in Russian). The term was originally used as a designation for a person who was unable to work. Both the Ukrainian language version of the Convention on the Rights of Persons with Disabilities and Закон України “Про основи соціальної захисненості інвалідів в Україні” (Відомості Верховної Ради УРСР, 1991, № 21, с. 252), as amended between 1994 and 2014, use the term "інвалід". This has been criticised by various non-governmental organisations and, in February 2015, the Committee on the Rights of Persons with Disabilities wrote to the Ukrainian government requesting that the terms “інвалід” and “особи з обмеженими можливостями” (another translation of “persons with disabilities” used which could loosely be translated as “people with limited capabilities”) no longer be used. In response, the Ministry of Social Policy asked the Cabinet of Ministers to amend the official Ukrainian language version of the Convention on the Rights of Persons with Disabilities. (Міністерство соціальної політики України, “Міністерство соціальної політики України ініціює внесення змін до україномовного перекладу Конвенції ООН про права інвалідів” mlsp.gov.ua, 18 March 2015.
The state defined what “social contributions” citizens with disabilities would be allowed to make, set the parameters of education and work possibilities for this population, and closely regulated the development of disability consciousness.257

The post-independence 1996 Constitution approaches disability from the position of welfare and social assistance, rather than one in which persons with disabilities are rights-holders. As such, Article 24 of the Constitution of Ukraine, which provides for the rights to equality and non-discrimination, does not list “disability” as a protected characteristic. Instead, the needs of persons with disabilities are addressed through a specific reference in Article 46, which deals with social protection rights:

*Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.*

*This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work.*

*Pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than the minimum living standard established by law.*

The approach taken in the Constitution is indicative of how approaches to disability, and persons with disabilities, in Ukraine (at least, in the first years after independence) reflect that of the Soviet period. Instead of disadvantage

257 See Phillips, *ibid.*
faced by persons with disabilities being considered from a discrimination or equality, the Constitution identifies persons with disabilities as vulnerable, unable to care for themselves, and dependent on state care. The aim of providing a right to social protection is to assist persons with disabilities on a humanitarian basis, but not to ensure equal participation with others in all areas of life.

Despite the fact that Ukrainian legislation contains provisions prohibiting discrimination against persons with disabilities, requiring reasonable accommodation to be made, and providing for some, limited positive action measures to overcome disadvantage (in particular, via the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine”), mechanisms to ensure that the provisions are implemented are either lacking or ineffective. The National Assembly of Disabled People in Ukraine has reported that the legislative provisions are declaratory rather than enforceable, and that there has been a lack of the financial investment and administrative implementation necessary to make the legislation effective in practice. In particular, the Assembly found that obligations to identify and eliminate barriers which limit the ability of persons with disabilities to access all areas of life are weakened by the lack of any clear authority responsible for ensuring their implementation.

All persons with disabilities are classified into one of three groups (I, II or III) by the Medico-Social Expert Committee (MSEC) based on the severity of the disability and the individual’s ability to work and care for himself or herself. Detailed regulations set out the specific criteria by which the MSEC is


259 Міністерство регіонального розвитку, будівництва та житлово-комунального господарства, України, Національна асамблея інвалідів України, Безперешкодний доступ осіб з інвалідністю до об'єктів соціальної, транспортної інфраструктури та зв'язку: Національна доповідь, 2013, pp. 131–132.

260 Ibid.

261 Article 26 of Кабінет Міністрів України, Постанова № 1317, 3 December 2009 р., "Питання медико-соціальної експертизи", and Міністерство охорони здоров'я України, Наказ № 561, 5 September 2011, "Про затвердження Інструкції про встановлення груп інвалідності".
to make a determination.\textsuperscript{262} As of 1 January 2014, the breakdown of adults with disabilities was as follows:\textsuperscript{263}

**Table 3: Number of Adults with Disabilities in Groups I, II and II**

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of Persons</th>
<th>Proportion of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group I</td>
<td>291,295</td>
<td>10.9%</td>
</tr>
<tr>
<td>Group II</td>
<td>1,042,340</td>
<td>39.1%</td>
</tr>
<tr>
<td>Group III</td>
<td>1,329,811</td>
<td>49.9%</td>
</tr>
<tr>
<td>Total</td>
<td>2,663,446</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

As noted above, where concrete steps have been taken to address the disadvantages faced by persons with disabilities, these have been through the welfare system, either in the form of financial payments, or through institutionalisation, rather than through measures aimed at empowerment, the removal of barriers to participation and obligations to make reasonable adjustments. As a result, persons with disabilities in Ukraine experience severe restrictions on their ability to participate on an equal basis with others, particularly in employment and other areas of economic and social life.

**Accessibility**

Accessibility is a key principle of the CRPD (Article 3(f));\textsuperscript{264} the Convention contains a specific provision on the requirements of states parties to ensure accessibility for persons with disabilities in Article 9, requiring states parties to ensure that persons with disabilities have access “an equal basis with others” to the physical environment, to transportation, to information and communications, to other facilities and services open or provided to the public, both in urban and in rural areas.

Despite these obligations, a significant and widespread manifestation of discrimination against persons with disabilities is the failure to ensure acces-

\begin{itemize}
  \item 262 Кабінет Міністрів України, Постанова № 1317, 3 December 2009 р., “Питання медико-соціальної експертизи”, and Міністерство охорони здоров’я України, Наказ № 561, 5 September 2011, “Про затвердження Інструкції про встановлення груп інвалідності”.
  \item 263 See above, note 102.
\end{itemize}
sibility, particularly in respect of the built environment, transportation and access to information. While the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions requiring reasonable accommodation to be provided in access to buildings, infrastructure and the physical environment, such accommodation is not always so provided and thus persons with disabilities are often forced to bring complaints before any adjustment is made. In one example noted by the Ukrainian Parliament Commissioner for Human Rights, Yevhen Bochkaryov, a resident of Kyiv and with a disability was categorised as group I and lived on the eleventh floor of a block of flats, but the building initially had no ramp allowing him to enter it without assistance. As such, he was often unable to leave the building to go to work or to visit his doctor. It was not until he complained to the Parliament Commissioner for Human Rights who contacted the Kyiv city authorities to ensure that a ramp was built.265

General Infrastructure

The Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions on the need to adapt infrastructure to meet the needs of persons with disabilities. In June 2009, the Cabinet of Ministers approved an Action Plan entitled “Barrier Free Ukraine”.266 The Action Plan entails a gradual transition towards adapting public transport, reviewing and adopting relevant standards for buildings and streets, and making other modifications such as special signage, pedestrian crossings with lower kerbs, audible traffic signals and fencing. It also requires specialised training for architects and others involved in building to provide them with skills and knowledge on universal design, the creation of spaces free from barriers, and the needs of persons with disabilities. These requirements were further established through the Law of Ukraine “On Architectural Activity”,267 an Order


266 Кабінет Міністрів України, Постанова № 784, 29 July 2009, “Про затвердження плану заходів щодо створення безперешкодного життєвого середовища для осіб з обмеженими фізичними можливостями та інших маломобільних груп населення на 2009–2015 роки ‘Безбар’єрна Україна’”.


In addition, the Code of Ukraine on Administrative Offences\(^{270}\) sets out responsibility for non-compliance with the provisions of relevant building codes, standards and rules during the construction, reconstruction, restoration or repair of buildings. The Law of Ukraine “On Liability for Violations in Urban Planning”\(^{271}\) contains provisions on responsibility for failing to ensure a barrier-free space for persons with disabilities and others who have mobility difficulties.

However, the absence of effective enforcement mechanisms in the legislation on accessibility makes its implementation difficult. For example, the simplified and deregulated process of obtaining permission for buildings whose complexity is categorised as I to III (98% of all constructions in Ukraine) means that the designers and developers are not required to carry out any expert examination of designs and completed structures and there is no means of supervising buildings’ constructions and reconstructions.\(^{272}\) There are no legislative provisions which provide for non-governmental organisations representing persons with disabilities to have any involvement in the creation of barrier-free spaces.\(^{273}\) As there is no clear responsibility for meeting the legislative requirements, and no clarity as to who can enforce the Law or inspect construction, ensuring compliance with the requirements is almost impossible.

\(^{268}\) Міністерство регіонального розвитку, будівництва та житлово-комунального господарства України, Наказ № 45, 16 Май 2011, “Про затвердження Порядку розроблення проектної документації на будівництво об’єктів”.

\(^{269}\) See above, note 258.

\(^{270}\) Кодекс України про адміністративні правопорушення (Відомості Верховної Ради Української РСР, 1984, додаток до № 51, с. 1122), as amended between 1985 and 2015.

\(^{271}\) Закон України “Про відповідальність за правопорушення у сфері містобудівної діяльності” (Відомості Верховної Ради України, 1994, № 46, с. 411), as amended between 1997 and 2012.

\(^{272}\) See above, note 254, Para 67.

\(^{273}\) Ibid.
In 2013, the Justice without Barriers campaign undertook a study into accessibility of courts for persons with disabilities. An inspection of 72 courts in 16 oblasts found that only 29 had ramps, of which only 12 met the standards in the State Buildings Codes; 46 had metal detectors and turnstiles making it difficult for persons in wheelchairs to enter; 69 court buildings had more than one level but 65 of these had no lifts; and doors were often too small and corridors too narrow for people in wheelchairs.

One woman, Valentyna Chaika, spoke of her experience. Valentyna, a person with a disability categorised as group I, uses a wheelchair, and brought a case to the Krasnoarmiisk City District Court in the Donetsk oblast on behalf of another person with a disability, H. He was unable to enter the courtroom even with the assistance of his friends and colleagues. The stairs were steep and there were no ramps or rails to assist persons with physical disabilities.

In Krasnoarmiisk, the issue of accessibility of the City District Court has been under consideration since 2008. In that year, during a session of the committee responsible for ensuring accessibility of persons with disabilities and with limited mobility to the city’s infrastructure, it was decided that the City District Court would be equipped with a ramp and rails by June 2009. However, as of May 2015, no such modifications had been made.

During the research for this report, a number of persons with disabilities told the authors of the problems they faced. For example, A., a person with cerebral palsy, told us:

There are ramps in the pharmacy on Uhorska Street [in Lviv]; but a pharmacy on Mazepy Street has no ramps; in grocery shops, the stairs are often damaged. Once I had huge problems trying to enter a shop with damaged stairs. The owner came in with me. I said, “Excuse me, I would like to know why the stairs

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275 Ibid.

are damaged?" The owner’s answer was, “Come back when you get well”.277

Another person, Mazhena, who has a visual impairment, told us:

When I am in a shop, I am asked where my aide is and why I walk along the aisles alone. I ask for somebody to help me with my shopping. I tell them that it is common everywhere like this, and they answer they have no staff able to do this. Nowhere do staff help me, even when there are many workers. I go shopping in the lunchtime, trying to choose a time when there are fewer people in the shop. But it is not everywhere that it is so. (...) We submitted an appeal, but there are many appeals there and no one reads them. There are other difficulties in the supermarkets: weighing fruits without asking for help, reading the ingredients of yogurt, buying new products for those who cannot see.278

In some instances, people try to bring complaints against inaccessible infrastructure, with little success. Oleksandr Voloshynskyi, a member of the Green Cross Society, an NGO which implements programmes to enhance the employment of persons with disabilities, told us:

Numerous appeals are submitted. Yaroslav Hrybalskyi and Lyuba Kukurudza submitted an appeal against restaurant Kumpel in Lviv, on Chornovola Avenue. The restaurant tried to ensure “accessibility”, with two metal rails installed at an awkward angle. They addressed the State Architectural and Construction Inspection in Autumn 2013 and the owner was threatened with a fine; he asked us to withdraw the appeal and signed a letter of commitment that he would remove the rails and build a ramp as soon as the weather allowed. As of April 2014, the ramp has not been built; in any case,

One particularly acute problem arises when persons with disabilities are unable to access healthcare facilities. In 2013, for example, then Prime Minister Mykola Azarov iterated the need to amend legislation to ensure that persons with disabilities were able to access pharmacies and other healthcare facilities. However, despite this and other government declarations on access to medical facilities, and an Order of the Ministry of Health in 2014 on improving state accreditation of healthcare facilities to implement the declarations, access to medical facilities remains restricted. The standards, that requires ramps and lifts in order to accommodate persons who use wheelchairs, are neither followed nor implemented.

Near to our place in Simferopol, there is a three storey building (at 61 Kechkemetska Street) with a private medical establishment containing eye, dental and cosmetic clinics. The building was constructed and opened in 2010 in violation of Ukrainian law, without ensuring access for persons with disabilities and others with reduced mobility. My wife and I both have disabilities and use wheelchairs. I need to receive the services from these clinics but cannot access the building, as it is completely inaccessible for persons with wheelchairs. The facility is the closest one to where I live, and so easiest to get to. There are public dental clinics, but these are not accessible either as they were built many years ago before the relevant Building Codes. In addition, these clinics are far from where I live and it’s difficult to access them using public transport.

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280 Урядовий портал, Микола Азаров доручив змінити умови ліцензування аптек і медичних закладів під потреби інвалідів, 12 Января 2013.

281 Міністерство охорони здоров'я України, Наказ № 142, 14 Марч 2011, “Про вдосконалення акредитації закладів охорони здоров’я”.

In 2012, a high profile case involving accessibility was that of Dmytro Zharyi, a lawyer who uses a wheelchair and who brought a claim against a network of pharmacies.\(^{283}\) The case involved the lack of ramps in pharmacies which prevented access. The claimant argued this was a form of discrimination on the ground of disability and was thus prohibited under legislation which makes accessibility obligatory in order to receive a licence as a pharmacy. When Mr Zharyi went to one of the pharmacies in order to buy medicine, the shop assistant had to come out of the pharmacy to serve him. The case went to the Court of Appeal which held that the network of pharmacies should have its licence revoked due to violations of the licence agreement and failure to ensure access for persons with disabilities. In response, then Prime Minister Mykola Azarov charged the Ministry of Health to develop, together with the Ministry of Regional Development, Construction and Housing, amendments to the existing licence conditions for pharmacies and medical facilities which would ensure accessibility for persons with disabilities.

In addition to difficulties in access to infrastructure, there are also problems concerning escorting persons with disabilities in hospitals. In the city of Luhansk, for example, persons with visual impairments are treated at Polyclinic 12 in Artemivskyi district. A ramp was built to ensure access for persons with difficulties in mobility, but no reasonable accommodation had been made for persons with visual impairments such as signals for finding entrances, coloured staircases, highlighted numbers and signs. Treatments could not be provided outside of the hospital as the equipment could not be transported to the patient’s home. Instead, the hospital provided an escort for persons with visual impairments. However, in some cases, these escorts had no training on the methods and techniques of how to provide such assistance. During the reconstruction of the building, the requirements of the State Building Code should have been considered, however they were not: funds were allocated to install a ramp, but no equivalent funding for ensuring accessibility for persons with visual impairments was made available, despite the fact that it was less expensive.\(^{284}\)


\(^{284}\) Equal Rights Trust interview with Dmytro Mazurak, 1 February 2014. Following the annexation of Crimea by the Russian Federation in March 2014, the situation may have changed significantly.
Transportation

There are significant problems in public transport, which is often not accommodated for persons with disabilities. Trains, for example, often do not contain toilets which are accessible for persons with certain disabilities, making them unusable for anything more than short journeys.\textsuperscript{285} Indeed, as of 2012, there were only 19 train carriages in Ukraine adapted for persons with disabilities.\textsuperscript{286} Persons with disabilities can also face other obstacles when using transportation, such as difficulties in purchasing train tickets. Andrii Stehnytskyi, for example, has a visual impairment, categorised as disabled in group I, and is therefore entitled to a discount in the price of train tickets. On 11 January 2013, he initiated a case against the State Railways Administration of Ukraine, Ukrzaliznytsia, as there was no possibility to purchase tickets with the discount online, using Ukrzaliznytsia’s website. In addition, the website itself had not been adjusted to accommodate the needs of persons with visual impairments. In particular, the website used colour coding for vacant seats which the software for persons with visual impairments was not able to process. The Lviv oblast Court of Appeal ordered Ukrzaliznytsia and its Information Centre to remove the defects on its website to ensure that persons with visual impairments are able to access the website fully and to ensure that persons with disabilities could purchase discounted tickets.\textsuperscript{287}

Information

Persons with visual impairments also face difficulties in accessing information. There are around 70,000 persons with visual impairments in Ukraine.\textsuperscript{288} During research in Lutsk, persons with such impairments raised a number of concerns over the use of paper documents in local government institutions and the near impossibility of electronic documents and electronic signatures.

\textsuperscript{285} See above, note 249, Para 13.

\textsuperscript{286} Ibid., Para 72.

\textsuperscript{287} Facts taken from Рішення Апеляційного суду Львівської області, Справа № 461/431/13, 2 October 2013. See also Тимощук, О., “Боротьба з дискримінацією інвалідів: судові перемоги”, Дзеркало тижня, No. 6, 21 February 2014.

\textsuperscript{288} Riabokon, L., “People of the White Cane”, Day Kiev, 16 November 2004.
being made available for persons with visual impairments. Persons with visual impairments face problems accessing information in almost every area of life; the state either ignores obligations to provide reasonable accommodation or has no funds to make necessary adjustments.

In 2010, a case was initiated by a man with a hearing impairment concerning the failure of the government to introduce relevant secondary legislation on subtitling and translating into sign language television programmes and films. The Court held that the Cabinet of Ministers had not fulfilled its legal duty and that the failure to adopt an order amounted to discrimination and the violation of a number of articles of the CRPD. However, the government has still not implemented the judgment and only a small proportion of television programmes, films and videos are available with subtitles or sign language.

**Employment**

Article 27 of the CRPD requires Ukraine to “recognize the right of persons with disabilities to work, on an equal basis with others”, including “the opportunity to gain a living by work freely chosen or accepted in a labour market” and a “work environment that is open, inclusive and accessible to persons with disabilities”.

In addition to the difficulties in accessing infrastructure and information detailed above, persons with disabilities face numerous disadvantages in employment, including prejudice, discrimination in the hiring process, or a refusal to provide reasonable accommodation.

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290 Київський Апеляційний Адміністративний Суд, Справа № 2а-4637/10/2670, 12 August 2010.

291 See above, note 254, Para 20.

292 See above, note 264. Article 27(1), in full, requires states parties to “recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. States parties are also required to “promote the realization of the right to work, including for those who acquire a disability during the course of employment”, including through legislation.
The Ministry of Social Policy has stated that employment for persons with disabilities is a priority and, indeed, Article 18 of the Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” requires employers to provide jobs and to create conditions for persons with disabilities to participate in work. Article 26 of the same Law, as recently amended, requires employers to ensure that the work environment is accessible for persons with disabilities. These provisions are largely consistent with the requirements of the CRPD. However, the provisions are not well enforced: failure to comply with the requirements is punished only by small fines, and many businesses simply choose to ignore the requirements, paying a fine rather than hiring persons with disabilities.

As of 1 January 2015, a total of 742,591 persons with disabilities were employed. Assuming that the number of persons with disabilities has remained largely constant since 1 January, the employment rate of persons with disabilities in each of the groups can be calculated.

Table 4: Number of Persons with Disabilities in Groups I, II and III in Employment

<table>
<thead>
<tr>
<th>Group</th>
<th>Number of Persons</th>
<th>Number of Persons Employed</th>
<th>Proportion of Persons Employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group I</td>
<td>291,295</td>
<td>20,874</td>
<td>7.2%</td>
</tr>
<tr>
<td>Group II</td>
<td>1,042,340</td>
<td>193,494</td>
<td>18.6%</td>
</tr>
<tr>
<td>Group III</td>
<td>1,329,811</td>
<td>528,223</td>
<td>39.7%</td>
</tr>
<tr>
<td>Total</td>
<td>2,663,446</td>
<td>742,591</td>
<td>27.9%</td>
</tr>
</tbody>
</table>

As can be seen, the proportion of persons with disabilities in employment is very low. For those persons with the most significant disabilities (group I), the proportion is just 7.2%. The total number of persons with disabilities in

293 See above, note 102.
294 See above, note 258.
296 See above, note 102.
297 Ibid.
employment has increased, however, in recent years. In 2012, the total number of persons with disabilities in employment was 662,000.\textsuperscript{298}

One means by which the government has sought to address the low proportion of persons with disabilities in employment is through a quota. Article 19, paragraph 1 of the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” requires enterprises, institutions and organisations employing more than 25 persons to ensure that persons with disabilities make up 4\% of the total average number of full-time employees. Where the total number of employees is between eight and 25, at least one employee must be a person with a disability. Failure to meet the quota results in a penalty of an administrative fine which goes to support the Social Fund for Persons with Disabilities. NGOs representing persons with disabilities have noted, however, that the quota is not always observed,\textsuperscript{299} and, in 2014, the CESCR stated that this had “a limited impact owing to the lack of compliance by employers”.\textsuperscript{300}

In addition to these cases and patterns of employment discrimination, refusal to hire persons with disabilities is particularly common, with employers often giving false reasons for their decision (such as that the applicant does not have appropriate qualifications, or that there are no vacancies). Employers also often fail to provide reasonable accommodation when faced with an applicant with a disability.

Oleksandr Voloshynskyi is a member of the Green Cross Society which implements programmes to increase the number of persons with disabilities in employment. In an interview, he told the Equal Rights Trust of his experience with the director of a poultry farm in Pustomyty Lviv oblast:

\textit{I spoke to the director several times about hiring persons with disabilities to put the laid eggs into trays. He said, ‘In my farm, the disabled will never work whilst


\textsuperscript{299} See above, note 254, Para 131.

I’m director.’ He pays the fines and doesn’t hire persons with disabilities.\textsuperscript{301}

It is also common for job vacancies submitted to Employment Centres to state that they are suitable for persons with disabilities, when in fact it would be extremely difficult for many persons with disabilities to perform the job.\textsuperscript{302}

As the Ministry of Social Policy accepts, increasing the number of persons with disabilities in employment requires preparatory steps, such as guidance for persons with disabilities and employers and vocational and work rehabilitation.\textsuperscript{303} A number of vocational rehabilitation centres exist providing support to persons with disabilities in entering (or re-entering) employment.

\textit{Education}

Article 24(1) of the CRPD guarantees “the right of persons with disabilities to education (…) without discrimination and on the basis of equal opportunity”. The Laws of Ukraine “On the Fundamentals of Social Protection of the Disabled” and “On the Rehabilitation of the Disabled in Ukraine” both require educational establishments to ensure that suitable conditions are available for those students whose disabilities require particular accommodation. However, these provisions have not been effectively implemented: there are insufficient numbers of educational institutions able to meet the needs of students with disabilities, few staff trained to deal with students with particular disabilities requiring specialised treatment and a lack of accessible educational materials. For example, materials printed in Braille are only available in the libraries of the Ukrainian Society for the Blind, a non-governmental organisation receiving no state funding; no public libraries contain books in Braille. The government has estimated that “only 11% of educational institutions are fully accessible for children with special educational needs, and 39% are partially accessible”.\textsuperscript{304}

Some secondary schools are able to provide education for students with certain disabilities through appropriate adaptation. For those with hearing dif-
difficulties, studies are accompanied by sign language and appropriate technical equipment. For those with visual difficulties, specialised equipment, including Braille tactile writing equipment, and large print materials are available. However, this is not so in higher education, where universities and colleges are often unable or unwilling to provide appropriate educational adaptations. Yulia Sukhova, a student with visual difficulties, spoke to us about her experience:

*I graduated from the Lviv Pedagogical College, specialising in social pedagogy. I wanted to take a Master's course, however [in the educational establishments] in Lviv, there are no social pedagogy courses, only social work. There is social pedagogy only at the Drohobych Pedagogical University. I went to Drohobych, I had done my studies well, the Ukrainian Society for the Blind supported me, I had attended seminars and had work experience outside the College. I passed the examinations and had the best results amongst all the entrants, but when I came to finalise the documents, I was told that I could not be admitted as I was blind. I asked why. They said, “you have already graduated [from the College] and that’s all”. I said that I needed higher education. They said, “For what? You are disabled. Have your pension. Stay at home. Don’t make difficulties for the lecturers, for us and for your parents.” This was in 2010. For a long time, they refused to accept my documents. I asked for a written refusal. They began to shout and became so rude that my dad and mum had tears in their eyes and were hysterical. (...) I ended up going to “International Ukraine” in Kyiv where they had an inclusive programme. Many people have problems in Drohobych.*

Lyubov Kukurudza, the Head of the Lviv oblast branch of the Ukrainian Society of the Blind told the Equal Rights Trust of the experience of another young student who faced a similar experience:

There are problems with the Lviv State University of Physical Culture. Many people who are visually impaired cannot enter there. Last year, there was a young woman, the graduate of the Medical College who was visually impaired. She wanted to enter the University of Physical Culture to study physical rehabilitation and they simply did not admit her. As a result she went to Rivne, as in Lviv she was humiliated so much that she decided not to try to get in.\textsuperscript{307}

Despite the declared commitment to inclusive education, the parents of children with disabilities face many difficulties in practice. One of the participants of a focus group in Kharkiv was the mother of a 5 year old girl with a visual impairment from Balakleya, Kharkiv oblast, who was unable to find a suitable kindergarten for her.\textsuperscript{308} The administration of the local kindergarten told her that it was not able to create the conditions needed for her child. The absence of inclusive education limits the options of parents: parents often have to send their children to special boarding schools instead. Indeed, there are around 50 specialised boarding schools, run by the Ministry of Social Policy, catering for around 7,000 children. In many of them (for those children with particular severe illnesses or disabilities), there is almost no education whatsoever due to an absence of special programmes, textbooks and teachers.\textsuperscript{309}

\textbf{Healthcare}

Article 25 of the CRPD guarantees the right of persons with disabilities “to the enjoyment of the highest attainable standard of health without discrimination”. This requires states parties to “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons”.

\begin{itemize}
  \item \textsuperscript{307} Equal Rights Trust interview with Lyubov Kukurudza, Lviv, 20 March 2014.
  \item \textsuperscript{308} Focus group in Kharkiv on 23 March 2014 hosted by the Kharkiv Foundation "Citizen Alternative" together with the Kharkiv Organisation of Blind Lawyers.
  \item \textsuperscript{309} Національна Асамблея інвалідів України, Дотримання прав дітей з інвалідністю в будинках-інтернатах, 2010, р. 36. See also Chapter 4.
\end{itemize}
In addition to the difficulties in accessing health infrastructure and information detailed above, persons with disabilities face other difficulties in accessing healthcare, particularly in accessing medicines and rehabilitation. The Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” governs the provision of medicines and rehabilitation to persons with disabilities. The details on the provision of medicines and means of rehabilitation programmes for persons with disabilities are set out in individual programmes. However, there are often delays in these programmes being developed and implemented, and the delays have recently increased as a result of budget cuts. For example, Decree of the President of Ukraine No. 113/2009, which states that persons with visual impairments should receive free sound producing thermometers, blood glucose meters or blood pressure monitors, has not been implemented, due to funding cuts: sound-producing can be three to four times more expensive than regular equipment.

In addition, obligations to provide individual rehabilitation programmes for persons with disabilities have not yet been implemented following the suspension of relevant budget funding, despite funds being allocated for this specific purpose.

**Access to Goods and Services**

Article 9 of the CRPD requires states parties to ensure the identification and elimination of “obstacles and barriers to accessibility” which includes ensuring that “private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities”. Nevertheless, a particular problem facing persons with disabilities in Ukraine is discrimination in accessing certain goods and services, sometimes due to social stigmatisation.

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310 See above, note 258.


313 Подробности, “В Украине прекратили финансировать реабилитацию инвалидов”, podrobnosti.ua, 13 April 2013.
Case Study: Tetyana Hrechyshnikova

Tetyana Hrechyshnikova has had a disability since childhood; she uses a wheelchair and is classified as being in group I. On the evening of 27 January 2013, she and her friends went to celebrate her birthday. At around 2 am, she and her friends arrived at a nightclub “Litsa”. The security at the club refused to let them in and said that entry was prohibited for people using wheelchairs. When they saw Tetyana, they said that she did not pass their “face control”, that the club was private property and that it was not accommodated for people like her. She was spoken to aggressively and, after forty minutes or argument, she demanded a written refusal of admission. This was denied. She was extremely upset by the incident. In February 2013, she brought a claim of disability discrimination to the Kalininskyi District Court of Donetsk, seeking the sum of 50,000 hryvnia (approximately 2,100 euro) in damages. The night club’s lawyers argued that they were looking to protect her health and welfare and so did not allow her into the club as it was not accommodated for persons with wheelchairs. On 29 May 2013, the Kalininskyi District Court found in favour of Tetyana, but granted her only 2,000 hryvnia (approximately 90 euro) in damages. The District Court held that the night club had violated the Law of Ukraine “On Consumer Rights Protection”, the Law of Ukraine “On Fundamentals of Social Protection of the Disabled” and the UN Convention on the Rights of Persons with Disabilities. However, due to the low sum awarded in damages, Tetyana has taken her case to the European Court of Human Rights.

Many persons with disabilities also find it difficult to obtain certain financial services, including bank loans and mortgages. Each bank in Ukraine has its own particular rules setting out to whom it will lend money, with the majority refusing to provide such financial services to some, or all, persons with disabilities.

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Testimony: Oleh Lepetyuk, Head of the Kharkiv Organisation of Blind Lawyers

On 20 November 2012, in order to improve the living conditions of my family, I found a property which was affordable to me, an apartment on the secondary housing market available through PrivatBank. The interest rate on the loan to purchase the apartment was 15% and the monthly cost was 2,258 hryvnia (approximately 100 euro). On 21 November, I submitted an application for purchase of the apartment and applied for credit to the Head Office of PrivatBank. Afterwards, I received a telephone call from someone at the bank introducing herself as Iryna, from the credit department. As the application had been received, she asked me a number of questions. I answered questions about my marital status, place of residence and work and I told her that I was self-employed as a lawyer. I also told her that in addition to my earnings through work, I received social assistance as a category I person with a disability, as well as a “loss-of-breadwinner” pension, and a pension for special merits. I also told her that I was a PrivatBank client with a credit card with a limit of 12,000 hryvnia (approximately 500 euro). At this point, Iryna apologised, concluded the interview and said that I would not receive any credit as I was a pensioner and a category I person with a disability. After this conversation, I looked at the PrivatBank website for any notifications concerning restrictions on obtaining credit but found none. I telephoned PrivatBank the same day and asked to speak to Iryna. I was told that I would no longer be dealt with by her but that my request would be considered in a few minutes. After speaking to her colleagues, the operator confirmed that PrivatBank did not provide loans to persons with disabilities and pensioners and that there was nothing she could do.

Some banks offer loans only to certain groups of persons with disabilities. Platinum Bank, for example, provides loans to persons with disabilities within group III. Slavko Vasylyk, a person with a disability of group I, told the Equal Rights Trust:

*I was not provided with a loan because it is obvious that I cannot see. My friend, also a person in group I, tried to*
obtain a loan and was successful because his disability is not so visible. The documents required do not include a certificate of disability, only an identity code and a reference from work. But it is obvious from my appearance. This was five years ago in Alfa Bank or Delta Bank, I do not remember exactly. I came and told them that I wanted to apply for a loan. The request was made, I went to the supermarket for twenty minutes, and was refused when I came back. The reasons were not given. We went to another bank, however it was already clear that the loan would not be provided, so I asked my friend to obtain the credit agreement instead.317

In addition to difficulty obtaining financial services, the Kharkiv Association of Blind Lawyers has stated that most of the buildings where banks are located are inaccessible for persons with disabilities who use wheelchairs;318 ATMs are positioned without any consideration of the needs of persons with disabilities, often situated too high or upstairs. The ATM screens themselves are not adapted for persons with visual difficulties, nor are the websites of the banks which allow for online banking. Within banks, persons with hearing difficulties struggle to communicate with bank staff without an interpreter and so are not always clear on the contents of agreements that they sign. For persons with visual difficulties, there is often a problem when they are required to reproduce their signature several times, with bank staff refusing to service them.319

**Family Life**

Article 23(1) of the CRPD requires states parties to “take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others”, while Article 23(2) states that:

318 The figure is estimated by some to be as great as 80%. See above, note 254, Para 59.
States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

There are, however, examples of situations where insufficient consideration is given to the rights of persons with disabilities to raise their children when making a decision as to whether a child should be raised by its parents or be put into care or up for adoption. In the case of the Shugaevas, for example, it has been argued that the institution in which the couple lived was too quick to take their child away and failed to give sufficient weight to the parents’ rights. The Shugaeva, a couple from Simferopol, both have disabilities (cerebral palsy) and live in a boarding institution. In 2013, Mrs. Shugaeva gave birth to a girl. Although Mrs. Shugaeva had been pregnant before, she had been forced by the staff at the institution to have an abortion. As such, the couple concealed the pregnancy the second time. However, the administration at the institution did not permit the family to keep their daughter, arguing that due to their disabilities, they would not be able to provide sufficient care for the child. The administration also said that the establishment was only for adults and that they would be unable to look after themselves and a child. Although they brought a claim against the institution, they were unsuccessful and so have planned to appeal the European Court of Human Rights.320 Cases such as these emphasises the need for a careful balancing of the parents’ rights and the child’s best interests.

Conclusions

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. However, the legacy of the Soviet

320 Case study based on media and an interview with the family’s lawyer, Richard Sidney, in December 2013 by Dmytro Zharyi. See also Керменчикли, А. and Ковалева, И., “Скандал в Крыму: молодой семье инвалидов не отдают здорового ребенка”, Segdonya, 3 August 2013.
era, during which the treatment of persons with disabilities was based on a welfare rather than human rights framework, continues to influence the approach taken towards disability. 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 failures to make reasonable accommodation and because of direct discrimination. Similarly, the government itself acknowledges that education remains inaccessible for many persons with disabilities. Finally, persons with disabilities were found to experience discrimination and disadvantage in access to healthcare and in access to goods and services.

2.4 Discrimination on the Basis of HIV Status

Health status is a well-recognised ground of discrimination in international law. The CESCR has recognised that Ukraine and other states party to the ICESCR are required to guarantee all of the economic, social and cultural rights in the Covenant without discrimination on the basis of health status, including HIV status.\(^{321}\) In addition, the UN Commission on Human Rights has stated that “the term ‘or other status’ in non-discrimination provisions in international human rights texts can be interpreted to cover health status, including HIV/AIDS” and that therefore “discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards”.\(^{322}\) As such, Ukraine is required to guarantee all of the civil and political rights in the ICCPR without discrimination on the basis of HIV status, by virtue of Article 2(1) (which uses the term “other status”). Similarly, under Article 26 of the ICCPR, Ukraine is required to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including on HIV status. Further, the ECHR requires

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321 See above, note 250, Para 33.
Ukraine to prohibit discrimination based on HIV status in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.\footnote{323}{See, for example, \textit{I.B. v Greece} (Application No. 552/10), 3 October 2013.}

The first case of HIV was reported in Ukraine in 1987, although it did not begin to spread rapidly until 1995 when the virus entered the injecting drug user community. By 2013, the Joint United Nations Programme on HIV/AIDS estimated that there were 210,000 people living with HIV in Ukraine (0.47\% of the population).\footnote{324}{UNAIDS, \textit{HIV and AIDS Estimates: Ukraine}, 2013, available at: http://www.unaids.org/en/regionscountries/countries/ukraine.} Other estimates put the figure slightly higher, at 238,000 (0.53\% of the population).\footnote{325}{UNAIDS, “Ukraine Harmonized AIDS Response Progress Report: Reporting period: January 2012 – December 2013”, p. 4.} However, as of April 2015 only 137,944 people – approximately 60\% of the total population of people living with HIV/AIDS – were registered as being under any kind of medical supervision for the virus.\footnote{326}{Український центр контролю за соціально небезпечними хворобами, Оперативна інформація про офіційно зареєстровані випадки ВІЛ-інфекції, СНІДу та кількість смертей, зумовлених СНІДом за квітень 2015 року, 2015.} A large number of people who have HIV/AIDS simply do not know it; indeed, in 2013, it was estimated that as many as 50\% of people living with HIV did not know about their status.\footnote{327}{Український центр контролю за соціально небезпечними хворобами, Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року, 2013, p. 16.}

Despite the rapid increase in the last twenty years, the annual number of new HIV transmissions is expected to decline or remain steady in the future.\footnote{328}{Ibid.} This projection is based on anticipated changes in the main ways that HIV is transmitted, namely a reduction in risky behaviour amongst groups such as injecting drug users and female commercial sex workers, and increased access to anti-retroviral therapy.\footnote{329}{Ibid.} However, the prevalence of HIV amongst men who have sex with men is expected to grow.\footnote{330}{Ibid.} It is projected that the number of AIDS-related deaths will gradually decline, though the actual num-
ber is likely to remain high, primarily due to the “ageing” of the epidemic and an anticipated large number of cases of HIV-related TB.\textsuperscript{331}

Research conducted in 2011 – the People Living with HIV Stigma Index – found that 51\% of the respondents had faced prejudice for being HIV positive. The respondents stated that they had often had rumours spread about them (30\% of respondents) or faced verbal insults (18\%). 25\% of respondents stated that their HIV status had restricted their access to social and health services, for example in the form of a refusal to provide medical treatment (20\%).\textsuperscript{332} One in eight respondents stated that they had not been informed that they had been tested for HIV, and one in ten stated that they had been forced to be tested. A third of respondents had not received any consultation before or after testing.\textsuperscript{333} With regard to employment, 10\% of employed respondents reported having suffered discrimination at work. 3\% of them had resigned due to discrimination by the employer or colleagues, and 8\% stated that they were deprived the opportunity to work.\textsuperscript{334}

Research for this report indicates that, as a result of discrimination and prejudice, people living with HIV are forced either to conceal their status or risk being socially excluded in various areas of life, including employment, education, access to goods and services and health care. In addition, the high level of stigma and discrimination against people living with HIV has a negative effect on HIV transmission.

**Discriminatory Legal Provisions**

Despite the protections offered under 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”,\textsuperscript{335} there remain provisions in other pieces of legislation which discriminate directly against per-

\begin{itemize}
\item \textsuperscript{331} Ibid.
\item \textsuperscript{332} All-Ukrainian Network of PLWH, “The People Living with HIV Stigma Index”, 2012, p. 7.
\item \textsuperscript{333} Ibid., p. 8.
\item \textsuperscript{334} Ibid., p. 29.
\item \textsuperscript{335} Закон України "Про протидію поширенню хвороб, зумовлених вірусом імунодефіциту людини (ВІЛ), та правовий і соціальний захист людей, які живуть з ВІЛ" (Відомості Верховної Ради України, 1992, № 11, с. 152), as amended between 1998 and 2012.
\end{itemize}
sons living with HIV. Article 10-21 of the Law of Ukraine “On the Police”, for example, provides that, in addition to other functions, the police is required:

\[T\]o identify and report to healthcare institutions information on people who are at risk of AIDS, and, at the request of a healthcare institution, to issue warrants for such persons, as well as those infected with HIV, persons suffering from sexually transmitted diseases, chronic alcoholism and injecting drug addicts, for the purposes of mandatory screening and treatment.\(^{336}\)

Similarly, the police are required to “execute court orders requiring people suffering from contagious forms of tuberculosis to attend anti-tuberculous institutions”.\(^{337}\) In practice, as the Executive Director of the International HIV/AIDS Alliance in Ukraine, Andrii Klepikov, has noted:

\[T\]he Ministry of Internal Affairs collects information about substitution maintenance therapy patients and, in particular, police officers insist on disclosure of their HIV status, something which is confidential. This frightens patients who become wary of taking part in substitution maintenance therapy programmes, not to mention intimidating doctors. At the same time, there is an inspection from the Ministry of the Interior of the activities of the health institutions and of non-governmental organisations supporting patients.\(^{338}\)

Until 2011, a provision of the Law of Ukraine “On Prevention of Acquired Immunodeficiency Syndrome (AIDS) and Social Protection of the Population”\(^{339}\) (which was replaced by the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus


\(^{337}\) Ibid., Article 10, paragraph 21-1.

\(^{338}\) УНІАН, “Міліція збирає інформацію про хворих на ВІЛ/СНІД в Україні”, unian.ua, 21 January 2011.

\(^{339}\) See above, note 335.
(HIV) and Legal and Social Protection of People Living with HIV”) included a provision which prohibited foreigners and stateless persons from entering Ukraine for more than three months, unless they presented documentation showing that they did not have HIV. While this provision has been repealed, a near identical provision remains in the Law of Ukraine “On Protection of the Population from Infectious Diseases”\(^{340}\) (Article 24, paragraph 4), the only difference being that the provision still in force is broader, including also active TB and covering entry into Ukraine for any period of time rather than only for three months or more.

In 2013, a draft law was put forward by Tetyana Donets of the Batkivshchyna party which would have deleted Article 10-21 of the Law of Ukraine “On the Police” as well as Article 24, paragraph 4 of the Law of Ukraine “On Protection of the Population against Infectious Diseases”.\(^{341}\) In December 2013, the then government of Ukraine put forward a draft law which would have repealed the latter provision, but not the former.\(^{342}\) Both draft laws were revoked in February 2014.

**Employment**

Neither the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” nor the Labour Code explicitly mention health status or HIV status as protected characteristics against discrimination. The Labour Code, provides, however, that requirements as to a worker’s health status can be established by legislation (Article 22, paragraph 3). The Ministry of Health has produced various lists of diseases (either alone or jointly with relevant agencies), which can exclude applicants from certain professions. These regulations also list the professions which require certain physical or psychological attributes. While the Labour Code ostensibly seeks to protect potential employees by prohibiting employment contracts being made where a person’s health status renders them unable to do the job, our research found that

\(^{340}\) Закон України “Про захист населення від інфекційних хвороб (Відомості Верховної Ради України, 2000, № 29, с. 228), as amended between 2003 and 2012.

\(^{341}\) Проект Закону про внесення змін до деяких законодавчих актів України (щодо протидії поширенню хвороб, зумовлених ВІЛ, 3737 of 6 December 2013.

\(^{342}\) Проект Закону про внесення змін до деяких законодавчих актів України (щодо протидії поширенню хвороб, зумовлених ВІЛ, 3737-1 of 19 December 2013.
in practice, these provisions have been used by employers to discriminate against people on the basis of their health status. For example, in April 2013, Iryna, a 39 year old woman from Odesa oblast, was denied a position of a dishwasher in an Odesa café because her medical reference contained a note about her positive HIV status. The café administrator stated that they would not hire anyone with HIV.\textsuperscript{343} Similarly, in September 2012, Maryna, a 32 year old woman from Odesa oblast and a worker at an Odesa textile factory had to leave the workplace to get tested for HIV during working hours. Several days later, the director of the factory asked her to resign referring to the company’s financial difficulties, and said he would be unable to pay her the minimum wage, though other employees continued to receive higher salaries. Under pressure from the director, the employee resigned. Maryna believed that the situation arose because the director had found out about her HIV status from the medical reference provided by the sexual health centre where she had been tested.\textsuperscript{344}

As noted above, people living with HIV are subject to severe stigma, including in the workplace, where they can experience harassment by their colleagues. The fear of HIV and AIDS and stigma is also shared by employers who, instead of protecting employees with HIV/AIDS, discriminate against them. Viktoriya, a 33 year old woman from Odesa oblast, told the Equal Rights Trust her story. In summer 2013, the supervisor of a private art workshop in Odesa became aware of Viktoriya’s HIV positive status. He approached the director and offered to dismiss the employee immediately. He also informed other staff members about her HIV status and forbade her from using the shared kitchen. Ultimately, the workshop director did not dismiss her, but, at her request, moved her to another site.\textsuperscript{345}

\textsuperscript{343} Equal Rights Trust interview with Iryna, Odesa, 10 February 2014. As noted in the Acknowledgments, the original field research for this report, including interviews with victims of discrimination, was undertaken by a number of researchers across Ukraine. The collection of testimony from victims of discrimination on the basis of HIV status was undertaken by Public Youth Organisation “Klub Vzayemodopomohy Zhyttya+” based in Odesa. Due to the organisation’s geographical focus, the interviews collected for this chapter are all from victims within Odesa oblast, however the experiences faced and situations encountered are illustrative of victims from across the entire country.

\textsuperscript{344} Equal Rights Trust interview with Maryna, Odesa, 17 February 2014.

\textsuperscript{345} Equal Rights Trust interview with Viktoriya, Odesa, 20 December 2013.
Several regulations issued by executive authorities contain provisions that are vague or ambiguous, contributing to maladministration and conflicting practice. For example, the List of General Medical Contraindications for Persons of All Professions for Work on Ships refers to AIDS and hepatitis C as infectious diseases during “the period of danger to others”, thus allowing doctors to prevent people with these diseases from working on ships.\(^{346}\) The discriminatory nature of this regulation is exacerbated by the fact that it does not set out how this “period” is to be determined in practice. In 2013, the director of the Odesa Medical Marine Centre “Zdorovya”, Lyudmyla Kuchmii, stated that, “The quality of our examination is quite high. We cannot let the sailor out if he has hepatitis C, HIV or tuberculosis – last year we had 4 cases of these diseases”.\(^{347}\)

**Healthcare**

Discrimination on the basis of health or HIV status is particularly common within the healthcare system, often as a result of medical staff becoming aware of a person's HIV status during the course of their work. People living with HIV risk have been refused basic or specialised medical treatment in both public and private healthcare facilities – one survey indicated that between 2007 and 2011, 25% of people living with HIV experienced problems in access to treatment.\(^{348}\) However, a series of awareness-raising campaigns directed towards combating stigma among medical staff have had a significant positive impact and have improved the situation in recent years. According to a 2013 survey by State Service of Ukraine on AIDS and Other Socially Dangerous Diseases, only 11% of persons living with HIV experienced stigma or discrimination in access to healthcare, almost half the figure from previous years.\(^{349}\) The Head of the State Service has said that:

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\(^{346}\) Міністерство охорони здоров’я України, Наказ № 347 of 19 November 1996 “Про затвердження Правил визначення придатності за станом здоров’я осіб для роботи на суднах”.

\(^{347}\) Ищук, И., “Людмила Кучмий: «Мы стоим на страже здоровья моряков»”, Favorit, No. 7 (82), September 2013.

\(^{348}\) See above, note 332, p. 32.

The main goal for increasing the quality of medical services for people living with HIV is reducing discriminatory practices among the medical staff. This offers wider opportunities for people living with HIV and for people belonging to the “high risk” groups to receive the medical aid they need. We have not yet overcome the prejudices among healthcare professionals, but the decreasing level of stigma associated with HIV among the doctors is encouraging. In the upcoming years, nationwide measures will be implemented to integrate and decentralise HIV services. In addition, we are planning to strengthen education and raise awareness among the public, and to involve general practitioners, social workers and the media in particular.\textsuperscript{350}

Despite this improvement, incidents where HIV positive patients are refused medical treatment remain frequent. While sometimes medical staff will offer other reasons for the refusal to provide treatment, in many instances, they make no attempt at hiding the fact that the reason is the patient’s HIV status. In January 2013, for example, Svitlana a 30 year old woman from Odesa oblast was hospitalised at a clinic in one of the departments in Odesa with a reference from the Odesa AIDS centre. Within two days, the doctors and the medical staff – who knew about her positive HIV status from her medical records – refused to even approach her. She had a high temperature and called for a nurse to give her some medicine, however she was told that they had no medicine for her and that she should receive treatment in a special “AIDS hospital”. Svitlana was forced to call her husband, who brought antipyretic medication for her. She was discharged before she had fully recovered from her illness. She was taken in by a local NGO providing services for people living with HIV, after being informed by the hospital of their plans to discharge her.\textsuperscript{351}

Arguments from medical staff that people living with HIV should be treated exclusively in specialised centres is a common pretext for refusal or restriction of medical treatment in general facilities. In July 2013, Olena, a 28 year old HIV positive resident of Odesa called an ambulance due to a sudden rise in

\textsuperscript{350} Ibid.

\textsuperscript{351} Equal Rights Trust interview with Svitlana, Odesa, 18 February 2014.
her body temperature (up to 40°C) several times during the week. Each time the doctors found out about her HIV status, they refused to provide her with medical care. One even suggested she go to “her AIDS doctor.”

In addition, it is common for medical staff to treat HIV positive patients aggressively or abusively. In the winter of 2014, for example, Iryna, a 45 year old woman from Odesa oblast, requested a consultation with an urologist at the Odesa Municipal Polyclinic. When she saw her doctor for the second time (to collect a prescription), she had with her a document from the local AIDS centre stating that she was in the fourth stage of AIDS. When her doctor saw this, he got up aggressively and pushed her out of the room with the words: “Go to your AIDS doctors and get treated there”. In tears, Iryna asked him just to prescribe a course of medical treatment, as he was going to do before he saw the document, but he refused.

In state healthcare facilities (with the exception of specialist AIDS centres) patients with HIV often meet the same stigma and ostracism shared by wider society. As a result of a refusal to be treated, many are forced to pay for expensive private medical treatment. In March 2011, for example, Hanna, a 49 year old in Odesa oblast, was hospitalised with a trauma at a municipal clinic. She informed her doctor about her HIV status, in order to ensure that the prescribed medicine would be compatible with the antiretroviral drug that she was taking. Immediately afterwards, the medical staff of the hospital changed their attitude to her completely. Each day the junior medical staff (laboratory technicians and nurses) refused to give her injections and suggested she do the injection herself or hire a private nurse. Even the orderly refused to clean near her bed. The other patients were moved out of the ward despite the fact that the department was oversubscribed. When Hanna pointed to the unlawfulness of these actions, one of the laboratory technicians replied: “I don’t want each and every person sick with AIDS to tell me what I should do with her”. She was discharged prematurely, not having received the medical treatment she needed, and was forced to hire a nurse at her own expense.

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352 Equal Rights Trust interview with Olena, Odesa, 3 February 2014.
Even in private healthcare facilities, experiences are not always much better. One woman, Olena, a 29 year old woman from Odesa oblast, spoke to the Equal Rights Trust. In September 2013, Olena was refused treatment in the Odesa branch of the private Ukrainian Institute of Plastic Surgery and Cosmetology “Virtus” due to her HIV positive status. She tried another clinic where she was also refused treatment. Eventually, the second clinic agreed to perform the operation, but at an increased price.\textsuperscript{355}

A particular area of healthcare where persons living with HIV face discrimination is in reproductive healthcare, where attempts to limit their reproductive rights are a particular problem. The People Living with HIV Stigma Index revealed that 28\% of men and 11\% of women surveyed were told not to have children; 5\% of men and 2\% of women faced coercion into being sterilised; and 5\% of women faced coercion to undergo an abortion.\textsuperscript{356}

Despite the fact that Ukrainian law explicitly prohibits medical staff from disclosing the HIV status of a patient, widespread stigma and lack of professionalism has resulted in cases where this prohibition has been ignored. In September 2010, for example, while undertaking his duties, the Chief Doctor of the Central District Hospital in Reni, Odesa oblast, sent his medical conclusion on a child with disabilities – containing information on the fact that the child was HIV positive – in an open and unencrypted format to the Social Security Department of the Reni District State Administration. The document was also sent to the chair of the local council of the village where the family of the child lived. The staff at the council learnt of the child’s HIV status and this led to the information being spread amongst the population of the village where the child lived.

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” provides that persons living with HIV are entitled to compensation for harm caused as a result of disclosure of their HIV-positive status, or information relating to their HIV-positive status.\textsuperscript{357} Although such incidents are frequent, it was only in 2013 that the first conviction of a medical

\textsuperscript{355} Equal Rights Trust interview with Olena, Odesa, 20 February 2014.
\textsuperscript{356} See above, note 332, p. 77.
\textsuperscript{357} See above, note 329, Article 15, paragraph 1, sub-paragraph 1.
worker for revealing such information took place under the Criminal Code; no compensation was paid to the victim.\textsuperscript{358}

**Discrimination in Other Areas of Life**

Discrimination against persons living with HIV stems primarily from the stigma and prejudice surrounding the virus. As such, those living with HIV generally try to conceal their HIV status unless absolutely necessary to disclose it. However, sometimes this status is disclosed by others, either through a legal requirement, or, as the case above indicates, the negligence of medical staff or others who have access to their private information. Disclosure can then result in discrimination in almost all areas of life.

The stigma surrounding the virus and the discrimination it engenders extends beyond individuals who themselves have HIV to their spouses, partners and family members. The People Living with HIV Stigma Index showed that in addition to the 51% of persons living with HIV who suffered stigmatisation and discrimination, 14% said that their relatives had faced similar attitudes. The most vulnerable group are children with HIV positive parents. In one instance, the staff at a kindergarten refused to admit a child whose parents were HIV positive. Even when the parents were able to persuade the staff to allow the child in, he was treated so badly that they withdrew him.\textsuperscript{359}

After medical and social services and employment, education is the third most common field in which discrimination against persons living with HIV takes place. Of people identifying themselves as parents living with HIV in the 2011 Index, 4% reported that their children had been expelled or suspended from school or had been prevented from attending lessons; 2% of respondents had faced such discrimination personally.\textsuperscript{360} Even where children living with HIV are able to attend school, where their condition is known to others, they can face ostracism from other pupils and even teachers. Individuals interviewed for this report indicated that school administrations can often exacerbate the problem. For example, a student from one of the colleges in Odesa who wished

\textsuperscript{358} Вголос, "В Україні Вперше медика покарали за розголошення ІНФОРМАЦІЇ про ВІЛ-статус дитини”, vgolos.com.ua, 26 January 2013.

\textsuperscript{359} See above, note 332, p. 27.

\textsuperscript{360} Ibid., p. 32.
to remain anonymous, told us that between December 2011 and March 2012, he suffered constant abuse from one of his lecturers because of his HIV positive status. The lecturer announced publicly during the lecture that he knew about the student’s HIV positive status and asked other students about their relations with him, including whether they had had sexual relations with him, and stated that there was no place in the college for him amongst healthy students. As a result, the student faced stigma from other students and maltreatment from the lecturer who forbade other students from coming within two metres of him. The suffering only ended after the student’s relatives paid the lecturer to stop. The student appealed against the actions of the lecturer but the college administration did nothing.\textsuperscript{361}

\textit{Conclusions}

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, few 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.

\subsection*{2.5 Discrimination on the Basis of Ethnicity, National Origin and Colour}

Ukraine is required to prohibit discrimination against persons on the basis of their race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the ICCPR and ICESCR by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Ukraine is also required by Article 26 of the ICCPR to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including on the basis of race, colour and national origin. The CESCR has also stated

\textsuperscript{361} Equal Rights Trust interview with an anonymous student, Odesa, 25 December 2013.
that Article 2(2) of the ICESCR extends to a prohibition of discrimination on the basis of ethnic origin. In addition, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, Ukraine is required to prohibit all forms of discrimination on the basis of race, colour, descent, national and ethnic origin. Further, the ECHR requires Ukraine to prohibit discrimination based on race, colour and national origin in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

It is well established that in international human rights law, regardless of the way in which different social sciences distinguish between the terms “race”, “colour”, “national origin”, “ethnicity”, “ethnic origin”, and “descent”, they are equivalent legal terms when designating prohibited grounds of discrimination. The terms most relevant to Ukraine within this family of protected characteristics are “ethnicity”, “national origin” and “colour”, and therefore they are used in this section.

The proportion of the Ukrainian population which belongs to a minority ethnic group is relatively low, with the exception of ethnic Russians who made up 17.3% of the population at the 2001 census. Together, ethnic Ukrainians and Russians made up 95.1% of the total population of Ukraine. Other minority ethnic groups include Belarusians (0.6%), Crimean Tatars (0.5%), Moldovans (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Poles (0.3%), Romanians (0.3%), Jews (0.2%) and Roma (0.1%). The distribution of Ukrainian and Russians, who together comprise the vast majority of the population, is not uniform throughout Ukraine. Ethnic Ukrainians dominate in most regions, particularly in the north and west, 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.

362 See above, note 250, Para 19.


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The situation of Ukraine’s different minority ethnic groups varies significantly, ranging from those (such as the Crimean Tatars and the Roma) who suffer significant discrimination and disadvantage to those (such as the Belarusians and Moldovans) who are essentially integrated within the population and reportedly suffer little, if any, discrimination or disadvantage. This section starts by focusing on those minority ethnic groups which suffer the greatest levels of discrimination and disadvantage: the Roma (also known as the Romani, Gypsies and Tsyhany) who live in various parts of Ukraine, but with a particularly high proportion in Transcarpathia; and the Crimean Tatars (also known as the Qırımlar) a Turkic indigenous community who overwhelmingly live in Crimea, with smaller populations in other parts of Ukraine. This section also examines the experiences of the ethnic Russian population, a difficult task in the strongly politicised and rapidly evolving situation since the autumn of 2013. As a group vulnerable to discrimination and disadvantage in many societies – and one which historically suffered severe discrimination in Ukraine itself – the Jews are also covered in this section.

The section then looks at a more recent phenomenon, namely xenophobia and discrimination against recent migrants and foreign nationals, including students, largely those with darker skin colour, who face discrimination based on a combination of their national origin and skin colour.

During the Soviet period, questions of ethnicity raised complex issues. The existence of an ethnic group (“національність”\(^365\)) was a construction exercise by academics serving political expediency. As explained by Anatoly Khazanov:

> In the Soviet Union not only the status of ethnic minority but also sometimes even the official recognition of the very existence of one were matters of arbitrary decision by the state. The all-union and republic powers

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365 As this term has the same Latin root as “nationality” in English and similar terms in other Western languages, it has been very confusing to foreigners. In Marxist political science, “nationality” was a stage of the development of large groups following the stages of ethnic group (“етнос”), which in turn developed from tribe (“плем’я”), but in practice “національність” had the same meaning as the English “ethnicity”, or “ethnic belonging”. It was believed that all “національність” (plural) were evolving to form the historically new entity of the “Soviet people” (“радянський народ”).
abolished and created nationalities. The number of nationalities figuring in the Soviet population census and therefore receiving official recognition was constantly decreasing. There were 194 nationalities in 1929, 109 in 1939, 106 in 1970, and 101 in 1979. However, for the 1989 census, the Institute of Ethnography of the Academy of Sciences of the USSR proposed a list of 128 existing nationalities.\textsuperscript{366}

The determination of what was considered a “nationality” (“національність”) was a political one, rather than an assessment based on self-identification. During the Soviet period, a person’s “nationality” was not a free choice but was determined by the “nationality” of their parents: if both parents had the same “nationality”, so would their children. If the parents were of different “nationalities”, the child would choose, at age 16, between the two.\textsuperscript{367} Once determined, a person’s “nationality” would be recorded on their internal passport and was usually fixed for life. The internal passport was a compulsory document introduced in 1934 for all Soviet citizens. The “nationality” recorded in one’s internal passport was considered one of the “three aspects of the structure and functioning of the neo-Stalinist state” in ethnic relations, whereby “internal passports [were] used by the regime in order to maintain almost impassable boundaries between nationalities”.\textsuperscript{368} A person’s “nationality” was also reflected in official state records regarding birth, education and employment.\textsuperscript{369}

Initially, this system of ethnic registration was used to promote the rights and career advancement of members of certain national minorities,\textsuperscript{370} and, indeed, during the 1930s individuals were encouraged to declare non-Russian nationalities.

\textsuperscript{366} Khazanov, A., \textit{After the USSR: Ethnicity, Nationalism, and Politics in the Commonwealth of Independent States}, University of Wisconsin Press, 1995, p. 98. Note that “національність” is often rendered as “nationality” in English translations and English language literature, as in this case.

\textsuperscript{367} \textit{Ibid.}, p. 16.


\textsuperscript{370} \textit{Ibid.}, p. 10.
identities. However, starting in the 1930s and 1940s, the position of the Soviet authorities changed: whole “nationalities” began to be viewed with suspicion. With a system of strict national/ethnic registration already in place, it was relatively straightforward for the state to subject entire groups to repression. Germans and Jews were particularly vulnerable across the USSR.

Upon independence, the approach to ethnicity taken by the new state of Ukraine was markedly different. In 1992, Ukraine removed the requirement that a person’s “nationality” be recorded on their passport. The 1996 Constitution makes no reference to the concept of “nationality” as understood during the Soviet period; instead, Article 24, paragraph 2 prohibits “privileges or restrictions” based on, *inter alia*, race, skin colour and ethnic origin. The 2001 census recorded an individual’s ethnicity (“національність”) on the basis of self-identification.

As noted in Part 3 of this report, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” prohibits discrimination on, *inter alia*, race, colour, and ethnic origin. Article 161 of the Criminal Code prohibits “deliberate actions aimed at inciting national, racial or religious enmity and hatred”.

The government of Ukraine has also adopted various strategies aimed at tackling discrimination on the basis of race and ethnic origin such as Plans of Action to Combat Xenophobia and Racial and Ethnic Discrimination for the periods 2008–09 and 2010–12.

### 2.5.1 The Roma

The Roma (referred to in Ukraine as the Tsyhany) are an ethnic group found mostly in Europe, who have lived in the territory making up modern-

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373 See above, note 51, Article 1, paragraph 2.
375 Although the term “Roma” is the most commonly used and understood designation in the English-speaking world, the equivalent term in Ukrainian (“Рома”) is little used in Ukraine, even amongst Roma themselves. Instead, the term “Tsyhany” (in Ukrainian, “Цигані”) is used. Given the familiarity with the term “Roma” in English, however, this chapter uses that term.
day Ukraine since the 15th century. The 2001 census suggested a total Roma population in Ukraine of 47,600376 (around 0.1% of the population), although unofficial estimates put the number much higher, between 120,000 and 400,000 (between 0.27% and 0.89%).\textsuperscript{377} The Roma population is not uniformly distributed across the country, with the largest numbers in the oblasts of Odesa, Poltava, Cherkasy, Donetsk, Dnipropetrovsk, Kharkiv, Chernivtsi and Transcarpathia. In certain parts of Transcarpathia, the Roma officially constitute up to 3% of the population.\textsuperscript{378}

The Roma are considered by many to be the most discriminated minority ethnic group in Ukraine.\textsuperscript{379} They face difficulties in obtaining identification documents, struggle to find long-term employment, experience high levels of poverty, low standards of housing, and poor quality of education and healthcare.\textsuperscript{380} These problems are interrelated. The difficulties in obtaining identification documents can present obstacles in access to services such as education and healthcare. Lower levels of education leads, in turn, to difficulties in securing employment and a consequent higher rate of unemployment.

The Roma’s difficulties in accessing services and obtaining various forms of social welfare and the higher levels of poverty amongst the community are compounded by other factors such as higher than average birth rates and large number of children; high rates of teenage pregnancy (sometimes “explained” with racist observations that early births are for the purposes of obtaining social assistance which may be the only source of income for the

\begin{footnotes}
\item[376] See above, note 363.
\item[379] See, for example, Український незалежний центр політичних досліджень, Аналітичний звіт “Дискримінація в Україні – проблеми й перспективи їх подолання”, September 2012.
\item[380] See, for example, United Nations Human Rights Committee, \textit{Concluding Observations: Ukraine}, UN Doc. CCPR/C/GRC/CO/7, 22 August 2013, Para 12, noting the “prevalence of discrimination, including the difficulties encountered in access to personal documents, education, health care, housing and employment”; and above, note 300, Para 8, noting “the problems faced by Roma in accessing employment, social security, housing, health care and education”.
\end{footnotes}
Patterns of Discrimination and Inequality

failure to register marriages as in Romani communities, a marriage validity is a matter of complex custom and not of placing signatures on paper; lack of identification documents and difficulties in obtaining such; and a low level of knowledge and understanding of their legal rights. Low levels of literacy and negative cultural attitudes towards women – such as preferences for educating men over women, and a tolerance for early marriage – also limit the equal enjoyment of economic and social rights, particularly in the field of employment. However, it must be stressed that the single most important root cause of Roma disadvantage is anti-Gypsism, often manifested as racial discrimination.

The Roma are often visibly identifiable in Ukraine on account of their appearance and dress. There is a strong social prejudice against the Roma in Ukraine, with data from 2013 showing a higher degree of intolerance towards the Roma than any other ethnic group. The police consider the Roma to be potential criminals and therefore encourage the spread of stereotypes among the population. Since the 1990s, there have been hundreds of documented cases of police brutality against Roma and taking unlawful action against them. Law enforcement agencies and officials from state and local authorities exploit the vulnerability of the Roma to extort money from them, as well as ignore complaints made by them.

As a result of discrimination at the hands of state agents, there is a high degree of mistrust of public authorities among the Roma. The most strongly negative attitudes the Roma have towards the police, hospitals and the departments for labour and social protection, that is, the state institutions tasked with ensuring Roma exercise on an equal basis with others their rights to security and safety of the person, access to justice, health, employment and social assistance. 74% of Roma do not trust public authorities entirely or in part. Maria Kolokolova of the Kharkiv Institute for Social Researches has summarised the position:

An analysis of the public comments on the responses shows that this mistrust is primarily caused by the fact that the Roma encounter these state institutions most frequently, but the results of this interaction are mainly negative.

As a consequence, the Roma in Ukraine struggle to use the law as a means of protection. They live largely segregated from the rest of society, instead utilising their own traditional forms of dispute resolution and community leaders to settle disputes. In particular, in Transcarpatia, where the highest numbers of Roma reside, the Roma tend not to go to lawyers or state authorities when faced with legal problems, but to members of their own community: a survey by the Kharkiv Institute of Social Researches found that 63% of Roma in Transcarpatia will go to relatives and friends to solve problems, 41% to community leaders, 37% will try to solve the dispute themselves, and 33% to NGOs. The majority stated that they needed the help of lawyers to solve their problems (21% always and a further 46% sometimes), but a large majority (79%) considered this to be impossible. The most significant obsta-

386 Колоколова М., Щербань С., Вивчення правових потреб ромського населення в Закарпатській та Черкаській областях, 2012, pp. 20–21.
387 Ibid.
388 Харківський інститут соціальних досліджень, Дискримінація та правова ізоляція ромських громад обмежують розвиток держави в цілому, 25 July 2012.
390 Ibid.
391 Ibid., p. 27.
acle to obtaining qualified legal support is its cost (51% of Roma saying that such support is “too expensive”).\textsuperscript{392}

In preparing this report, the authors reviewed a number of cases collected, and conclusions made, by Poltava Media Club, an NGO with long experience of working with the Roma community in the Poltava oblast, and on monitoring Roma rights in the region. Using a wide range of sources, the Poltava Media Club considers that neither the Ukrainian state nor the Ukrainian people acknowledge that the Roma as a group are in a disadvantaged position. Even the publication of information detailing violations of Roma rights meets with incomprehension and sometimes indignation by non-Roma. Stereotypes forming part of the phenomenon of anti-Gypsyism are firmly rooted within the Ukrainian culture and society. A review of posts and comments on the internet as well as official crime statistics both indicate that the degree of intolerance has steadily increased in recent years. However, there is no state encouragement of tolerance towards Roma, and there is no judicial practice of considering crimes targeted towards the Roma to be hate crimes.

\textit{Violence and Hate Crime}

The Roma, both as individuals and as a community, face violence and other ethnically motivated hate crimes. In 2013, the HRC expressed its concern at:

\begin{quote}
[R]eports of hate speech, threats and violence against members of ethnic groups (...) and national minorities, in particular Roma (...) resulting in physical assaults, acts of vandalism and arson, most of which are committed by groups driven by extreme nationalist and racist ideology.\textsuperscript{393}
\end{quote}

Examples are commonplace. In June 2013, a group of men attacked and set fire to a Roma camp in Kyiv, leaving 40 people homeless and their proper-

\textsuperscript{392} \textit{Ibid.}

\textsuperscript{393} United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 11.
ty, including personal documents, destroyed.\textsuperscript{394} In early 2014, in Slovyansk, Donetsk oblast, a group of over 20 men targeted seven Roma households, entering the houses and beating Roma families, including children, demanding money and stealing anything of value.\textsuperscript{395} In February 2014, a group of about 15 people attacked four Roma households in Korosten, Zhytomir oblast, and in April 2014, a Roma family’s house in Cherkassy was set on fire.\textsuperscript{396}

State officials have, on occasion, made comments about the Roma which amount to hate speech. In May 2013, for example, Sergei Ilash, the Secretary of Yalta City Council, stated that all Roma women who are fortune-tellers and do not have passports should be either detained or evicted from the city and “Believe me, we will not cry over them”, before calling Roma and homeless people “little beasts”.\textsuperscript{397}

\section*{Harassment by Law Enforcement Agencies}

Research has found that the majority of the police consider Roma to be one of the population groups which is most inclined to commit crime.\textsuperscript{398} Roma have reported that the police (primarily investigators and district inspectors) often use offensive language towards them as a group and as individuals.\textsuperscript{399} As documented by international organisations, law enforcement officials regularly target the Roma community, in some instances requiring only identity checks, fingerprinting and verification of documents, but in others using unlawful violence,\textsuperscript{400} extorting bribes, unlawfully detaining people without a

\begin{itemize}
\item \textsuperscript{394} European Roma Rights Centre and Chiricli, \textit{Written Comments concerning Ukraine for Consideration by the Committee on Economic, Social and Cultural Rights (CESCR) at its 52nd Session from 28\textsuperscript{th} April to 23\textsuperscript{rd} May 2014}. 2014, p. 7.
\item \textsuperscript{395} European Roma Rights Centre, ”Joint Statement on Violence Against Roma in Ukraine”, errc.org, 30 April 2014.
\item \textsuperscript{396} Ibid.
\item \textsuperscript{397} Gazeta.ua, “Регионал”, который хочет стать мэром Ялты, назвал местных бомжей и цыган “зверушками”, Gazeta.ua, 24 May 2013.
\item \textsuperscript{398} Харківський інститут соціальних досліджень, Дотримання прав ромського населення в діяльності ОВС України, 2013, pp. 21–23.
\item \textsuperscript{399} European Commission against Racism and Intolerance, \textit{ECRI Report on Ukraine (fourth monitoring cycle)}, CRI(2012)6, 21 February 2012, Para 162.
\item \textsuperscript{400} See above, note 378.
\end{itemize}
court order, or beating confessions out of people.\textsuperscript{401} However, unlawful acts by the police enjoy impunity: they are rarely punished by disciplinary action or prosecution.

A series of police raids in Lviv in September and October 2011, for example, resulted in Roma individuals being taken to police stations, where they were fingerprinted, photographed and in some cases beaten up.\textsuperscript{402} In Uzhhorod, in January 2012, a Roma settlement was subjected to a violent police raid in which police used tear gas and rubber batons against local residents, including children, older people, and persons with disabilities.\textsuperscript{403}

As noted by the European Commission against Racism and Intolerance (ECRI):

\textit{Some sources suggest that police corruption and serious abuses are not only directed at Roma but also affect the broader population; however, most are clear that Roma are the main victims of such misconduct as they are perceived by the police as having little education or knowledge of their rights and, therefore, as easy targets. Representatives of civil society who attempt to report allegations of police misconduct often face reluctance to investigate or denial of the reported events by officials.}\textsuperscript{404}

A number of cases documented in research for this report show the high levels of harassment faced by the Roma. For example, Volodymyr Nikolaenko told the Trust’s researchers that in July 2012, several officers from the Chutiv district police department in Poltava oblast came to his home and told him that “an order had come from Kyiv to register all the Roma” as there had been an increase in theft and robbery by Roma persons.\textsuperscript{405} As such, they were required to take his fingerprints and secure a commitment from him not to leave

\textsuperscript{401} See above, note 399.  
\textsuperscript{402} See above, note 378.  
\textsuperscript{403} \textit{Ibid.}, pp. 17–18.  
\textsuperscript{404} See above, note 399.  
\textsuperscript{405} Equal Rights Trust interview with Volodymyr Nikolaenko, 23 February 2014, Chutiv, Poltava oblast.
the district. Initially, Volodymyr refused, but the police told him that if he did not submit, he would be summoned to the police department where the talk would be “rather different”. Under this pressure, he gave his fingerprints, provided personal information (his place of birth, details of his employment, his income, etc.) and signed a document confirming that he would not leave the district. Mr Nikolaenko stated that many other Roma in the Chutiv district have been treated the same way.

In early 2010, police from the Novi Sanzhary district police department, also in Poltava oblast, used threats to force Hanna Boldyzhar to provide fingerprints and be photographed. The police told her that they were required to fingerprint “all people of Gypsy nationality” and to provide the information on them to the oblast department of the Ministry of Internal Affairs, due to the high number of crimes committed by “persons of Gypsy nationality”.

Olena Petrenko, a Romani woman, told Equal Rights Trust researchers about a case of racial abuse by police in Myrhorod, Poltava oblast. On the evening of 6 December 2010, Ms Petrenko and three of her relatives arrived at the railway station in Myrhorod in order to return home from a funeral that they had attended. Before their train departed, officers from the Myrhorod municipal police took the four Roma women to the police department, preventing them from boarding the train. At the municipal police department, the officers took their passports and money without officially registering the confiscation. The police verbally abused the women, calling them thieves, took their fingerprints and photographs, and forced them to confess to crimes they had not committed. One of the police sprayed one of the women’s heads with deodorant before setting it alight with a cigarette lighter. At around 1 am the next morning, they were released and told to return later that morning to collect their belongings. When they did so, only Olena Petrenko was given her money back; the others women’s money was kept. The women complained about their treatment, but the acting chief of the municipal police department told them that he considered their detention to be lawful, that his officers had not exceeded their powers and that they would receive no apology. He told them that they were slandering his officers and that none of the police would corroborate their story.

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Another case documented for this report concerned Rayisa Markivska and seven of her relatives. In 2010, Ms Markivska and her relatives travelled to the Cherkasy oblast for a wedding.\textsuperscript{408} In Chyhyryn, Cherkasy oblast, their cars were stopped by the police and they were taken to the district police department. There they were detained for two hours in order to “check them through the database”. Their fingerprints were taken, they were photographed, and then ordered to cover the expenses for the fuel that the police used to take them to the department to be checked. They were forced to pay 200 hryvnia (approximately 8 euro) in total to be released.

On occasions, the police themselves commit crimes against the Roma which is followed by a failure properly to investigate. In 2012, the European Court of Human Rights issued its judgment in \textit{Fedorchenko and Lozenko v Ukraine}, a case involving an arson attack against three Roma households committed by a police officer in retaliation for certain members of the households’ failure to pay him a monthly bribe – whom he alleged to be drug traffickers – and in which a number of members of the household died.\textsuperscript{409} The Court held that there had been a failure properly to investigate the attack by the police and that:

\begin{quote}
\textit{[G]iven the widespread discrimination and violence against Roma in Ukraine (...) it cannot be excluded that the decision to burn the houses of the alleged drug traffickers had been additionally nourished by ethnic hatred and thus it necessitated verification.}\textsuperscript{410}
\end{quote}

On this basis, the Court held that there had been a violation of Articles 14 of the ECHR taken in combination with Article 2.

\textit{Identification Documents}

Many Roma do not possess the personal identification documents such as birth certificates, internal passports or residence registration, which are

\textsuperscript{408} Equal Rights Trust interview with Rayisa Markivska, 27 February 2014, Chyhyryn, Cherkasy oblast.

\textsuperscript{409} \textit{Fedorchenko v Ukraine} (Application No. 387/03), 20 September 2012.

\textsuperscript{410} See above, note 394, p. 4.
needed in order to obtain many public services.\textsuperscript{411} Indeed, in some communities, between 30 and 40\% of Roma lack necessary identification documents.\textsuperscript{412} Without such documents, children are not always able to enrol in school; persons over the age of 16 cannot enrol in further education or obtain work; access to certain health care services is limited; and it is not possible to vote.\textsuperscript{413} The absence of identification documents can be attributed to a number of factors, including: the social isolation of the Roma in general; missed deadlines for exchanging documents after the collapse of the Soviet Union; lack of knowledge that such deadlines existed; and failure to have certain documents during the Soviet period proving place and date of birth.\textsuperscript{414} The Ukrainian Parliament Commissioner for Human Rights has highlighted the administrative barriers that Roma face:

\begin{quote}
[T]he major problem of many Roma is absence of documents certifying their identity. While drawing up of these documents there is the largest number of abuse by employees of appropriate state bodies, which for obtaining Ukrainian citizen passports require Roma to hand in additional documents that current regulations are not foreseen [sic].\textsuperscript{415}
\end{quote}

Roma without the necessary identification documents face difficulties in accessing a wide range of state services, including education, housing and healthcare, and experience problems in securing employment.\textsuperscript{416} Indeed, the Ukrainian Parliament Commissioner for Human Rights has said that it is the absence of identification documents which makes it impossible for the Roma to realise their rights.\textsuperscript{417}

\begin{footnotes}
\item[411] See above, note 399, Para 70.
\item[412] See above, note 394.
\item[413] See above, note 399, Para 70.
\item[414] See above, note 394.
\item[416] See above, note 378.
\item[417] See above, note 415.
\end{footnotes}
The issue of missing identification documents has been a repeated theme of Ukraine’s reviews by UN Treaty Bodies: in recent years, the Human Rights Committee, CESCR and CERD have all called upon Ukraine to put in place a system by which all Roma can obtain the necessary identification documents to access state services. Despite these calls, the government has failed to act.

_Social Assistance and Healthcare_

In addition to the difficulties faced by Roma without identification documents in accessing certain forms of social assistance and healthcare, research for this report identified cases in which individual Roma were treated with hostility by those providing such services. For example, Nadiya Buzna, a Romani woman, stated that in February 2012, she visited the district Labour and Social Protection Department of the Myrhorod District State Administration in Poltava oblast to apply for a “loss of breadwinner” pension for her and her son. When she entered the room, inspectors working there approached and said that she was “another Gypsy woman coming to ask for money”. She left the office in tears. Nadiya stated that every time she had to go to the office it was like torture for her, as the workers there humiliated her simply because she was Roma and requested social assistance to which she was entitled.

The Romani woman Oksana Dyudya told the Equal Rights Trust’s researchers that in autumn 2013, she went to the Labour and Social Protection Department of the Poltava oblast State Administration to apply for social assistance. She was pregnant for the seventh time and had requested various forms of social assistance over a number of years. One of the inspectors asked her, “why do you Gypsies produce so many children, is it for money?” She also complained that each time she applied for social assistance, she was rebuked and humiliated. In order to create a ground to reject her assistance requests, authorities forced her to submit a letter prepared by the local council stating

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419 See above, note 399, Para 70.

420 Equal Rights Trust interview with Nadiya Buzna, 27 February 2014, Myrhorod, Poltava oblast.

that she was cohabiting with a man with whom she had had children and thus did not need assistance as a single mother.

One interviewee, Yevhen Horvat, stated that on 15 February 2014, his sister, Alla, was informed that she had been denied a low income pension, a form of social assistance for single mothers and their children. On 18 February, having arranged a meeting beforehand, Alla, her lawyer and a journalist attended the district Labour and Social Protection Department to seek information on the reasons for the refusal. Even with her lawyer and a journalist present, the staff of the department made racist remarks, stating that the Roma have numerous children, that they raise “idiots” as they give their children no education, and that they themselves have no desire to learn how to read and write or fill in forms without help. She was blamed for the “sins” of the Gypsies: a desire to have many children, illiteracy, poverty, being workshy but happy to receive social assistance. The staff showed contempt towards the Roma and activists who supported Roma rights. They came out from different rooms, shouting and making statements that the Roma “always made problems”.

Equal Rights Trust researchers found evidence of healthcare professionals directly discriminating or harassing Roma individuals, largely in response to their own prejudices towards the Roma people. For example, in May 2012, Tetyana Snizhko stated that, having recently given birth, she was told by the obstetrician at the Poltava Municipal Clinic Maternity Home that “[t]he only thing you Gypsies are able to do is breed”. Another interviewee, Yuriy Roshtash, spoke of the treatment he received when his baby was admitted to Kobelyaky District Central Hospital:

Our two month old baby was hospitalised at the Kobelyaky District Central Hospital, in the Poltava oblast, due to a cough and fever. The Director of the Children’s Department, Ms. T. Elbiyeva, said that the baby should not undergo an X-ray examination to confirm the diagnosis. For two days, the baby was not examined (following the Director’s instructions) and the nurses in the department refused to hold the child. The Director and

422 Equal Rights Trust interview with Yevhen Horvat, 27 February 2014, Chutiv, Poltava oblast.
the head nurse stated that the father should call relatives from his village to hold “their little Gypsy” during the X-ray procedure. Yuriy told them that one of the six nurses there could do this, however he was told that they “were not obliged” to do this. The village where he lived, Chapaiieve, was 30km from the hospital, with no public transport available, making it too expensive for Yuriy to pay for a taxi to go back. Despite his protestations, the staff at the hospital refused to change their mind. Yuriy overheard words like “dirty” and “black” being used in loud conversations between staff. The Director threatened to call the police to explain to him “his rights and duties”. Yuriy’s brother rented a car to travel from the village in order to help hold the baby for thirty seconds during the X-ray examination, costing a total of 150 hryvnia (approximately 6 euro).424

Furthermore, the research for this report also identified discrimination by local government officials, diverting public funds such that Roma families were unable to benefit – the case of the village of Chervoni Kvity in Poltava oblast. On 14 June 2012, a tornado and a series of storms in the Kobelyaky district of Poltava oblast caused damage to over 80 houses in the village of Chervoni Kvity: houses and other buildings lost their roofs, electric cables were torn, trees fell and harvests were spoiled. In the village of Chapayeve, one quarter of the population is Roma, having moved there from Transcarpathia several years earlier. The oblast had a reserve fund and allocated 486,000 hryvnia (approximately 20,700 euro) for the purpose of addressing the damage caused by the disaster. The money was sufficient to repair all of the damage caused to the households. The village council of Chervoni Kvity was appointed to administer the funds. However, the head of the village council misrepresented the purpose of the funds, telling the Roma population that compensation for their losses was “not authorised”. Together with the deputy leader of the village council, she visited each household and prepared a report on measures to repair the damage, but did not visit any of the households occupied by Roma families. As they were not mentioned in the resulting report, these families were unable to receive building

materials or financial compensation. In July 2012, Lyudmyla Kucherenko, a local human rights defender, demanded the village council establish a special commission to deal with the claims that the Roma households had not received any state assistance. A commission was established and the households of the Roma visited. When she was asked why she had not visited the households of Roma families previously, the head of the village council falsely claimed that she had knocked at their doors but that there had been no-one at home.\footnote{425}{Interview conducted by Lyudmyla Kucherenko with various victims in Chervoni Kvity, Summer 2012, Chervoni Kvity, Poltava oblast.}

\textit{Employment}

According to representatives of Roma organisations, only 38\% of the Roma are employed and only 28\% work full-time.\footnote{426}{See above, note 399, Para 144; European Commission against Racism and Intolerance, \textit{Third Report on Ukraine}, 12 February 2008, CRI(2008)4, 2008, pp. 65–83.} It is very difficult for Roma to find employment, given the lack of identification documents and high levels of illiteracy.\footnote{427}{See above, note 399, Para 144.} ECRI has noted that “few Roma appear to be employed in the public sector; Roma who do find work in this sector tend to conceal their ethnic origin for fear that they will be refused employment or promotion.”\footnote{428}{\textit{Ibid.}, Para 145.} ECRI has also reported that in the private sector, “prejudices remain rife” and that “Roma tend to be the first to lose their jobs in difficult times or to be blamed if something goes wrong”.\footnote{429}{\textit{Ibid.}} As a result, most Roma are self-employed, selling in markets or collecting scrap metal in order to gain an income.\footnote{430}{\textit{Ibid.}} As Roma girls are often prevented from accessing education (see below), and due to the persistence of traditional stereotypes regarding the roles and responsibilities of women, Roma women suffer particular disadvantage in the labour market.\footnote{431}{See above, note 382.}
Patterns of Discrimination and Inequality

Education

Roma children often complete only five to six years of education, despite the fact that a full secondary education in Ukraine lasts eleven years.\textsuperscript{432} While problems faced by Roma children in accessing education are often blamed on an alleged lack of interest to education in Roma families,\textsuperscript{433} or on the itinerant lifestyle of the Roma, there is evidence that Roma children experience discrimination when they attempt to enter education.\textsuperscript{434} There is evidence that some schools refuse admission to Roma students due to a lack of identification documents such as birth certificates; others require an unofficial financial contribution from parents to cover running costs which Roma parents cannot afford to pay; in yet other cases, Roma students are simply refused admission without reason.\textsuperscript{435} Irrespective of the causes, the major disparity in levels of schooling between Roma and non-Roma children is evidence of a violation of the Roma right to equality and needs urgent positive measures to close the educational gap between Roma and non-Roma.

There is also evidence that once in the education system, Roma students receive poorer quality education than their peers, or are subjected to bullying and abuse. For example, the mother of Alyona Havrylenko, a Roma child from Zachepylyivka in the Novi Sanzhary district, spoke to the Equal Rights Trust’s researchers about the abuse her daughter experienced at school and the impact on her education. Ms Havrylenko stated that she often misses lessons at school due to the behaviour of her teachers and classmates. Some of the teachers treat her coldly while others humiliate her in front of the students, mocking her clothes and appearance, and calling her “stupid Gypsy”. Mimicking the teachers, her classmates treat her similarly, and often worse, physically bullying her during breaks, pulling at her hair and subjecting her to verbal abuse. On occasion, the level of hostility is so severe that she does not attend classes for weeks. On one occasion, during a lunch break, the children collectively avoided her and mocked her until she broke down in tears. Her mother

\textsuperscript{432} Харківський інститут соціальних досліджень, Вивчення правових потреб ромського населення в Закарпатській та Черкаській областях, 2012, р. 33.
\textsuperscript{433} Ibid., pp. 33–34.
\textsuperscript{434} Виртосу, І. “До школи в шльопках, або Як переконати ромських дітей учитися”, Українська правда, 24 April 2013.
\textsuperscript{435} See above, note 394.
is fearful of naming the teachers and classmates who are involved, fearing victimisation, though she is convinced that the cause of the bullying is due to her daughter being Roma.\textsuperscript{436}

The European Roma Rights Centre has collected evidence indicating that Roma children are frequently educated in separate schools, often of lower standards. In 2014, the organisation reported that:

\[\text{Roma children] often study in fully segregated and sub-standard schools, are not permitted to register in integrated schools, and are overrepresented in so-called ‘special education’ schools which have adapted curricula for children diagnosed with special education needs.}\textsuperscript{437}

\textbf{Housing}

The Constitution provides a right of everyone in Ukraine to housing (Article 47, paragraph 1) and a right to social housing for citizens who require social assistance. However, the Housing Code of Ukraine provides only that citizens of Ukraine have a right to obtain social housing, sets out the criteria for people to be recognised as needing improvement in their housing conditions, and outlines mechanisms and processes to obtain housing. These provisions mean that Roma without personal documentation are often unable to benefit and access housing.

In addition, there is evidence that the aforementioned hostility towards the Roma in law enforcement and the provision of state services is shared by local government bodies with responsibility for housing. Research undertaken for this report indicates that these authorities can prevent Roma families from acquiring housing, and even encourage hostile attitudes towards the Roma amongst the local population, accusing them of settling on “their territory”. Yelyzaveta Chernyavets, interviewed for this report, stated that in February 2011, she and her family wanted to purchase a house in the village of Mushy-

\textsuperscript{436} Equal Rights Trust interview with Olha Havrylenko, 27 February 2014, Zachepylivka, Poltava oblast.

\textsuperscript{437} See above, note 394, and above, note 300, Para 25.
na Hreblya in Novi Sanzhary district in the Poltava oblast.\textsuperscript{438} They had already spoken to one of the residents in the village, but were soon after informed by the house owner that he would not sell them the house. When Yelyzaveta asked for a reason, the owner told her that the head of the village council, having heard that a Roma family were going to purchase a house in the village, had come to him and told him not to sell his house to them, allegedly saying, “we don’t want the Gypsies to flow onto our territory”.

Eviction and threats of eviction are commonplace, often because Roma lack the necessary documents relating to home ownership.\textsuperscript{439} In July 2013, in Khust, Transcarpathia, around 300 people were threatened with eviction, despite having lived on the land for five years, as they did not have the necessary proof of ownership.\textsuperscript{440} A similar situation occurred in Uzhhorod, affecting around 40 Roma families in August 2013.\textsuperscript{441} In July 2014, in the neighbourhood of Pasichna in Ivano-Frankivsk, the police reportedly forced Roma families to leave their settlement.\textsuperscript{442} There have also been reports of cases in which vigilantes took it upon themselves to evict Roma settlements: in June 2013, a group of men attacked a Roma camp in Kyiv leaving 40 people homeless; in July 2013, two men attacked a Roma settlement in Bereznyaki, Kyiv, by setting fire to the camp.\textsuperscript{443}

The case of Mykola Kovach, who lived with his family in the village of Chapa-yeve in Kobelyaky district, Poltava oblast, in a house belonging to his brother, illustrates some of the problems faced by Roma when interacting with local authorities on housing and land issues. The house was attached to a 75 acre plot of land. In 2013, a local farmer had used this land for farming without permission saying, “Go away you nomads; the Gypsies don’t need any more land”. Mr Kovach’s brother protested, but with no result. In 2014, Mr Kovach wished to use the land to grow food and rear animals. On 12 March 2014, the head of the village council telephoned him and told him that he could not use his brother’s

\textsuperscript{438} Equal Rights Trust interview with Yelyzaveta Chernyavets, 11 January 2014, Mushyna Hreblia, Poltava oblast.


\textsuperscript{440} See above, note 394.

\textsuperscript{441} \textit{Ibid.}

\textsuperscript{442} See above, note 382, p. 21.

\textsuperscript{443} \textit{Ibid.}
land as he had no right: the land belonged to his brother, the owner of the house, and not to him. When Mr Kovach’s brother spoke to the head, she answered, “I have said it and it shall be so; who are you to give me orders what to do?”

Most Roma live in housing which is of a lower standard than that of the rest of the population. Roma settlements are often isolated and with underdeveloped infrastructure. In 2014, the CESC R expressed concerns that:

\[
\text{[T]he majority of Roma continue to live in substandard housing conditions without safe drinking water or sanitation facilities, electricity, heating, sewage, waste disposal or legal security of tenure, which exposes them to the risk of eviction.}
\]

**Developments since March 2014**

The conflict in Donbas has had a significant impact upon the local Roma population. As of September 2014, Roma non-governmental organisations in Ukraine estimated that there were around 9,000 internally displaced Roma, largely women and children, from Eastern Ukraine. Anti-Roma prejudice has resulted in many of these internally displaced persons (IDPs) being treated with suspicion when they arrive in other parts of the country. There are reports of new Roma settlements being monitored by local authorities and the police, and even reports of Roma IDPs being told to leave.

As many Roma IDPs lack identification documents, they have been unable to register as IDPs with the authorities. Yet more fear that registration might lead to detention or mistreatment. A monitoring visit by the NGO Chiricli to Kharkiv, where 3,000 Roma IDPs had settled, indicated that only 36% of 125 displaced Roma were registered as IDPs with the local authorities. In a series

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444 Equal Rights Trust interview with Mykola Kovach, 27 February 2014, Chapaeiev Poltava oblast.

445 See above, note 399, Para 152.

446 See above, note 300, Para 18.


of monitoring visits Chiricli conducted in 2014, 82.8% of Roma IDPs interviewed spoke of a lack of concern from the local authorities which translated into lack of access to basic amenities such as accommodation and food: of 411 Roma IDPs interviewed, less than 30% had been provided with accommodation by the local authorities; as such, many resorted to living in train stations or parks.\textsuperscript{450} Instead of local authorities, civil society organisations and churches had provided the bulk of assistance in the form of accommodation and food.\textsuperscript{451} Even with this assistance, conditions were extremely difficult for many: Chiricli estimates that 85% of Roma IDPs did not have enough money even to provide for themselves and their families.\textsuperscript{452}

\textit{Conclusions}

Roma are rightly considered to be the most discriminated ethnic group in the country, experiencing a number of discriminatory practices ranging from discrimination by state agents and difficulties in obtaining identification documents to high levels of unemployment and poverty and poor quality education and housing. 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 the research for this report 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 and healthcare. The Roma also experience discrimination and inequality in education, employment and housing. Roma IDPs are treated less favourably than other IDPs from the Donbas area.

\textbf{2.5.2 The Crimean Tatars}

The part of Ukraine comprising Crimea (a peninsula in the far south of Ukraine) and Sevastopol (a city on the Crimean peninsula but just outside

\textsuperscript{450} Ibid., pp. 30–32.
\textsuperscript{451} Ibid., p. 31.
\textsuperscript{452} Ibid., p. 27.
of the Autonomous Republic of Crimea) has a particular unique history and status. As noted in Part 1 of this report, Crimea’s history was, for many centuries, entirely distinct from the rest of the territory which constitutes modern-day Ukraine. From 1478 to 1774, the most territory of Crimea formed part of the Crimean Khanate, a vassal state of the Ottoman Empire. In the late 18th century, the territory was absorbed into the Russian Empire. Between 1921 and 1945, it was a distinct territory, the Crimean Autonomous Soviet Socialist Republic within the Russian Soviet Federative Socialist Republic. However, after World War II and the deportation of most ethnic minorities, above all the Crimean Tatars, the region was transformed into an ordinary oblast. It was transferred to the Ukrainian SSR in 1954. Today, Crimea has a unique status as an autonomous republic (the Autonomous Republic of Crimea) and is the only region of Ukraine where the majority of the population is ethnically Russian, rather than Ukrainian.

On 16 March 2014, disputed referenda on Crimea’s status were held in the Autonomous Republic of Crimea and Sevastopol, with over 95% of voters in both reportedly supporting Crimea and Sevastopol joining Russia as new federal subjects. Within days, the Crimean peninsula was annexed by Russia. As such, the Ukrainian government no longer has *de facto* control over the Autonomous Republic of Crimea and the city of Sevastopol. Russia considers Crimea and Sevastopol to be federal subjects within Russia. Only a handful of other countries recognise Crimea and Sevastopol as part of Russia, however, and, in April 2014, the United Nations General Assembly adopted Resolution 68/262 on the territorial integrity of Ukraine, stating that the referenda had “no validity” and that Crimea remained part of Ukraine.\footnote{United Nations General Assembly, *Resolution 68/262: Territorial Integrity of Ukraine*, UN Doc. A/RES/68/262, 1 April 2014.}

One of the things which marks Crimea as unique is its place as home to the Crimean Tatars (the Qırım tatarlar or Qırım tatarlar in Crimean Tatar language), a Turkic ethnic group resident in the region since the 9th century. As citizens of the Crimean Autonomous Soviet Socialist Republic, the Crimean Tatars were subjected to forced assimilation, marginalisation and exile by the Soviet regime. In 1942 and 1943, Stalin ordered the forcible deportation of all Crimean Tatars for alleged collaboration with the Nazis. More than 230,000 people were deported, mostly to the Uzbek Soviet Socialist Republic, with over 100,000 dying of
starvation or disease. 95% of place names of villages and towns in the Crimean Tatar language were replaced with Russian names.\textsuperscript{454} Though pardoned in 1967, it was not until the 1980s that the Crimean Tatars were permitted to return.

The 2001 census showed a total of 248,000 Crimean Tatars living in Ukraine, of whom about 98% (243,400) lived in Crimea and a further 0.7% (1,800) in Sevastopol.\textsuperscript{455} By 2013, the total was estimated to have risen to around 265,985 Crimean Tatars in Ukraine as a whole.\textsuperscript{456} Together, the Crimean Tatars constituted between 10% and 13% of the total population of Crimea. As a result of the annexation of Crimea by Russia, large numbers of Crimean Tatars fled the peninsula for other places in Ukraine; the Ukrainian Presidential Commissioner for the Crimean Tatar People stated that of the 19,000 or so people who had left the peninsula by the end of 2014, over half were Crimean Tatars.\textsuperscript{457}

The CERD has regularly highlighted the many disadvantages faced by the Crimean Tatars, noting difficulties:

\begin{quote}
[I]ncluding lack of access to land, employment opportunities, insufficient possibilities for studying their mother tongue, hate speech against them, lack of political representation, and access to justice.\textsuperscript{458}
\end{quote}

Many of the disadvantages faced by the Crimean Tatars stem from prejudice towards them from others, including the authorities. Attempts to commemorate events in the Crimean Tatars’ history, to speak about their forced deportation or to counter the false accusations of Nazi collaboration of the Crimean Tatars have faced a negative reaction.\textsuperscript{459} Such initiatives, whether by Crimean


\textsuperscript{455} See above, note 363.

\textsuperscript{456} See above, note 454.

\textsuperscript{457} УНІАН, "Анексований Крим покинули більше 9 тисяч кримських татар", unian.ua, 22 December 2014.


\textsuperscript{459} Дзеркало тижня, "У Криму на бюджетні гроші випустили книгу із звинуваченнями кримських татар у співпраці з фашистами", dt.ua, 26 July 2013.
Tatars themselves or by others, have been blocked by local authorities, as in the case of the proposal to name Simferopol International Airport in honour of the famous Soviet aviator and twice Hero of the Soviet Union, Amet-Khan Sultan, a Crimean Tatar.\textsuperscript{460}

ECRI has raised concerns over reports that “local Crimean authorities resort to anti-Tatar discourse for electoral purposes” and that:

> [H]igh-ranking politicians, including government ministers, have reportedly engaged in markedly intolerant discourse against Crimean Tatars, suggesting for example that their deportation under Stalin was justified or that Crimean Tatars are a legitimate target of anger of the local population.\textsuperscript{461}

Further, ECRI has concluded that:

> [A]nti-Tatar sentiment remains an issue in Ukraine and appears to have increased in recent years as politicians’ rhetoric has given it a semblance of respectability. Local politicians’ tendency to ignore or deny the specific problems faced by Crimean Tatars also pushes the latter to seek their own solutions and voice their identity more strongly. The end result is a risk of radicalisation rather than resolution of the issues, to the detriment of Crimean society as a whole and Tatars in particular as targets of prejudice.\textsuperscript{462}

The Crimean Tatars have been underrepresented in political life. While at the community level in rural areas, Crimean Tatars make up around 16% of deputies of local councils,\textsuperscript{463} at the district council level the figure is 9%, and in the


\textsuperscript{461} See above, note 399, Para 50.

\textsuperscript{462} Ibid., Para 94.

\textsuperscript{463} Avdet, "Доклад Мустафы Джемилева", avdet.org, 23 July 2012.
Verkhovna Rada of the Autonomous Republic of Crimea only 7%.\textsuperscript{464} Within state bodies, only 5% of employees are Crimean Tatars.\textsuperscript{465}

**Violence and Hate Crime**

Crimean Tatars face violence and hate crimes, and their property, including mosques and graveyards, is often attacked by extremists. In May 2012, in the Bakhchisarai District, the tombstone of an important Muslim leader, Eskender, was destroyed.\textsuperscript{466} In August of that year, swastikas were painted on memorial stones with the names of the place where the Crimean Tatars were deported.\textsuperscript{467} In 2013, the HRC raised concern over:

> Reports of hate speech, threats and violence against members of ethnic groups, religious and national minorities, in particular (...) Crimean Tatars, resulting in physical assaults, acts of vandalism and arson.\textsuperscript{468}

As noted below, since the annexation of Crimea in March 2014, which was strongly opposed by the Crimean Tatar population, there has been a notable rise in violence and hate crimes against the Crimean Tatars. These attacks go largely unpunished. Crimean Tatars make up just 4% of the police force and relations between the police and this group are poor.\textsuperscript{469}

**Economic, Social and Cultural Rights**

Since their return to Crimea in the 1980s and 1990s, one of the most significant problems faced by the Crimean Tatars has been that of land ownership. Following their deportation in the 1940s, land owned by the Crimean


\textsuperscript{465} Ibid., p. 8.


\textsuperscript{467} Qirimtatar.org, “В Крыму очередной раз осквернено мусульманское кладбище”, qirimtatar.org, 13 February 2013.

\textsuperscript{468} See above, note 393.

\textsuperscript{469} See above, note 464, p. 10.
Tatars (more than 10,000 km², over a third of Crimea) was seized and redistributed by the Soviet authorities. Since their return, those Crimean Tatars who themselves, or whose families, owned land prior to the deportation, have found virtually impossible, to resume ownership. It was only in 2014 that the Verkhovna Rada passed legislation which would enable Crimean Tatars to receive either the land which was seized or compensation; however, with the Ukrainian state having no effective control over Crimea, it has not been possible for the legislation to be implemented and enforced.

Until the 2014 law was passed, Ukrainian law did not provide for any restitution of property confiscated unlawfully during the Soviet period. Indeed, until that point, there had been no official recognition of the Crimean Tatars as victims of land violations. With their land occupied by others, those Crimean Tatars who returned to Crimea had to try to obtain empty plots of land to build a home, but this had been an extremely slow and difficult process. Starting in the early 1990s, various governmental commissions and working groups were set up, involving relevant government departments and state agencies. However, none of their conclusions or recommendations were accepted and implemented and resolution of the problem was repeatedly postponed. As of December 2012, only around 50,000 Crimean Tatars had received land allotments for either personal or work use, leaving the vast majority of the population without any land rights. Even those who had received land had received plots only in the most inhospitable areas.

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470 Закон України “Про відновлення прав осіб, депортованих за національною ознакою” (Відомості Верховної Ради, 2014, № 26, с. 896).

471 United Nations Committee on Economic, Social and Cultural Rights, Sixth Periodic Report of States Parties: Ukraine, UN Doc. E/C.12/UKR/6, 27 December 2012, Para 405. According to the state’s report, a total of 22,900 former deportees had received land allotments totalling 126,100 hectares; 300 returnees had set up farms on land totalling 4,900 hectares; 1,600 persons had joined newly created farming businesses totalling 8,500 hectares; and 24,800 persons had received land allotments for farming purposes totalling 24,300 hectares in area. A further 21,300 returnees had been permitted to prepare project documentation in order to obtain licenses to work private allotments covering a total area of 21,100 hectares.

With so many Crimean Tatars without any land, some have chosen to occupy empty plots. These Crimean Tatars are accused of “squatting”, causing conflict with the majority population and the authorities. As of 2012, around 2,000 hectares were occupied in 56 unauthorised settlements, involving between 8,000 and 15,000 people. While it is true that there are some Crimean Tatars squatting, the same is true of members of the so-called “Slavic population” of Crimea (the Russians and Ukrainians that constitute the vast majority of the population of the region); however, the local authorities have only ever sought to intervene when it has been the Crimean Tatars who have “squatted”. On the night of 1 December 2012, for example, local dwellers and so-called Crimean Cossacks headed by Sergei Aksyonov, the leader of the political party Russian Unity, destroyed a number of buildings occupied by Crimean Tatars on the “Protest Glade” near Simferopol. The Crimean Tatars have also been often accused of occupying the land plots to sell them rather than live on them. As with the issue of “squatting”, while this does happen on occasion, the same has been said of some of the ethnic Ukrainians and Russians who have also occupied plots of land.

The high cost of living in the larger Crimean cities has meant most Crimean Tatars search for land in the rural areas, where around 86% now live. While the land is cheaper, the areas are underdeveloped, with many of them considered to be inhospitable prior to the return of the Crimean Tatars. More than half of Crimean Tatars either do not have their own home or live in a dwelling which meets the minimum acceptable standards of living. In its recent state party report to the CESCR in 2012, Ukraine stated that only 75% of the area where Crimean returnees are concentrated had a water supply, only 32% had

475 See above, note 473.
479 Avdet, “М. Джемилев: Альтернативы Курултаю быть не может ...”, avdet.org, 6 February 2012.
natural gas and only 9% had hard-surface roads. There were few educational, healthcare and cultural facilities. 480

Poverty is a particular problem. Although Crimea generally suffers from high levels of poverty, Crimean Tatars are particularly affected, with 43% of Crimean Tatar households qualifying as poor in 2013, compared to 33% for ethnic Russians and 38% for ethnic Ukrainians. 481 This is partly due to the fact that Crimean Tatar households are, on average, larger (3.20 people per household, compared to 2.28 among ethnic Russians and 2.19 among ethnic Ukrainians) and have a lower ratio of working to non-working persons. 482 In 2012, the unemployment rate amongst Crimean Tatars was more than double that of the population as a whole. 483 The Crimean Tatars themselves consider this to be the result of discrimination during recruitment, with particular difficulties faced by women and those in their 40s and 50s. 484

The Crimean Tatar language remains a language of limited communication. The authorities have not undertaken any measures to promote or encourage its use, and use of the language in public service and the media has been minimal. 485 The vast majority of Crimean Tatars have been unable to receive an education in their native language and to use the language in their day-to-day life. Despite the increase in the population of the Crimean Tatars in the region in the last 25 years – to the point where they constituted between 10% and 13% of the population – in 2013 there were only 15 Crimean Tatar schools out of 576 schools in Crimea, and no Crimean Tatar pre-schools. 486 As a result of a lack of textbooks available in the Crimean Tatar language, many classes in these schools are in fact taught in Russian or Ukrainian. 487 Where there are settlements with large numbers of Crimean Tatars, there is both the demand and the feasibility of establishing primary school classes with a curriculum in

480  See above, note 471, Para 404.
481  See above, note 474.
482  Ibid.
483  See above, note 399, Para 92.
485  See above, note 474, pp. 23–24.
486  See above, note 474, p. 27.
487  Ibid.
the Crimean Tatar language, but local authorities have reportedly resorted to pressure in order to prevent parents from calling for it.488

**Developments since March 2014**

Following the annexation of Crimea by Russia in March 2014, the Ukrainian authorities lost *de facto* control of the territory. In April 2014, the Verkhovna Rada adopted the Law of Ukraine “On the Restoration of Rights of Persons Deported on Ethnic Grounds”, which entered into force between August 2014 and 1 January 2015.489 This Law has the potential to address many of the social and economic problems faced by the Crimean Tatars, particularly in relation to restitution of property lost following deportation and support to the acquisition of land and homes.

Meanwhile, the situation of the Crimean Tatars inside Crimea has deteriorated. The Crimean Tatars boycotted the referendum on Crimea’s status in March 2014,490 maintaining a strong pro-Ukrainian stance.491 The pro-Russian authorities regularly denigrate the Crimean Tatars; Sergei Aksyonov, the Head of Russian authorities of Crimea, has called for Crimean Tatars to be tried for treason or deported for undermining Russian rule in Crimea.492

There have been a number of enforced disappearances of Crimean Tatar activists.493 The first took place on 3 March 2014 when a young man, Reshat Ametov, was dragged away during a protest by three men in military-style jackets. His corpse was found on 16 March 2014 around 67km away, report-

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489 Закон Україні "Про відновлення прав осіб, депортованих за національною ознакою" (Відомості Верховної Ради, 2014, № 26, с. 896).


edly showing signs of ill-treatment.\textsuperscript{494} By October 2014, at least 19 Crimean Tatars had been abducted or disappeared.\textsuperscript{495} One of the victims was found hanged in a deserted sanatorium in the city of Evpatoria.\textsuperscript{496}

The authorities have conducted large numbers of raids in search of weapons and “extremist” literature, routinely targeting Crimean Tatar properties, including the houses of officials at the Mejlis (the executive-representative body of the Crimean Tatars), mosques and eight of the 10 madrassas in Crimea.\textsuperscript{497} Article 20.29 of the Administrative Code of the Russian Federation prohibits the possession or distribution of “extremist material” and has been used to fine individuals found in possession of Islamic texts, including one of the deputy heads of the Crimean Muftiyat in charge of education issues and a librarian of a boarding school whose school library contained three books with sermons by a Turkish Muslim theologian.\textsuperscript{498}

\textbf{2.5.3 Ethnic Russians}

At the 2001 national census, a total of 8,334,141 persons in Ukraine considered themselves to be ethnic Russians, making up 17.3\% of the total population.\textsuperscript{499} This represents a drop from 22.1\% of the population who identified as ethnic Russians in the 1989 census. As such, ethnic Russians represent by far the biggest ethnic minority group in Ukraine, though the proportion of ethnic Russians in each oblast varies greatly: from 1.2\% in Ternopil oblast and 1.8\% in Ivano-Frankivsk oblast in the west to 38.2\% in Donetsk oblast and 39.0\% in Luhansk oblast in the east.\textsuperscript{500}

Ukrainian legislation neither imposes any requirement on individuals to declare their ethnic identity, nor directly links the ethnic background of a per-


\textsuperscript{495} Rupert, J., "Four More Crimean Tatars Vanish, One Dead Amid Russian Crackdown", \textit{Atlantic Council}, 16 October 2014.

\textsuperscript{496} See above, note 493, Para 212.

\textsuperscript{497} \textit{Ibid.}, Paras 209 and 218 to 221; see also above, note 494, Para 21.

\textsuperscript{498} See above, note 493.

\textsuperscript{499} See above, note 363.

\textsuperscript{500} \textit{Ibid.}
son with the language they speak. Therefore, an individual’s ethnic identity and mother tongue/first language is rather a matter of personal choice. As for a number of generations people have chosen their “nationality”, and as this choice has been of very little personal meaning or social consequence in any area of life, there has been no clear line between ethnic Russians and the rest of the population. It is only after the annexation of Crimea by Russia and the war in Donbass, and only in these territories, that a Russian ethnic identity began to slowly emerge as more distinct, as a result of the inevitable politicisation of ethnicity; however, at the same time, the opposite process can be observed: a formation of a united Ukrainian political nation irrespective of ethnic origin.

Prior to the 2014 conflict, relations between ethnic Russians and the majority population in Ukraine were generally harmonious, with little evidence of discrimination or disadvantage. The UN Special Rapporteur on Minority Issues reported in 2015 that:

\[\text{Russian minority representatives acknowledged that, prior to the unrest, they did not face a repressive environment, widespread discrimination, exclusion, or violence based on their identity.}\]

While the conflict between Ukraine and pro-Russian separatists in the east of the country has resulted in a more negative image of the Russian state among the Ukrainian public, this does not appear to have translated into a negative attitude or behaviour towards ethnic Russians in Ukraine. Indeed, on the basis of a visit to Ukraine in April 2014, the Special Rapporteur reported that:

\[\text{The Special Rapporteur was not provided with evidence that anti-Russian sentiment was widespread. There have been few incidents of discrimination, harassment or abuse of individuals or groups on the basis of their Russian identity in Kyiv or other localities. Russians and ethnic Ukrainians frequently stated that their relations remained good. Incidents of intercommunal violence}\]

were extremely rare or non-existent in most localities at the time of the Special Rapporteur’s visit.\textsuperscript{502}

As part of the research for this report, in April 2015, the Equal Rights Trust conducted a series of interviews with ethnic Russians in Kyiv, Dnipropetrovsk and Odessa. The Trust found that the developments of 2013-2014 have created an identity crisis for the Ukraine’s Russian community, forcing its members to question what it is to be Russian in Ukraine. Such identity elements as speaking Russian as a first language, being Orthodox Christians or loving Russian culture do not appear to be sufficient as there are many ethnic Ukrainians and members of other ethnic groups in Ukraine who also share these characteristics. Moreover, these cultural identifications do not impede a person to feel a part of the multi-ethnic Ukrainian political nation. This trend to choose multi-ethnic democratic Ukraine may be growing among Ukraine’s Russians. On the opposite side of a political rather than ethnic spectrum are Russians who do not accept an independent Ukraine and see it as a threat to the “Russian world” pursued by the Kremlin. Thus, rather blurred identity markers of Ukraine’s Russians within Ukrainian realities are considered to be one of the major challenges of this community.

The testimonies collected by the Equal Rights Trust in April 2015 suggest that while there was no evidence of discrimination against ethnic Russians on the basis of ethnicity, and while there has been no experience of any hostility at the personal level, the conflict has forced Russians in Ukraine to clarify and determine their belonging in an Ukrainian state, not as a “national minority” but as a constituent of the Ukrainian political nation which has always been characterised by the presence of Russian language and culture.

Almost all of those interviewed noted the historically good relations between ethnic Ukrainians and ethnic Russians in the country. One respondent stated that, “violations of our rights take place regardless of ethnicity, be it Russian or Ukrainian – in fact, for us ethnicity has never been a decisive factor”.\textsuperscript{503} However, several interviewees noted an increase in hostility as a result of the crisis and conflict and the resulting increasing politicisation of ethnicity.

\textsuperscript{502} Ibid., Para 23.

\textsuperscript{503} Equal Rights Trust interview with Oleksander Kondryakov, Chair of the Board of the All-Ukrainian Public Organisation “Russian School”, 7 April 2015, Kyiv.
Larysa Abramovych, Chair of the Board of International Public Organisation “International Union”, stated that:

*I am a Russian who has lived in Ukraine since 1993. For 10 years I lived in the Donbas (Mariupol). I cannot say that my rights were violated. However, today when the relations between our countries have entered the conflict phase, I started feeling the problem. I try not to say that I am Russian because I see the reaction. I understand the reasons for such reactions. At the same time, the issue of terminology is very important in today’s Ukraine, as Russians could hardly be called “a national minority”.*

Vyacheslav Potapov, Chair of the Kyiv City Organisation of the All-Ukrainian National Cultural and Educational Society “Russian Assembly”, told the Equal Rights that:

*When the Russian annexation of Crimea took place, even some of my friends started to address this issue to me. But I was born and raised here, in Kyiv, and this is my motherland. When people talk about Russian aggression in Ukraine, I suggest to them to call it the Kremlin’s aggression. It is the government and not the entire country that takes decisions even if someone is against it.*

Oleksandr Prigarin, Associate Professor at the Department of Archaeology and Ethnology of Ukraine at the Odessa I.I. Mechnikov National University provided the Equal Rights Trust with an analysis of the impact of the crisis and the events in Crimea and Donbas on public perceptions of ethnic Russians:

*While previously, ethnicity in Ukraine was determined by blood or by language, during the last one and a half...*
years we have observed the radicalisation of the ethnic factor. Previously one could easily be an ethnic Russian citizen of Ukraine. Now this formulation is at least naïve. (...) For a long time the issue of ethnicity was attributed to the private sphere, though it still was able to find ways to the public sphere. (...) Odesa is an example where numerous different ethnic groups normally coexist with each other. In fact, Russian culture has always been an integral part of the region and of the city. Russians have never felt as a minority here and would probably never accept this role. This is determined rather not by Russian ethnic factor, but by the Russian-speaking contents of the public space here. However, over the last one and a half years we can observe certain changes of the attitudes towards Russians and this is a result of a general politicisation of ethnicity. Perhaps for the first time, Russians acknowledge themselves as a minority here. At the private level, the attitude towards Russians did not change, but it has changed at the political level. Nevertheless, people continue watching Russian TV and films and reading Russian books.\textsuperscript{506}

Mr Prigarin further commented on the shrinking space for the promotion of Russian culture:

\textit{Today it is very difficult to maintain of a Russian-oriented cultural organisation in the public space, i.e. an organisation which is not engaged in politics and works exclusively in the sphere of culture. With regard to Odessa, there are two aspects. First, there is an external political aspect. We had a centre of Russian culture which was opened in the university following a number of scandals. Now it ceased to exist. Second, there is a regional aspect. Most of the active Russian activists basically left Odessa:}

\textsuperscript{506} Equal Rights Trust interview with Oleksandr Prigarin, Associate Professor at the Department of Archaeology and Ethnology of Ukraine at the Odessa I.I. Mechnikov National University, 8 April 2015, Kyiv.
some of them are in jail, others emigrated. One may not share their political and ideological views, but these people were able to organise cultural and social space in order to promote Russian culture. Today people are cautious in expressing their Russianness. We face a situation in which Russian ethnic affiliation is perceived as an allegiance with the regime of Putin. Last spring the majority of people were not pro-Russian or pro-Putin. They rather did not accept Ukrainian ethnicisation and their protest was aimed at that. (…) Until recently, there were a number of local programmes for schoolchildren, teachers, or veterans financed from the Russian state budget and backed by access to the media in Russia. These programmes were not sufficient but they existed. Now they virtually ceased to exist. Thus, allegorically speaking, local Russians were forgotten by both Ukraine and Russia.  

Some interviewees blamed the media for increasing the level of tension between ethnic Ukrainians and ethnic Russians. For example, Larisa Abramovich stated that:

_In today’s Ukraine, there is a huge stream of xenophobia coming from the media. While trying to cover “hot topics”, they start increasing stereotypes. Moreover, they often are ignorant and do not have enough knowledge of history. The state currently does not have any programme which is focused on the media training them on why they should not use certain provocative approaches that incite xenophobia and hate speech._  

Similarly, Nadiya Fedoseyeva-Yefymyshch, President of the Union of the Uralic Peoples of Ukraine told the Trust that:

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507 _Ibid._

508 Equal Rights Trust interview with Larysa Abramovych, Chair of the Board of International Public Organisation “International Union”, 7 April 2015, Kyiv.
My organisation brings together representatives of Uralic (Finno-Ugric) peoples who have their homelands in the Russian Federation. (...) The Finno-Ugric factor is often used in anti-Russian rhetoric. In the media one can read or hear about the “Finno-Ugric onslaught”, or that Russians are actually not Slavs but a certain mixture of Finno-Ugric and Turkic peoples. These stereotypes construct obviously negative attitudes towards representatives of these nations.\(^{509}\)

**Conclusions**

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, with no evidence of ethnic discrimination. However, the research revealed that the conflict had increased the tension between the two previously hardly distinguishable groups, though even at the time of writing, ordinary Ukrainians appeared to draw a clear distinction between their opposition to the Russian state and their attitude towards ethnic Russian Ukrainians.

The position of the Russian community as of mid-2015 can be summarised as follows: Ukraine’s Russians generally do not perceive themselves as a national minority. This is largely determined by the historical experiences of this community, its size and the spread of the Russian language in the Ukrainian public space. The 2014–2015 Ukrainian-Russian conflict has significantly affected the ethnic Russians in numerous ways, including: (i) politicisation of ethnicity has resulted into the situation in which Russian ethnic identity is often intentionally or unintentionally confused/associated with Putin’s regime; (ii) the mobilisation of ethnic Russians in Ukraine could be traced along two

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\(^{509}\) Equal Rights Trust interview with Nadiya Fedoseyeva-Yefymyshch, President of the Union of the Uralic Peoples of Ukraine. 7 April 2015, Kyiv.
diverging lines: either to identify with a multi-ethnic Ukrainian political nation or with the political concept of “the Russian world” pursued by Kremlin; (iii) the latter has been largely determined by the Kremlin’s efforts to support pro-Russian political projects rather than to focus on Russian culture in Ukraine; (iv) as a result of the conflict Russians in Ukraine face an identity crisis; (v) Russian cultural organisations have become less active and less visible; (vi) the conflict between Ukraine and Russia has significantly decreased the scope of opportunities for cooperation of Ukraine’s Russians with their kin-state; (vii) similar challenges are also experienced by other ethnic communities in Ukraine which have their homelands on the territory of the Russian Federation.

2.5.4 Jews

According to the 2001 census, there were a total of 103,591 Jews in Ukraine, just over 20% of the total number living in Ukraine at the time of the 1989 census (486,326). The figure in the 2001 census has been called into question by some Jewish organisations and activists. The European Jewish Congress, for example, has reported that the actual number of Jews in Ukraine is between 360,000 and 400,000, with the largest communities in Kyiv (110,000), Dnipropetrovsk (60,000), Odesa (45,000) and Kharkiv (45,000). Regardless of the actual number, it is undeniable that, upon independence in 1991, many Jews emigrated from Ukraine to Israel and the USA, largely as a result of the poor Ukrainian economy. However, the fall of the Soviet Union – under which Jews suffered significant repression – led to something of a renaissance of Jewish life across the former Soviet Republics, including Ukraine. Today, 98.5% of Jews in Ukraine live in urban areas, making them one of the most urbanised groups in the country. 83% of Ukrainian Jews are native Russian speakers, 13.4% declare Ukrainian as their mother tongue, while only 3.1% (mostly elderly people) regard Yiddish as their first language.

510 See above, note 363.


513 See above, note 363.
The conflict in Donbas has coincided with an increase in Jewish emigration from Ukraine to Israel; in 2013, 2,020 Jews left Ukraine to go to Israel while the following year this figure almost tripled to 5,840. However, some of the individuals interviewed in preparing this report suggested that the conflict has actually increased cooperation and understanding between ethnic Ukrainians and Jews. Indeed, Ihor Shchupak, head of the Dnipropetrovsk Museum of Jewish Memory and the Holocaust, has been quoted as saying that the present is a “golden age” for Jews in Ukraine. Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, argued in an interview with the Equal Rights Trust that the events since the EuroMaidan crisis have united Ukraine’s different groups, overcoming historic divisions:

*The recent events in Ukraine showed a turning point when people stopped dividing themselves into nationalities and when all realized that Ukraine is a multi-ethnic state where all live under the same sky. Before this moment all communities lived here, but they lived as communities and did not have such an identification with Ukraine. Today we understood that we must not divide our people into nationalities because we are all Ukrainians. Everyone who stood to defend Ukraine said that he is Ukrainian, though not forgetting about his or her own ethnic affiliation. I would make a parallel with the US where all people regardless of their origin say: “I am American”. Today all people say: “We are Ukrainians”. They perfectly understand that Ukrainians means affiliation with the country they live in. When an aggressor comes, you can lose everything. When you lose everything, your ethnic affiliation is not important and all have to unite to stand against the aggressor."

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516 Equal Rights Trust interview with Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, 9 April 2015, Dnipropetrovsk.
Generally, Jews in Ukraine interviewed for this report in April 2015 believed that there was little, if any, discrimination against them and that the Jewish population was well-integrated within society. Arkadii Monastyrskyi, President of the Jewish Forum of Ukraine, stated that:

_Ukrainian Jews actively participate in politics on different levels. There are many Jews in the Parliament and state public bodies. However, these Jews rather view themselves as Ukrainian citizens and not as Jews._

Similarly, Pavlo Kozlenko, Director of the Odesa Holocaust Museum, spoke of how Jews “like many other groups are deeply integrated into Ukrainian society”, continuing:

_It is very difficult to separate [Jews] from other nationalities. In fact, on the personal level, ethnic allegiance is not important for the people. We do not speak about bizarre anti-Semitism, but about normal people. In today’s Ukraine we have Jews on both sides of the barricades. This is because Jews are members of society with their own opinion which does not depend on their ethnic affiliation. Other nationalities do not have a special attitude towards Jews. Indeed, even though there could be a certain percentage of those who are narrow-minded (...) normal people perceive us in an ordinary way without prejudices._

Roman Shvartsman provided the Trust with a historical perspective:

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517 Equal Rights Trust interview with Arkadii Monastyrskyi, President of the Jewish Forum of Ukraine, 7 April 2015, Kyiv.

518 Equal Rights Trust interview with Pavlo Kozlenko, Director of the Odesa Holocaust Museum, 8 April 2015, Odesa.

519 Equal Rights Trust interview with Roman Shvartsman, Head of the Odesa Regional Association of Jews and former Prisoners of Ghettos and Nazi Concentration Camps, 8 April 2015, Odesa.
Testimony: Roman Shvartsman, Head of the Odessa Regional Association of Jews and former Prisoners of Ghettos and Nazi Concentration Camps

I am almost 79 years old now and I have seen many things in my life. 55 years of my life I lived in the Soviet Union. I can see a clear dividing line in my life, marked by the collapse of the Soviet Union and the emergence of an independent Ukraine. I have said it in my numerous interviews and will say it now. I want to say that when Ukraine became independent, Jews came to life and felt that they lived in an independent country. While previously we were told that religion is the opium of the masses, now we feel that we have Jewish religion, traditions and culture. They do not exist on paper, they are actively developing. For instance, in Odessa we have Jewish secondary and higher educational establishments. Though the education process is conducted in Ukrainian, much attention is being paid to Jewish culture and traditions. Today, in Odessa and in the whole of Ukraine, Jews feel free and comfortable. We communicate with the Jewish communities in other regions of our country and can definitely emphasise that now we can proudly say that we are Jews.

I can show you the changes with examples of my family. During the Soviet period, one of my brothers had to change his surname, the son of another brother had to take the surname of his Ukrainian mother and my daughter could not become a student at a medical institute. I could go further with the examples which I experienced myself or which my family members did. During 24 years since independence, I experienced a totally different attitude. For instance, in independent Ukraine I got two Orders of Merit.

(…) Comparing what was under Soviet rule and what is now, I can say that the attitude towards Jews is nearly perfect. People often try to find their Jewish roots. We deal with it, we help them. Previously people tried to hide their Jewish background. Now the situation is totally different. When I come to the authorities, they greet and welcome me, while in the Soviet time I knew that I could face negative attitudes only because I am a Jew.

(…) I do not accept the phrase “national minority”. This term is to a certain extent humiliating. We are the people of Ukraine and we live here. The other thing is that we are all of different ethnicities, cultures and traditions. I do not feel now that my ethnicity is worse than any other one.
Similar to Mr Shvartsman, some of the Jews interviewed objected to being considered members of a “national minority”. Pavlo Kozlenko, Director of the Odesa Holocaust Museum, for example, stated that:

Here in Odessa Jews do not feel as a minority, especially as a deprived minority. On the contrary, they actively participate in the political and cultural life of the city, the region and the country in general. Moreover, the enormous contribution made by Jews to the local culture, arts and sports can hardly be compared with other nationalities. So, we can ask who represents a minority and who constitutes a majority, in these terms.

For these reasons, accusations made by commentators from Russia to the effect that Ukraine is anti-Semitic have been fiercely contested by the Jewish population in Ukraine. Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, stated that:

Generally, Jews of our region are used by the Russian propaganda, which claims that they are oppressed, discriminated, etc. When a representative of the US State Department for countering anti-Semitism came here, I told him: “Jews are oppressed here! Judge for yourself: the governor is Jewish, his deputy and members of the team are Jews. The largest synagogue and the largest Jewish cultural centre in the world, “Menorah”, are also located in Dnipropetrovsk. Do you see how we are oppressed?” He smiled and said: “This is already an indicator!” I do not want to be under any illusion. Perhaps, on the people’s level there are still traits of anti-Semitism. However, many people in social networks write that today Jews demonstrate what it is to be a patriot. All elements of discrimination, including anti-Semitism, derive from people’s ignorance and lack of knowledge.


521 Equal Rights Trust interview with Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, 9 April 2015, Dnipropetrovsk.
Violence and Hate Crimes

In recent years, there have been numerous incidents of anti-Semitic hate crimes and violence, including assaults and desecration and graffiti at Jewish cemeteries.\textsuperscript{522} In 2013, there were a total 13 reported anti-Semitic incidents.\textsuperscript{523} However, in September 2014, the UN High Commissioner for Human Rights has maintained that according to impartial research Jews did not appear to feel threatened in Ukraine.\textsuperscript{524} Worryingly, recognizable patterns of anti-Semitic crime have been downplayed by the Jews interviewed in the research for this report, accepting such crime as “normal” and explaining the desecration of graves with factors such as the near absence of Jews in some regions, as a result of which Jewish cemeteries have not been maintained.\textsuperscript{525} A number of people spoke to the Equal Trust about anti-Semitic hate crime in Ukraine:

\textbf{A.}: As for the manifestations of anti-Semitism, we always know about them among the first. Usually two or three times a year some anti-Semitic graffiti appears. It does not bother me much because it is popular anti-Semitism and we have survived state anti-Semitism. In such a case we contact the relevant authorities who act within the scope of Ukrainian laws. The main emphasis here is different: in Ukraine a person is not humiliated because of his or her ethnicity when this person deals with the state authorities. We do not face it!

\textbf{B.}: As for the general situation with discrimination, there are a number of organisations who prepare monthly reviews on this topic. Indeed, we take into account all facts


\textsuperscript{523} Безп’ятчук, Ж., “Євреї об’єднують зусилля для захисту України від агресора”, Радіо Свобода, 12 November 2014.

\textsuperscript{524} The High Commissioner for Human Rights has noted that “when interviewed by an impartial and reliable source representative of the various Jewish communities in Ukraine, it appears that these communities do not feel threatened”. See above, note 522.

\textsuperscript{525} Equal Rights Trust interview with A., B. and C., 8 April 2015, Odesa. (Initials changed.)
and claims and they are all checked (publications, cases of vandalism, xenophobia). If there are flagrant violations, we contact the Commissioner for Ethno-national Policy and he issues statements. In the case of Jews, they sometimes become subjects of attacks; this concerns mainly religious adherents because this fraction of the Jewish community is more visibly recognisable. However, these attacks are not specific to Ukraine, since they are also typical for many other countries. There are also manifestations of vandalism on the cemeteries. In fact, cemeteries in Ukraine (not only Jewish) are in a very bad condition. However, the Jewish peculiarity rests upon the fact that there are areas of Western Ukraine where the Jewish population is nearly non-existent. Thus, there is no one to take care of the cemeteries and buildings. This becomes the reason for vandalism.

C.: To a certain degree we can observe popular anti-Semitism. But this is rather the ignorance of our society. It existed and will always exist. When a neighbour lives better than you, it is easier to be jealous than to focus on your own shortcomings. As for desecration of monuments (regardless of their nature), sometimes it has a political message and is often in fact a cheap provocation.\footnote{526} 

That being said, two interviewees noted that Article 161 of the Criminal Code – which prohibits deliberate actions aimed at inciting ethnic, racial or religious hatred – is difficult to enforce, and that anti-Semitic offences are instead treated as a lesser offence of hooliganism.\footnote{527}

\footnote{526}{\textit{Ibid.}} \footnote{527}{Equal Rights Trust interview with X., 7 April 2015, Kyiv; Equal Rights Trust interview with Y., 8 April 2015, Odesa. (Initials changed.)}
Testimonies: Criticism of Incitement provisions

X.: Art. 161 of the Criminal Code foresees punishment for the violation of citizens’ equality based on their race, ethnicity or religion. However, its fulfilment is problematic because of quite complicated and time-consuming procedure foreseen by the article. For instance, a violation must take place during a public event when the accused person must incite against someone or something. It also requires an expert opinion and there is a very big problem in that state experts are non-existent. Thus, it is difficult to prove that a crime was committed on the ground of ethnicity and was not an act of hooliganism or similar misconduct. In this regard, I should point out that stereotypes still exist in the Ukrainian society. We have organised plenty of exhibitions and projects on this topic. However, the effectiveness of these endeavours is limited to the target groups willing to participate in it and learn it.

Y.: In general, we have very good laws but these laws do not always work. The existing mechanisms are not always effective, there is a problem with collecting evidence, etc. The law enforcement bodies often think that it is easier to qualify certain acts as hooliganism than interethnic hatred. It is easier to impose administrative sanctions. In general, I should say that much depends on opportunities and the willingness of the people in charge to pursue certain activities or measures. If one wants to deal with a certain question, it will be successfully solved; otherwise the shortcomings could be explained in numerous possible ways.

Conclusions

Ukrainian Jews have historically been subjected to severe repression, but are today well-integrated into society, experiencing little, if any, discrimination. As illustrated above, Jewish community leaders consider Ukrainian Jews to be sufficiently integrated so that most consider themselves Ukrainian citizens first and foremost. While those interviewed did identify Anti-Semitic practices, they emphasised the fact that these are relatively rare acts by private individuals, rather than the state sanctioned Anti-Semitism of the Soviet era.
2.5.5 Xenophobia against Foreign Nationals

Research for this report identified evidence of xenophobia and discrimination against non-nationals in Ukraine, primarily manifested in discriminatory violence and hate crimes, as well as discriminatory treatment by law enforcement agencies. This appears to be more often the case when the person has a dark skin colour. The victims are often students and immigrants from countries which were not previously part of the USSR.

At the time of the 2001 census, there were a total of 230,072 foreign nationals and 84,047 stateless persons in Ukraine, together making up just 0.7% of the population. Of the foreign nationals, the majority were from former Soviet republics (163,464) with 66,608 coming from other countries.528 The number of new immigrants each year is relatively low: between 30,000 and 37,000 a year between 2008 and 2012.529 At the end of 2011, the total number of migrants in Ukraine registered with the Ministry of Interior was around 313,000.530

Discrimination on the basis of skin colour is prohibited both by Article 24 of the Constitution, which prohibits “privileges or restrictions” based on, *inter alia*, skin colour”, and the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.531 There are a number of provisions in the Criminal Code relating both to the incitement of hatred (primarily Articles 161 and 300) and hate crime – aggravated offences where the motive is race, which would include skin colour, or other characteristics. In addition to Article 161 of the Criminal Code, Article 300 prohibits the “importation, making or distribution of works that propagandise violence and cruelty, racial, national or religious intolerance and discrimination” and there are also other offences which can be aggravated if motivated by racial hatred (for more detail, see section 3.2.3.1. of this report).

529 Ibid., p. 3.
530 Ibid., p. 2.
531 See above, note 51.
**Violence and Hate Crime**

The most significant form of xenophobia towards foreign nationals and recent immigrants comes in the form of hate crime and hate speech. Complete statistics on the number of incidents are difficult to obtain. However, the Kharkiv Human Rights Protection Group documented 62 hate crimes in 2012, including 27 attacks resulting in 48 foreign nationals being injured; in 2011, 35 foreign nationals were attacked.\(^{532}\) While the Ministry of Internal Affairs for 2011 gave a similar figure for the number of attacks on foreign nationals (33), none of these was classified as hate crime.\(^{533}\) Skin colour is invariably the motivation for such attacks. In 2012, ECRI noted that:

> Most racist incidents reported to the authorities or – more often – to civil society consist of physical attacks committed against foreign students, migrants, refugees, asylum seekers, Roma and other persons of non-Slavic appearance, including Africans, Central and South-East Asians and persons from the Middle East or the Caucasus. Such attacks clearly target people based on their appearance and most commonly occur in Kyiv and other major urban centres where there is a significant number of foreign students or migrants. (…) Such attacks are frequently severe, resulting in serious wounding by beating, knifing or shooting. Some observers also indicate that racist attacks tend to increase during electoral periods, when the political climate is less stable.\(^{534}\)

According to the ECRI, hate crimes are most commonly carried out by groups of skinhead youths who, while not necessarily members of structured right-wing organisations, may belong to a “skinhead subculture”.\(^{535}\)

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533 Ibid.

534 See above, note 399, Para 43.

535 Ibid.
While Article 161 of the Criminal Code provides for an offence of “deliberate actions aimed at inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity or insult to the feelings of citizens”, the reference to “citizens” appears to exclude non-citizens from its scope. This has led to criticism from the CERD in 2011.\(^{536}\) However, the Ukrainian authorities responded that there is a special note in the Criminal Code which confirms that stateless persons and foreigners are included in the term “citizens” and that the term does not only include Ukrainian nationals.\(^{537}\) Whether this is correct or not, it is not disputed that Article 161 is seldom used in practice. Before 2007, only one conviction had ever been secured, in 2002, following an attack on a synagogue.\(^{538}\) It was only in 2008 that the first conviction for an attack against a foreign national took place, following the murder of a Nigerian man in Kyiv.\(^{539}\) In 2009, only four investigation proceedings were initiated by the Public Prosecutor’s Office, six in 2010, and two in 2011. Even with these low numbers, not all of the proceedings resulted in charges being brought to court: no court proceedings were initiated in 2009, while there were three in 2010 and a further three in 2011.\(^{540}\)

In 2014, the HRC expressed its concern “that article 161 of the Criminal Code (...) which requires proving deliberate action on the part of the perpetrator, is rarely used and that such crimes are usually prosecuted under hooliganism charges”. The Committee urged the Ukrainian authorities to:

\[
\text{[S]}\text{trengthen its efforts to combat hate speech and racist attacks, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State party should also step up its efforts to ensure that alleged hate crimes are thoroughly investigated, that perpetrators are prosecuted under article 161 of the Criminal Code}
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\(^{536}\) See above, note 458, Para 9.

\(^{537}\) See European Commission against Racism and Intolerance, above, note 426, Para 21.


and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated.\textsuperscript{541}

\textbf{Relations with Law Enforcement Agencies}

Foreign nationals and recent immigrants commonly face discriminatory treatment by law enforcement agencies, primarily the police, who sometimes racially profile them for the purpose of identity checks or even to extort money.\textsuperscript{542}

In a survey of foreign nationals conducted by the Kharkiv Human Rights Protection Group in the city of Kharkiv at the end of 2011, 79.1\% of respondents stated that they had been detained by representatives of law enforcement agencies with the most obvious reason for this being their skin colour or appearance.\textsuperscript{543} In addition, 67\% of respondents had had their documents checked, and 13.2\% had had money extorted from them. More than half stated that law enforcement agents had detained them, despite their having the correct documentation with them, and 45\% of those detained were only released after they had paid a bribe to the police.

One student from Turkmenistan at Kharkiv National University of Economics attested:

\textit{They are so insolent. Well, how to say, they have a small salary, and it is necessary to live somehow, so they extort. Maybe they have some personal hostility against us, foreigners, but when they capture one of us, they don’t take us to their office, they just say, “give us money”, and if they get money, they just let us go. But if the person who is captured knows his rights and starts to argue with the policemen, they just let him go.}\textsuperscript{544}

\begin{itemize}
\item \textsuperscript{541} See above, note 380, Para 11.
\item \textsuperscript{542} See above, note 399 Para 166.
\item \textsuperscript{543} Ангорская, Л. “Почти половина иностранцев в Харькове подвергались преследованиям (данные опроса)”, Городской дозор Харькова, 30 January 2012.
\item \textsuperscript{544} Николаев, И., “Чужой среди чужих: как складываются отношения иностранных студентов с украинцами”, Харьковского профсоюза студентов, 23 June 2011.
\end{itemize}
Another student, A. Markse, studying at the Kharkiv National Automobile and Highways University, said, “Once a policeman was asked, ‘Why do you stop us and extort money out of us constantly?’ and he replied, ‘Why? Because you are foreigners’.”

The CERD has castigated the Ukrainian authorities over the:

> [A]ttitudes and reluctance to accept the racist or discriminatory nature of hate crimes by the law enforcement authorities as well as the repeated incidents of ethnic and racial profiling by the police, resulting in a majority of the reported hate crimes remaining unanswered.

The Committee urged the Ukrainian authorities to:

> [T]ake immediate measures to effectively investigate reported hate crimes and ensure that the police do not engage in racial or ethnic profiling when conducting document checks on foreigners or members of “visible minorities”. To that end, the Committee recommends that the State party investigate and bring to justice perpetrators of such acts regardless of their official status, and continue to expand training on human rights issues for staff of the Ministry of the Interior, State Migration Service, State Border Guard Service and the police.

**Conclusions**

There is evidence of hate speech and violent hate crime by skinhead youth groups against “visible” minorities in the country, primarily immigrants and students of darker skin or non-European features, though there are currently no official statistics on the prevalence of such acts. Ukraine has been criti-

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545 Ibid.
546 See above, note 458, Para 10.
547 Ibid.
548 See above, note 399, Paras 43 and 128.
cised for its inadequate response to these crimes, with both the relevant laws and their implementation called into question. In addition to hate crime, recent immigrants are disproportionately likely to be stopped and detained by law enforcement agencies.

2.6 Discrimination on the Basis of Nationality and Citizenship

Ukraine’s obligations to prohibit discrimination on the basis of nationality and citizenship differ from its obligations in respect of race, ethnic origin and colour. In respect of the latter three characteristics, Ukraine is required to prohibit all forms of discrimination. In respect of nationality and citizenship, however, the international human rights treaties to which Ukraine is party do not require that all rights and freedoms guaranteed to citizens are guaranteed to non-citizens equally. Some distinctions are justifiable and permissible, though these exceptions are limited. These distinctions are discussed in more detail in Part 3 of this report.

At the time of the 2001 census, there were a total of 230,072 foreign nationals and 84,047 stateless persons in Ukraine, together making up just 0.7% of the population. Of the foreign nationals, the majority were from former Soviet republics (163,464) with 66,608 coming from other countries. The number of new immigrants each year is relatively low: between 30,000 and 37,000 per year between 2008 and 2012. By the end of 2011, the total number of migrants in Ukraine registered with the Ministry of Interior was around 313,000.

Legal and Policy Framework

Article 24, paragraph 1 of the Constitution of Ukraine provides that “[c]itizens shall have equal constitutional rights and freedoms and shall be equal before the law”. Article 26 provides that foreign nationals and stateless persons in Ukraine enjoy the rights and freedoms, and also bear the duties, of citizens of Ukraine, save for exceptions expressly provided for by the Constitution, national legislation or international treaties to which Ukraine is

549 See above, note 528.
550 Ibid., p. 3.
551 Ibid., p. 2.
party. Together, these provisions mean that foreigners and stateless persons enjoy the same constitutional rights and freedoms as citizens, unless explicitly provided otherwise in law. In addition to the protection provided by Article 26, it should be noted that the majority of the rights and freedoms listed in the Constitution are guaranteed to “everyone”, though there are a significant number which are explicitly guaranteed only to “citizens”. One of these provisions is the first paragraph of Article 24 itself, thus making the right to equality itself an exception to the general proposition that non-citizens enjoy rights and freedoms listed in the Constitution. This is a regrettable failure of the constitutional protection of equality rights; the general constitutional principle should be the guarantee of a right to equality to “everyone”, including non-citizens; and exceptions should be defined, specifying those areas and circumstances in which less favourable treatment would be permitted.

Article 3, paragraph 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”552 mirrors Article 26 of the Constitution, providing that foreigners and stateless persons lawfully in Ukraine have the same rights, freedoms and duties as citizens of Ukraine, save as excluded by the Constitution or laws of Ukraine, or international law. Further, Article 3, paragraph 2 provides that “[f]oreigners and stateless persons under the jurisdiction of Ukraine, regardless of the legality of their stay are entitled to recognition of their legal and fundamental rights and freedoms”.

The precise exceptions and limitations to rights for non-citizens are discussed in more detail in Part 3 of this report. In practice, however, the existence of some distinctions between citizens and non-citizens in respect of certain constitutional rights does not present a significant problem. As the CERD has stated:

\[\text{In practice foreign nationals and stateless persons legally present in Ukraine enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, subject to restrictions provided by law.}\]


553 See above, note 458, Para 9.
The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” was amended in 2014 to prohibit discrimination based on citizenship.\textsuperscript{554}

**Discriminatory Legal Provisions**

In addition to legislation governing the rights and freedoms which are restricted to citizens in the Constitution, other pieces of legislation make distinctions between citizens and non-citizens, some of which are more justifiable than others.

Many of the restrictions placed on non-citizens are in the field of employment. Only Ukrainian citizens are eligible for positions in the civil service, in local government bodies, in the military, in the prosecutor’s office, at the Security Service of Ukraine, in internal affairs bodies, at the State Customs Service of Ukraine, as judges, and as counsellors-at-law, notaries and auditors.\textsuperscript{555} Foreign nationals are also not allowed to establish farms, although they are allowed to work on them.\textsuperscript{556} Save for these provisions, foreign nationals and stateless persons permanently resident in Ukraine, as well as those who have refugee status or who have been granted asylum, enjoy the same rights in employment as Ukrainian citizens, although work permits are required.

\textsuperscript{554} See above, note 51, Article 1, paragraph 2.


\textsuperscript{556} Закон України “Про фермерське господарство” (Відомості Верховної Ради України, 2003, № 45, с. 363), as amended between 2005 and 2014.
As noted above, international law provides for certain exceptions to the general prohibition on discrimination on the basis of nationality or citizenship. Of greatest relevance when considering the provisions above is the exception contained in Article 2(3) of the ICESCR, which reads:

*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

This provision permits developing countries to differentiate between citizens and non-citizens in respect of the right to work, an exception to the general prohibition on discrimination in respect of Covenant rights which is provided in Article 2(2). Establishing whether this exception covers the provisions listed above is complex. First, there is a question as to whether Ukraine is a “developing country” as there is no single universal definition of what constitutes a “developing country”. While the Development Assistance Committee of the Organization for Economic Cooperation and Development defines Ukraine as a “lower middle income country” which is therefore eligible for development assistance, the United Nations Development Programme considers Ukraine to have a “High Development Index”. More fundamentally, there are legitimate questions over the extent to which laws which prevent non-citizens from accessing employment meet the requirement arising under Article 26 of the ICCPR – whose application is “not limited to those rights which are provided for in the Covenant” – that the content of legislation should not be discriminatory.

Article 24 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations” imposes certain restrictions on religious activity by foreign citizens (but not stateless persons). It provides that priests, religious preach-
ers, teachers, and foreign representatives of foreign organisations may engage in religious preaching, performance of religious rites and other canonical activity only for those religious organisations which invited them to do so, and only with the official approval of the state body which registered the religious organisation in question.

Article 212, paragraph 12 of the Family Code prohibits stateless persons from adopting children, and Article 213 gives preferential treatment amongst adopters to Ukrainian citizens over foreign nationals.

Whereas there are questions over the extent to which Ukrainian legal provisions restricting access to employment for non-citizens could be permissible under the ICESCR, no such justification can be made for restrictions on rights protected under the ICCPR. The HRC has noted that: “the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”, while neither Article 2(1) nor Article 26 of the Covenant draw distinctions between citizens and non-citizens. Thus, restrictions on religious practice would be prohibited under Article 18 read with Article 2(1), while limitations on adoption would be a breach of Article 26, which requires states to prohibit discrimination in the law.

**Conclusions**

While 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, states must act within the scope of permissible limitations. In the case of Ukraine, evidence indicates that the state has exceeded its discretion, retaining a number of laws which discriminate, without justification, against non-citizens.

In particular, many legislative provisions restrict certain professions or professional activities to citizens. It may be justified to limit access to certain professions and professional activities to citizens where there is a genuine occupational requirement inherent in the particular profession or professional

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561 See above, note 204.

activity such that only a citizen could or should do it. Applying this test, the provisions limiting some of the profession and professional activities to citizens – such as auditors and farming – are patently unjustified.

2.7 Discrimination on the Basis of Language

Language is one of the characteristics explicitly listed in Article 2 of both the ICCPR and the ICESCR, and as such Ukraine is required to ensure the enjoyment of all civil, political, economic, social and cultural rights provided in these Covenants without discrimination on this basis. Further, as with other characteristics discussed elsewhere in this Part, Ukraine is required, by virtue of Article 26 of the ICCPR, to prohibit discrimination on the basis of language. Further, the ECHR requires Ukraine to prohibit discrimination based on language in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

In addition, Ukraine is required by Article 27 of the ICCPR to ensure that persons belonging to linguistic minorities are not denied the right, “in community with the other members of their group, (...) to use their own language” and, as part of the regional human rights framework, Ukraine has obligations under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM). Article 5(1), for example, requires Ukraine to:

\[
\text{[P]romote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. (emphasis added)}
\]

The FCNM contains further obligations in respect of ensuring freedom to hold opinions and to receive and impart information and ideas in minority languages (Article 9), the right to use freely and without interference a minority language, in private and in public, orally and in writing (Article 10) and to receive education in minority languages (Article 14).

Ukraine also has obligations in respect of minority languages under the European Charter for Regional or Minority Languages. Upon ratification of the
Charter in 2005, Ukraine declared that it would apply various provisions of the Charter, in respect of the Russian language and an extensive list of regional and minority languages, namely all of those listed in the 2001 census with the exception of Armenian.\(^{563}\)

**History of Language Use**

There is, perhaps, no issue which excites more attention and controversy amongst Ukrainian politicians than the question of language and, specifically, the status and use of the two major languages in the country: Ukrainian and Russian. As Nicolai Petro has noted, “language politics is so contentious that politicians will go to almost any lengths to deny that the issue even exists”.\(^{564}\) More colourfully, Professor Bill Bowring noted prophetically, in 2012, that the language situation in Ukraine “resembles an overheated kettle about to explode”.\(^{565}\)

Russian and Ukrainian are both East Slavic languages which started to become distinct in the 14\(^{\text{th}}\) century.\(^{566}\) When Russia assumed control of the central and eastern part of what are now the Ukrainian lands in the 17\(^{\text{th}}\) century, the Russian language began to dominate in urban areas, while Ukrainian was spoken more widely in rural areas.\(^{567}\) In the early 18\(^{\text{th}}\) century, under Peter the Great, the growth in literacy and education helped to standardise the Russian language across the Russian Empire, while other languages were suppressed. By the early 19\(^{\text{th}}\) century, the Ukrainian language had become known as the Malorossiyskiy dialect, even by many educated Ukrainians.\(^{568}\)

Later in the 19\(^{\text{th}}\) century, however, many liberals and intellectuals sought to promote the Ukrainian language. Language became linked with identity,

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563 The languages listed in the 2001 census were Crimean Tatar, Moldavian, Hungarian, Romanian, Bulgarian, Belarusian, Armenian, Gagauz, Romani, Polish, German, Slovak, Hebrew and Greek.


566 See above, note 564.


with liberals associating the use of local languages with nationalism and the end of tsarist autocracy. The Russian government responded with force: in 1863, the Interior Minister, Pyotr Valuyev, issued a decree which prohibited the publication of religious and popular literature in the Ukrainian language, even claiming that Ukrainians themselves “insist that no special Malorussian language has ever existed; [it] does not exist, and cannot exist”. A few years later, when Ukrainian literature arrived across the border from the Austro-Hungarian Empire, Alexander II issued a decree in 1876 prohibiting the importation of any literature published in Ukrainian.

The attitude of the Bolsheviks was markedly different. After coming to power in 1917, a policy of “Ukrainianisation” was adopted. A series of decrees made Ukrainian the language of the Ukrainian SSR and mandatory in all spheres. This policy was short-lived. In the 1930s, Stalin implemented a new policy on the question of nationality directed against “bourgeois nationalist” thinking. In 1938, the Russian language was made mandatory in all schools and the first all-Ukrainian newspaper in Russian, Ukrainskaya Pravda, was established.

The policy of Russification continued until the 1980s when, shortly before the collapse of the USSR, the government of the Ukrainian SSR passed legislation, in 1989, which made Ukrainian the sole official language of the state. When the Constitution of newly independent Ukraine was adopted in 1996, Article 10 – which sets out the status of languages in Ukraine – largely mirrored the principles in the 1989 law: Ukrainian was established as the sole “state language” and the state was required to ensure “the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine”. Russian was given secondary status, Article 10 of the Constitution only guaranteeing “the free development, use and protection of Russian” alongside “other languages of national minorities”. Volodymur Kulyk has called this combination

[A] result of an uneasy compromise between those parliamentary forces seeking to ensure the functioning of

569 See above, note 564.
570 See above, note 568, p. 21.
571 Закон Української “Радянської Соціалістичної Республіки Про мови в Українській РСР” (Відомості Верховної Ради УРСР, 1989, Додаток до № 45, с. 631).
Ukrainian as the sole public language and those striving for the preservation of the free use of Russian in all social fields.\textsuperscript{572}

The 1990s saw the Ukrainian language given a dominant status: laws were passed requiring all Ukraine-based television stations and billboards to be in Ukrainian; Ukrainian language and literature were established as mandatory subjects at schools, and foreign films were required to be subtitled or dubbed in Ukrainian.\textsuperscript{573} This process was strongly encouraged under President Viktor Yushchenko in the early 2000s. When the pro-Russian Viktor Yanukovych – himself from Donetsk oblast and with significant support from the southern and eastern parts of the country – took office in 2010, language policy strengthening the legal rights of those who preferred to speak Russian was introduced. In 2012, the Law of Ukraine “On the Principles of State Language Policy”\textsuperscript{574} was adopted, replacing the 1989 law. The 2012 Law provides that where a minority language is spoken by 10% or more of the inhabitants of a particular territory, special measures must be taken in that territory in respect of that language, practically giving it an equivalent status to Ukrainian in that particular territory.\textsuperscript{575} If a minority language is spoken by less than 10% of the territory’s inhabitants, it will be the subject of special measures if the local council so decides.\textsuperscript{576} Within two years, thirteen of Ukraine’s twenty-seven territories had given Russian special status.\textsuperscript{577} The Law was strongly opposed by many, and resulted in riots, primarily as a result of its strengthening the position of the Russian language.\textsuperscript{578}

Despite the fact that the 2012 Law strengthened the use of Russian, some pro-Russian activists who called for its adoption and for a stronger status


\textsuperscript{573} See above, note 568, p. 22.

\textsuperscript{574} Закон України Про засади державної мовної політики (Відомості Верховної Ради, 2013, № 23, с. 218), as amended between 2013 and 2014.

\textsuperscript{575} Ibid., Article 7.\textsuperscript{3}

\textsuperscript{576} Ibid.

\textsuperscript{577} Українська правда, “Турчинов пообіцяв поки не скасовувати закон про мови нацменшин”, pravda.com.ua, March 3 2014.

for the Russian language more broadly expressed disappointment in the outcome.\textsuperscript{579} In February 2014, following the impeachment of President Viktor Yanukovych, the Verkhovna Rada, in a belated attempt to pacify fast growing discontent and opposition to Kyiv among the Russian-speaking eastern and southern regions, passed legislation which would have repealed the Law. However, the acting President, Oleksandr Turchynov, vetoed the legislation, stating that he would not sign it “until a new bill to enable development of all languages is drawn up and passed in Rada.”\textsuperscript{580} The decision to cancel the law of 2012 was one of the pretexts for pro-Russian separatists in Donetsk and Luhansk oblasts to rise to arms and subsequently to declare independence from Kyiv, in April 2014.

\textbf{Legal Framework}

As noted above, Article 10 of the Constitution provides that the state language of Ukraine is Ukrainian and that the state will ensure the “comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine”. Ukrainian is thus given a privileged position over all other languages. Article 10 also provides for the recognition of other languages, guaranteeing “the free development, use and protection of Russian, and other languages of national minorities”.

Although Article 10 provides that the use of languages thus guaranteed by the Constitution is to be regulated by law, Article 53 (which provides for a right to education) states that citizens who belong to national minorities are guaranteed the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies. Thus, Article 53 meets, in part, the requirements of Article 27 of the ICCPR, Article 14 of the Framework convention on National Minorities, and the European Charter for Regional or Minority Languages listed above.

As noted, the Law of Ukraine “On the Principles of State Language Policy” provides that where a minority language is spoken by 10% or more of the

\textsuperscript{579} Столяренко, А., “Все про статус русского языка”, Українська правда, 13 March 2014.

inhabitants of a particular territory, special measures must be taken in that
territory in respect of that language, essentially giving it an equivalent status
to Ukrainian in that particular territory.\footnote{See above, note 574, Article 7.} If a minority language is spoken by
less than 10\% of the territory’s inhabitants, it will be given special measures
if the local council so decides.\footnote{Ibid.}

On the specific issue of discrimination on the basis of language, such discrimina-
tion is prohibited by both Article 24 of the Constitution and the Law of Ukraine
“On Principles of Preventing and Combating Discrimination in Ukraine”\footnote{See above, note 51.}

\textit{Use of Languages in Practice}

In practice, it is extremely difficult to classify people in Ukraine into groups on
the basis of their language. A person may consider one of the two languages
to be their “first language” or their “native language”, even if raised to speak
both fluently. They may, for reasons of identity, consider one language to be
their preferred language of communication, but in practice speak the other
even better. Friends may switch between Ukrainian and Russian when speak-
ing with each other. There are even various dialects (known collectively as
Surzhyk) which contain a mixture of both Russian and Ukrainian.

While the vast majority of people in Ukraine speak both languages,\footnote{See, for example, Fomina, J., “Language, Identity, Politics – the Myth of Two Ukraines”,
\textit{Institute of Public Affairs}, 2014, p. 5. A survey undertaken by the Razumkov Centre in 2002
suggested that 94.1\% of persons in Ukraine spoke Russian and 91.0\% spoke Ukrainian (Центр
Разумкова, Які мови Ви знаєте, тобто, якими мовами Ви можете спілкуватися?, available
to classify individuals generally utilise one of two indicators: (i) language
identity and (ii) language practice.\footnote{For further detail on the distinction between language identity and language practice,
particularly as it applies in Ukraine, see: Kulyk, V., “Language identity, linguistic diversity and
political cleavages: evidence from Ukraine”, \textit{Nations and Nationalism}, 17 (3), 2011, pp. 627–648.}

When examining these two indicators, it is important also to consider the actual relationship between language and
ethnicity, as there is a common misconception that ethnicity and language are
always correlative. The 2001 census showed that 77.8\% of the population self-
Patterns of Discrimination and Inequality

identified as ethnic Ukrainian and only 17.3% as ethnic Russian. The census also asked individuals which language they considered their “native language” (thus generating data against the first indicator): 67.5% of people stated that Ukrainian was their native language and 29.6% that Russian was their native language.\(^{586}\) Those who said that their native language was Ukrainian were predominant in the northern and western regions while those who said that they spoke Russian as their native language dominated in the eastern and southern regions. Instantly, it is clear that ethnicity and native language are not always correlative. More recently, in 2008, the Razumkov Centre undertook a survey which asked people which language they considered their native language, with the results broken down by region.\(^{587}\)

<table>
<thead>
<tr>
<th>Table 5: Language Considered Native Language by Language and Region</th>
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<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Ukrainian</td>
</tr>
<tr>
<td>Russian</td>
</tr>
<tr>
<td>Both Ukrainian and Russian</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Hard to Say</td>
</tr>
</tbody>
</table>

Asking people which is their language of practice (the second indicator) can produce very different results. To give one example, a survey from 2011 asked individuals which language they spoke at home, finding that 42.8% of respondents spoke Ukrainian at home (up from 36.8% in 1996) while 38.6% spoke Russian (up from 29.0%). 17.1% spoke both (down from 32.0%).\(^{588}\)

Looking at these figures, a complex picture emerges. While the proportion of the population who considered themselves to be ethnically Russian was, in 2001, around 17.3%, the proportion of people who considered their native


\(^{588}\) Kramar, O., “Russification via Bilingualism”, The Ukrainian Week, 18 April 2012.
language to be Russian was almost double: 29.6%. When one looks at the language that people use at home, the proportion stating that they speak Russian is higher still: approximately 38.6% in 2011. Professor Volodymyr Kulyk has explained these differences as part of an analysis of the results of a mass survey undertaken in 2006 by the Hromadska Dumka Centre:

Given that native language is often considered to be the language of one's nationality rather than one's own use, many people speaking mostly or even exclusively Russian still declare their native language to be Ukrainian (...)

Even more ambiguous is the declaration of one's Ukrainian nationality, which encompasses not only different language identifications (in our sample, 30 per cent of those defining themselves as Ukrainians declared their native language to be Russian or both). For Ukrainian-speakers, therefore, the primary determinant of policy preferences is the main language of everyday use. For Russian-speakers, however, native language – in this case, closely related to nationality – is of more importance because the fact of speaking Russian does not itself tell much about an individual’s preferences in language use and language policy.\footnote{Kulyk, V., “Language Policies and Language Attitudes in Post-Orange Ukraine” in Bester-Dilger, J., (ed.), Language Policy and Language Situation in Ukraine: Analysis and Recommendations, Peter Lang, 2009, pp. 41–42.}

While resentment or frustration may arise when an individual is not able to use their preferred language (whether Ukrainian or Russian), such situations cannot always be classified strictly as discrimination. Indeed, only a small proportion of people living in Ukraine are concerned about discrimination on the basis of language. An opinion poll from 2012 showed that the status of the Russian language was ranked just 31st out of a list of issues of concern to Ukrainians.\footnote{Корреспондент, “Среди приоритетов украинцев статус русского языка находится на 31-м месте”, korredpondent.net, 14 June 2012.} A more recent sociological survey from 2014 showed that across the whole of Ukraine, only 2.5% of people feared discrimination on the basis of language or ethnic origin; the figure in south eastern Ukraine – the region with a predominantly Russian-speaking population – was only 4.4%.\footnote{Mirror Weekly, “Survey: Ukraine’s South East destroys myth of Russian language oppression”, mw.ua, 31 December 2014.}
It should be noted that in the context of the war in the Donbas, the situation may be rapidly evolving and data obtained even as recently as 2012 may no longer be representative of the current position at time of writing. In interview with the Equal Rights Trust conducted in February 2015, Volodymyr Kulyk explained the difference in the perception of discrimination between Ukrainian speakers and Russian speakers, in a context where more and more people actually choose to speak Ukrainian:

Many more Russian speakers consider themselves to be discriminated on the basis of language than Ukrainian speakers (...) [The] explanation is [that] Russian speakers experience a new situation: they are accustomed to the situation when their language opens them every door, when they can use their language freely in every situation and now there appear some situations – few, but some situations – where their language is not accepted (...) some situations where a different language is spoken and they are uncomfortable. Ukrainian speakers are more accustomed to the reality that their language is not spoken everywhere; for decades they had to use Russian for some purposes and they do not consider this anything noteworthy. Their sense of discrimination is weaker and focus group discussions show that.\(^{592}\)

In addition to Russian, a number of other languages are spoken in Ukraine, albeit by much smaller minorities. The 2001 census identified small proportions of people stating that a language other than Ukrainian or Russian was their native tongue: Crimean Tatar (0.48%), Moldavian (0.38%), Hungarian (0.34%), Romanian (0.3%), Bulgarian (0.28%), Belarusian (0.12%), Armenian (0.11%), Gagauz (0.05%), Romani (0.05%), Polish (0.04%), German (0.01%), Slovak (0.01%), Hebrew (0.01%) and Greek (0.01%).\(^{593}\) The minority groups speaking these languages are generally fluent also in Ukrainian, Russian or both and concerns over discrimination are seldom, if ever, raised.

\(^{592}\) Equal Rights Trust interview with Volodymyr Kulyk, 25 February 2015.

One exception is the concerns raised by the Crimean Tatars over their treatment generally, including the treatment of the Crimean Tatar language, particularly since the annexation of Crimea by Russia in 2014. Given the close connection between the Crimean Tatar language and Crimean Tatar ethnicity, this issue is explored in section 2.5 of this report.

Article 7, paragraph 2 of the European Charter for Regional or Minority Languages requires Ukraine to eliminate:

*Any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.*

In 2014, the Committee of Experts on the Charter stated that they had “not been made aware of problems relating to this provision”.

**Discrimination against those using the Russian Language**

Concerns have been raised by Russian speakers when, in certain circumstances, they are not able to use the Russian language. Such situations are uncommon, but do exist. For example, certain medicines contain instructions only in Ukrainian, which can create difficulties for those, particularly elderly, persons, who only speak Russian. In 2009, the Ministry of Healthcare promised to recommend to pharmaceutical companies that medicinal instructions should be provided in Russian as well as Ukrainian, but this has not yet become compulsory, and most continue only to include Ukrainian-language instructions.

**Discrimination against those using the Ukrainian Language**

Complaints of language discrimination occur when a person is unable to obtain state services or obtain information in Ukrainian. Despite Ukrainian being the official language and the language of the majority most printed, audio and


595 TCH, “МОЗ України погодилося на російськомовні інструкції до ліків”, tsn.ua, 22 December 2009.
video materials are published in Russian, as are often products of Russian origin, which are commonplace given the trading links between the two countries. 596

Conclusions

Language is 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. However, the political tension surrounding the question of language identity and use and is not strongly reflected in the practice and everyday 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, very few people expressed concern about discrimination on the basis of language. This said, the Equal Rights Trust did identify a small number of cases of apparent language discrimination, particularly in print, online and video media.

2.8 Discrimination on the Basis of Religion

Ukraine is required to ensure the enjoyment of all rights guaranteed under the ICCPR and the ICESCR without discrimination on the basis of religion by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Ukraine is required by virtue of Article 26 of the ICCPR to ensure that its law prohibits discrimination on grounds including religion. Further, the ECHR requires Ukraine to prohibit discrimination based on religion in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

Compared to many other European countries, the proportion of the Ukrainian population who consider themselves to be religious is high and increasing. The overwhelming majority of those professing a religious faith are Christian. A 2014 study carried out by the Razumkov Centre revealed that 76.0% of

596 Bigmir.net, “Ситуація з мовами в Україні: російська переважає на ТБ, у ЗМІ та рекламі, українська домінує в освіті та кіно”, bigmir.net, 7 November 2013.
In the Crosscurrents

Ukrainians considered themselves religious, up from 57.8% in 2000. A further 7.9% were unsure whether they were believers or not, down from 22.5%. 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 (UAOC), 28.1% stated that they were “just Orthodox” and 1.4% stated that they did not know the denomination. Of the remaining 29.8% of those surveyed, 16.1% stated that they were non-Orthodox Christians; 7.8% were members of the Ukrainian Greek Catholic Church (UGCC), 1.0% were Roman Catholic, 1.0% were Protestant and 6.3% were other Christians; and there were small numbers of Buddhists (0.2%), Muslims (0.2%) and Jews (0.1%). In total, 12.5% did not consider themselves as affiliated with any particular religion.

As can be seen from the table below, however, the Christian population is not spread uniformly across Ukraine. In all regions, Orthodox Christians make up a majority of the population, but whereas the UOC KP forms a plurality of Orthodox Christians in the west, in all other regions a plurality of Orthodox Christians consider themselves as “just orthodox”.

<table>
<thead>
<tr>
<th>Religion</th>
<th>West</th>
<th>Centre</th>
<th>South</th>
<th>East</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ukrainian Orthodox Church (Moscow Patriarchate)</td>
<td>12.0%</td>
<td>16.4%</td>
<td>9.8%</td>
<td>24.2%</td>
<td>17.4%</td>
</tr>
<tr>
<td>Ukrainian Orthodox Church – Kyiv Patriarchate</td>
<td>25.4%</td>
<td>28.8%</td>
<td>13.5%</td>
<td>17.0%</td>
<td>22.4%</td>
</tr>
<tr>
<td>Ukrainian Autocephalous Orthodox Church</td>
<td>1.9%</td>
<td>0.3%</td>
<td>0.9%</td>
<td>0.1%</td>
<td>0.7%</td>
</tr>
<tr>
<td>“Just Orthodox”</td>
<td>13.4%</td>
<td>32.4%</td>
<td>42.3%</td>
<td>28.1%</td>
<td>28.1%</td>
</tr>
<tr>
<td>Orthodox but “no idea”</td>
<td>1.2%</td>
<td>1.2%</td>
<td>0.9%</td>
<td>1.7%</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

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598 Ibid., p. 31.

599 Ibid., p. 30.
Discrimination on the basis of religion in Ukraine tends to be directed towards groups of people professing a particular faith, restricting the ability of members of that group to practice their faith, rather than at specific individuals. Invariably, such discrimination occurs only where the affected religious group is in a minority in the particular region.

**Legal and Political Context**

During the Soviet period, the official state ideology of atheism resulted in the suppression of religious organisations. Since Ukraine gained independence in 1991, this situation has changed significantly, with the official atheism of the Soviet state replaced by acknowledgment of freedom of belief, including religion, and the prohibition of any compulsory religion or ideology. Indeed, Article 35 of the Constitution specifically establishes the separation of church and state and guarantees freedom of religion and belief:

*Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.*
The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other persons.

The Church and religious organisations in Ukraine are separated from the State, and the school – from the Church. No religion shall be recognised by the State as mandatory.

However, despite the official separation of church and state, the role of the churches in Ukrainian society and public life is increasingly important: churches have the highest rates of trust amongst all social and state institutions and they exert significant influence within society. Moreover, the personal religious views expressed by state and local authorities have called into question the extent to which the principle of separation of church and state is in fact observed and respected in practice. For example, in 2014, Prime Minister Arseniy Yatsenyuk, in referring to religious education in schools, stated:

It is important that such a course really preaches the God's Word and teaches children how to behave, to think about their country, how to pray together and fulfil God's Word.

His predecessor, Mykola Azarov, said in 2012 that:

Orthodox morality, Orthodox culture is the basis of our country's cultural development. It is important now for us, in the time, I would say, of swaying morality, to produce good films based on Orthodox values.

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601 Інститут Релігійної Свободи, “Голова ВР Турчинов та Прем'єр Яценюк зустрілися з Всеукраїнською Радою Церков”, irs.in.ua, 3 October 2014.
Discrimination on grounds of “religious and other beliefs” is prohibited under Article 24 of the Constitution and religion is listed as a protected ground in legal provisions prohibiting discrimination, including the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.\textsuperscript{603} There is also legislation guaranteeing freedom of religion – primarily the Law of Ukraine “On Freedom of Conscience and Religious Organisations”.\textsuperscript{604} However, it should be noted that, in certain cases, this latter Law allows the state and local authorities to impose unreasonable restrictions upon the activities of religious organisations, as set out below.

**Hate Speech and Hate Crime against Jehovah’s Witnesses**

The Jehovah’s Witnesses estimate there to be to around 275,000 followers in Ukraine.\textsuperscript{605} In 2013, the HRC expressed its concern over:

> [R]eports of hate speech, threats and violence against members of ethnic groups, religious and national minorities, in particular Roma, Jehovah’s Witnesses and Crimean Tatars, resulting in physical assaults, acts of vandalism and arson, most of which are committed by groups driven by extreme nationalist and racist ideology.\textsuperscript{606}

Jehovah’s Witnesses are the religious group whose members are most often subjected to hate crimes in Ukraine and the numbers of such incidents have increased in recent years. In 2010, the Jehovah’s Witnesses recorded fewer than ten acts of vandalism against the group’s property and a similar number of physical attacks on members of the faith; by 2013, these figures had increased to 80 and 24 respectively.\textsuperscript{607} These incidents included mob attacks upon reli-

\textsuperscript{603} See above, note 51.

\textsuperscript{604} See above, note 560.


\textsuperscript{606} See above, note 393 Para 11.

religious ceremonies, arson attacks on Kingdom Halls (places of worship for Jehovah's Witnesses) and assaults on worshippers, including children.\textsuperscript{608}

Jehovah’s Witnesses have accused the Ukrainian authorities of not prosecuting offences against them, even where the offences were witnessed by others.\textsuperscript{609} They have also expressed concern that on the rare occasion that prosecutions were initiated, offenders were charged with “hooliganism” rather than the more serious offences aimed at inciting religious enmity or hatred prohibited by Article 161 of the Criminal Code.\textsuperscript{610}

\textit{Compulsory Military Service and Conscientious Objectors}

Article 35 of the Constitution of Ukraine guarantees the right to conscientious objection – that is, the right to refuse to perform military service where this is contrary to an individual’s religious beliefs.\textsuperscript{611} Only men are required to undertake compulsory military service under Ukrainian law. The Law of Ukraine “On Alternative (Non-military) Service”\textsuperscript{612} allows Ukrainian men to replace this military service with an alternative, non-military service, according to their religious beliefs. A Decree of the Cabinet of Ministers lists those religious organisations whose beliefs are such that members cannot bear arms and are thus covered by the Law.\textsuperscript{613}

\begin{itemize}
\item \textsuperscript{609} See above, note 393, Para 11.
\item \textsuperscript{610} \textit{Ibid.}
\item \textsuperscript{611} In full, the relevant provision of Article 35 reads, “No one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.”
\item \textsuperscript{612} Закон України “Про альтернативну (невійськову) службу” (Відомості Верховної Ради України, 1992, № 15, с. 188), as amended between 1999 and 2012.
\item \textsuperscript{613} The list includes the Adventist Reform Church, Seventh Day Adventists, Evangelical Christians, Evangelical Christian-Baptists, the Slavic Church of the Holy Spirit (Pokutnyky), Jehovah’s Witnesses, the Charismatic Christian Churches and the International Society for Krishna Consciousness: Кабінет Міністрів України, Постанова від 10 November 1999 р. № 2066 “Про затвердження нормативно-правових актів щодо застосування Закону України Про альтернативну (невійськову) службу”.
\end{itemize}
The use of an exhaustive list means that, the Law does not allow for men to undertake alternative, non-military service in accordance with other religious, or non-religious beliefs grounded in conscience. In 2013, this was criticised by the HRC.614

Of even greater concern, the Law of Ukraine “On Mobilisation Preparation and Mobilisation” does not contain provisions which allow for conscientious objectors to refuse to undertake military service when mobilised.615 While of limited concern initially, the government’s decisions in 2014 and 2015 to mobilise tens of thousands of men to fight in the conflict in Donbas has resulted in complaints being brought to the Ukrainian Parliament Commissioner for Human Rights by individuals whose religious or conscience-based beliefs were such that they were unable to undertake military service.616 Failure to enter military service upon being mobilised is a criminal offence. However, in 2014 and 2015, both a court of first instance and an appeal court in Dnipropetrovsk acquitted a Jehovah’s Witness, Vitaly Shalayko, who had refused to undertake military service following his mobilisation, on the basis that he had a constitutional right, under Article 35 of the Constitution, to undertake alternative service.617

**Churches’ Property Rights**

In general, Ukrainian religious groups face difficulties in those regions where they constitute a minority. For the UOC MP, this is in the western regions; for the UOC KP, the UGCC and the Roman Catholics, this is the southeast of the country; and for Muslims, this is in Crimea. Smaller religious groups can experience discrimination across the whole country. The most common problems relate to ownership and use of religious buildings. In particular, conflicts arise when the state tries to restore ownership of a historical building, confiscated during the Soviet period, to a particular church.

614 See above, note 393, Para 19.
616 Information obtained from the Ukrainian Parliament Commissioner for Human Rights, February 2015.
Ukrainian legislation does not provide for churches to obtain legal status as a whole; instead, religious organisations register as separate communities, monasteries, religious educational establishments, and so on. Competition between the various Orthodox churches in Ukraine (primarily between the UOC MP and UOC KP, but also the UAOC and other smaller groups) results, on occasion, with one part of the local community, registered as a legal entity and in possession of religious buildings, deciding to transfer to another church. On other occasions, a large number of people will simultaneously transfer from one church to another, with an immediate impact on the question of legal ownership of the land. The weaknesses of the legislation and the sympathy of local authorities towards certain churches can lead to conflicts in which different churches are in unequal positions.

The first major pattern of discrimination occurs when two rival churches both claim possession and use of the same church. Sometimes local authorities will try to resolve the issue through compromise, suggesting that the churches use the building in rotation, but relations between the different churches are usually so hostile that such a proposal is not workable. In the majority of cases, the “stronger” church will obtain exclusive use of the building with the assistance of local authorities, politicians and influential public figures, leaving the other churches with no use. While such cases were most common in the 1990s, immediately after the end of the Soviet period, they continue to occur.618

The second major pattern of discrimination occurs when local authorities, sympathetic toward a particular church, refuse to allocate land for the construction of religious buildings where there is hostility towards it from the dominant church in the region. The City Council of Khmelnyk in the Vinnitsya oblast, for example, is dominated by members of the UOC MP and has refused to allocate land for the building of a Greek Catholic chapel; at the same time, the authorities in Lviv, dominated by Greek Catholics, have refused to allocate land for the building of a cathedral for the UOC MP.619 The Sevastopol City Council has, for many years, refused to return to the Roman

618 See, for example, Львівський портал, “Рейдерство по-християнськи, або навіщо міліції храм у Мостиськах?”, portal.lviv.ua, 22 July 2011.

Catholic Church an abandoned and decaying building which was originally a Catholic church. The Simferopol City Council refused to provide land for the building of a mosque for seven years until the Prime Minister of Crimea personally intervened on the issue.\textsuperscript{620}

**State Registration of Religious Organisations**

The Law of Ukraine “On Freedom of Conscience and Religious Organisations” provides that registration is not required for religious communities to perform their activities.\textsuperscript{621} However, in order to obtain the status of a legal entity which would allow a religious community to undertake any economic and financial operations, the community must register its statute with the local state administration (or, in Crimea, with the Council of Ministers of the Autonomous Republic of Crimea).\textsuperscript{622} Thus, religious centres, administrations, monasteries, brotherhoods, missions and educational facilities are all required to register their statutes with the executive authority responsible for state policy in the field of religion. The authority which undertakes the registration must examine the statute within one month (or, if additional consultation is required, within three months) and, within ten days of that date, inform the religious organisation of the decision.\textsuperscript{623}

In practice, however, there are numerous cases where the registering body has denied the registration to a religious organisation without grounds, solely on the basis that the faith in question is “non-traditional” or the religious group is a minority in the area. For example, in June 2011, the KCSA repeatedly refused to register a statute for the Kyiv Church of Scientology in the Dniprovskyi district of Kyiv.\textsuperscript{624} The Church appealed against the refusal. On 22 February 2012, the District Administrative Court of Kyiv found

\begin{footnotes}
\footnote[620]{Подробности, “Крымским татарам таки выделили землю под Соборную мечеть”, \textit{podrobnosti.ua}, 15 February 2011.}

\footnote[621]{Article 8 of Закон України “Про свободу совісті та релігійні організації” (Відомості Верховної Ради УРСР, 1991, № 25, с. 283), as amended between 1992 and 2014.}

\footnote[622]{\textit{Ibid.}, Articles 13 and 14.}

\footnote[623]{\textit{Ibid.}, Article 14.}

\footnote[624]{Інститут релігійної свободи, Права людини в Україні 2013. Доповідь правозахисних організацій: Свобода думки, совісті та релігії, 25 April 2014.}
\end{footnotes}
the refusal to be illegal and resolved to examine the submitted registration documents again. The Court held:

\[N\]either the content of the appealed resolution of the KCSA, nor the abovementioned conclusion of the State Committee on Nationalities and Religions of 27 July 2011 (...) can allow for a conclusion that the articles of the Statute of “Kyiv Scientology Church” contradict the legislation of Ukraine. During the court hearing representatives of defendants were unable to indicate such provisions of the Statute. Therefore the defendants’ arguments that the Statute of the religious community “Kyiv Scientology Church” in Dniprovskyi district of Kyiv that was submitted for registration contradicts the current legislation of Ukraine are not worthy of court’s attention.\[625\]

On 27 September 2012, the judgment was affirmed by the Kyiv Administrative Court of Appeal. On 22 August 2013, the Supreme Administrative Court of Ukraine dismissed an appeal by the KCSA and left the judgment on 27 September in force. Consequently, the KCSA was required to examine the documents submitted for registration again.

On occasion, where the state authorities are reluctant to allow the registration of a particular religious organisation, they will use all means possible to delay the process of registration and demand that the applicants supply documents or information not required under the legislation. This was the case with the religious group the True Orthodox Independent Parish of Nativity:\[626\]

\[625\] Ухвала Окружного адміністративного суду міста Києва, 9 April 2014, № 2а-11740/11/2670.

\[626\] See above, note 624.
Case Study: The True Orthodox Independent Parish of Nativity

On 4 April 2012, a group of citizens submitted an application to the Head of the Sumy Oblast State Administration (SOSA) to register a religious community, the “True Orthodox Independent Parish of Nativity” in Sumy. On 27 April 2012, officials at the Head Department on Public Relations of the SOSA forwarded the application to the Department on the Religions and Nationalities of the Ministry of Culture, seeking religious expertise. This contradicted the relevant legislation (particularly the Law “On Freedom of Conscience and Religious Organisations”) as religious expertise is outside of that Ministry’s competence. The Ministry returned the documents with a recommendation that the community should prepare information following the Questionnaire on Cult Practice and Social Activity of Religious Organisations. The authority imposed a requirement to prepare answers to the questionnaire, with a deadline of 25 June 2012.

On 3 July 2012, when the claimant refused to answer the questions, the Head Department on Public Relations returned the documents together with the application and made no recommendation to the Head of SOSA regarding registration or a refusal to register the Statute. This was also contrary to the legislation: it was empowered neither to forward the documents for expertise nor to return the documents to the applicant without an official decision to register or a refusal to register the Statute.

The Sumy District Administrative Court upheld a claim brought against the Head Department on Public Relations of SOSA, the Department of Culture and Tourism of SOSA and the Department on the Religions and Nationalities of the Ministries of Culture for refusal to register the community.

On 12 March 2013, the Kharkiv Administrative Court of Appeal rejected the appeal of the Department of Informational Activity and Housing of SOSA and upheld the decision of the first instance court. On 16 May 2013, the Supreme Administrative Court refused to initiate cassation proceedings.

Compulsory Religious Worship for Schoolchildren

Since 1997, beginning in the western regions of Ukraine, and subsequently in other regions, optional courses in Christian Ethics or Ethics and Beliefs have
been introduced in schools. Although these classes are technically optional, there are reports that schools have pressurised parents into requiring their children to attend these classes.

There is also evidence that pupils are compelled to take part in religious worship. For example, at School No. 25 in Kyiv, a conflict arose between parents and the school’s director, lasting a year. A programme was implemented based on the pedagogical theories of Kostiantyn Ushynskyi (an influential Christian teacher in the 19th century) which included religious classes. The school administration pressurised students to undertake religious classes and worship. A number of parents complained that their children were taking these classes without their consent and that they involved priests leading prayers, psalms and church attendance. On 15 December 2013, the parents organised a picket near the school, demanding that the program be ended.

There have been other instances in which the children were compelled to take part in the religious worship of the dominant church in the region.

**Developments since March 2014**

The close link between geography and religious denomination in Ukraine has created a particular religious dimension to the crisis and conflict in Donbas. The UOC MP which dominates in the eastern regions of Ukraine is under the jurisdiction of the Russian Orthodox Church. It has not condemned Russian aggression and has indeed been generally supportive of the actions of pro-Russian separatists. Certain battalions within the separatist armed forces fought under religious-themed banners and used rhetoric based upon the superiority of the Russian Orthodox Church.

627 Ibid.

628 See, for example, За Збручем, “Архієпископ УПЦ КП: Вчителів силою зганяють у Зарваницю”, zz.te.ua, 15 February 2013.

629 See above, note 597 p. 5. See also Center for Civil Liberties and International Partnership for Human Rights, *When God Becomes the Weapon: Persecution based on religious beliefs in the armed conflict in Eastern Ukraine*, April 2015, pp. 8–11.

630 Ibid., Center for Civil Liberties and International Partnership for Human Rights, p. 8.
Patterns of Discrimination and Inequality

Following the annexation of Crimea by Russia and the expansion of separatist activities in the Donetsk and Luhansk oblasts, discrimination and violence against particular religious groups in these regions increased noticeably: the victims were primarily Christians who do not belong to the pro-Russian UOC MP, namely those of the Kyiv Patriarchate, Greek Catholics, Roman Catholics and Protestants. There have been reports of repression of religious organisations and clergy through prohibition of religious activities,631 and of extortion, kidnappings and even murder of those belonging to churches other than the UOC MP.632 The Jehovah’s Witnesses have reported that 14 Kingdom Halls have been seized by armed men representing the “Donetsk People’s Republic” and the “Luhansk People’s Republic”.633

The Muslim Crimean Tatars have also suffered an increase in religious harassment and discrimination since Crimea’s annexation. While the situation of the Crimean Tatars is dealt with more fully in chapter 2.5.1 of this report, it should be noted here that some of the harassment and discrimination against this group has had a particular impact upon their practice of Islam. For example, mosques have been searched by the Russian authorities under the pretence of searching for “extremist literature”, while individual Muslim Tatars have been summoned to police stations and questioned about their religious beliefs.634

In June 2015, a draft law on freedom of conscience and religious associations was introduced into the State Council of Crimea by Svetlana Savchenko, the


chair of the State Council’s Committee on Culture.\textsuperscript{635} If enacted, this law would create within the Ministry of Culture a Department for Religious Affairs. Organisations would be required to inform the new Department about the arrival of any foreign preachers. The Department would also have vaguely-worded powers such as “forecasting the development of the religious situation” and “facilitating the strengthening of mutual understanding and tolerance”. The draft law defines a traditional religion as one “having formative cultural significance for the historical community” and a “totalitarian sect” (also referred to in the draft law as a “destructive cult”) as “an organization that uses a complex of special techniques (mind control) with the goal of suppressing the will of an individual and controlling feelings and conduct, causing harm to the individual and society”. The draft law does not, however, then use any of the terms in its main text.

\textit{Conclusions}

Religious discrimination in Ukraine is manifested in a range of patterns, each adversely affecting the adherents of 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. The Equal Rights Trust also found evidence of discrimination and corruption in the allocation of land for church use; and discrimination by state actors involved in registering religious bodies. More recently, our research revealed that minority churches in the areas of Donetsk and Luhansk had experienced increased repression since the conflict there began, while in the Crimea, Muslim Crimean Tatars had experienced an increase in religious harassment.

2.9 Discrimination against Internally Displaced Persons

The annexation of Crimea by Russia in March 2014 and the rise of pro-Russian separatist movements in Donetsk and Luhansk oblasts has created new challenges and brought to bear new forms of discrimination not previously

encountered in Ukraine. As noted in Part 1 of this report, the Crimean peninsula and those parts of Luhansk and Donetsk oblasts occupied by pro-Russian separatists were, as of May 2015, no longer under the de facto control of the Ukrainian government. As a consequence, many people have fled these regions and become internally displaced persons (IDPs). This section of the report focuses on the recent phenomenon of discrimination against persons in Ukraine on the basis of their former place of residence or their status as an IDP.

In April 2014, the total population of Crimea amounted to 1,968,550, while that of the city of Sevastopol was 385,998. The population of Donetsk was 4,334,556 and of Luhansk, 2,234,612. The Ministry of Social Policy estimates that at least 20,000 people have fled Crimea since its annexation and are now IDPs. A much greater number – at least 1,250,000 – are reported to have fled Donetsk and Luhansk regions with numbers continuing to grow. IDPs largely flee to the eastern parts of Ukraine and to Kyiv.

The arrival of large number of IDPs from Crimea and Donetsk and Luhansk oblasts has resulted in tensions in their new places of residence and there is evidence of intolerance on the part of some individuals towards IDPs, fuelled to some degree by the media. While IDPs fleeing from Crimea are generally seen as supportive of the Ukrainian government, the perception of IDPs from eastern Ukraine is that they are separatist sympathisers hostile to the government who are not willing to work and may be interested in making trouble. The UN Special Rapporteur on the human rights of IDPs has re-

638 Ibid. See also Kritskiy, V., “Divided and displaced in Ukraine: two groups facing two different futures?”, Internal Displacement Monitoring Centre, 15 August 2014.
ported “anecdotal evidence of emerging tensions between host communities and displaced persons” and that:

As the political situation has evolved, some described a growth in negative perceptions towards IDPs, which impacts on how those who have been internally displaced, particularly those from the east, are viewed, and could affect their integration. Some are perceived to be separatist sympathisers or unpatriotic on the basis of their places of origin, which may impact on reactions to them in host communities, and their ability to gain employment or to integrate easily into new localities.\textsuperscript{641}

As a result of this intolerance, IDPs, particularly from Donetsk and Luhansk oblasts, face challenges in obtaining employment and housing, once their status is known.

The Legal and Political Context

Ukraine is required to ensure non-discrimination on the basis of national origin in the enjoyment of all rights guaranteed under the ICCPR and the ICESCR by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. Further, under Article 26 of the ICCPR, it is required to ensure that of its law provides effective protection against discrimination on the basis of national origin. The CESCR, in interpreting the term “national origin” under Article 2(2), has stated that it includes a person’s state, nation or place of origin.\textsuperscript{642} In addition, the CESCR has stated that Article 2(2) of the ICESCR also prohibits discrimination against a person on the basis of their “current or former place of residence”.\textsuperscript{643}

Further, Article 14 of the ECHR prohibits discrimination on the basis of national origin in the enjoyment of the rights contained within the ECHR and Protocol


\textsuperscript{642} See above, note 250, Para 24.

\textsuperscript{643} \textit{Ibid.}, Para 34.
Patterns of Discrimination and Inequality

No. 12 to the ECHR provides a freestanding right to non-discrimination on the basis of national origin in the “enjoyment of any right set forth by law”.

The Constitution of Ukraine includes “place of residence” as a characteristic upon which discrimination is prohibited under Article 24, paragraph 2. The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” also includes this characteristic among its list of explicitly protected grounds. The Constitutional Court of Ukraine has issued a number of decisions interpreting “place of residence” in Article 24, paragraph 2, holding that it prohibits distinctions made between persons in Crimea and persons in other parts of Ukraine. The courts have not yet, however, indicated whether “place of residence” would include former place of residence, thus protecting IDPs when they move to another part of Ukraine.

The status of IDPs in Ukraine (of greatest relevance to IDPs from Crimea, and from Donetsk and Luhansk oblasts) is regulated primarily by the Law of Ukraine “On the Rights and Freedoms of Internally Displaced Persons”. Article 4 sets out the process by which IDPs obtain certification of their status and Article 5 provides that such a certification is considered proof that a person is an IDP for the purposes of the Law. Articles 6 to 9 guarantee various rights for IDPs at their place of residence. Most importantly, Article 14 prohibits discrimination against an IDP in the exercise of any right or freedom on the basis that they are an IDP.

In addition to these general provisions, the status of Ukrainian citizens from Crimea and the city of Sevastopol is governed by various laws which were passed following Crimea’s annexation, in particular the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine” and the Law of Ukraine “On

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644 Рішення Конституційного Суду України у справі за конституційним поданням Президента України щодо відповідності Конституції України (конституційності) Закону Республіки Крим “Про об’єднання громадян” (справа про об’єднання громадян в Автономній Республіці Крим), 3 March 1998, № 2-рп/98.

645 Закон України “Про забезпечення прав і свобод внутрішньо переміщених осіб” (Відомості Верховної Ради, 2015, № 1, с. 1), as amended in 2015.

646 Закон України “Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України” (Відомості Верховної Ради, 2014, № 26, с. 892), as amended in 2015.
the Creation of the Free Economic Zone ‘Crimea’ and the Specificities of Economic Activity on the Temporarily Occupied Territory of Ukraine”. The first of these Laws aims to guarantee the rights and freedoms of citizens in the Autonomous Republic of Crimea and Sevastopol by means of a “special legal regime” and “special procedure” (Article 4). Article 5, paragraph 1 provides that Ukraine shall take “all necessary measures to safeguard the human and citizens’ rights and freedoms provided by the Constitution and laws of Ukraine and international treaties” to citizens in Crimea and Sevastopol. However Article 5, paragraph 3 states that liability for violation of such human and citizens’ rights and freedoms rests with Russia as the “state-occupier”, in accordance with international law. By virtue of Article 10, Ukrainian citizens are permitted free and unimpeded access into and out of Crimea and Sevastopol upon presentation of an identification document, though foreign nationals and stateless persons require special permission. Article 18 provides that citizens of Ukraine are guaranteed full respect of their rights and freedoms under the Constitution, including social, labour and voting rights, and the right to education, upon leaving Crimea or Sevastopol.

*Employment and Housing*

The United Nations Special Rapporteur on the human rights of IDPs has spoken of “reports of stigmatization and discrimination experienced by some IDPs on account of their situation”. This discrimination is largely experienced in employment and housing. Following a visit in September 2014, the Special Rapporteur noted that IDPs described:

> [D]iscrimination when they identify themselves as displaced persons. Some described negative reactions by potential employers in relation to their situation, where they are from and the fact that they may not stay long term.

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650 See above, note 641 Para 48.
The UN High Commissioner for Refugees has similarly noted that IDPs from eastern Ukraine in particular have reported discrimination when seeking jobs in Kyiv and that prospective employers “refuse to hire people from the east for political reasons – accusing them of supporting the anti-government forces – or because it is perceived that they will leave the region soon.”

In respect of housing, the UN High Commissioner for Refugees has also noted that:

*IDPs from the Donbas or Luhansk region are often stigmatized and struggle against discrimination. People are often denied tenancy, and volunteers will sometimes arrange accommodations on their behalf by explaining that the apartment is for relatives.*

**Conclusions**

The existence of IDPs is a new phenomenon in Ukraine, with the result that it is 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, recent reports indicate that IDPs – particularly those from the Donbas region – are experiencing discrimination, largely as a result of prejudice against them.

### 2.10 Disadvantages Faced by Certain Groups of Children

This section 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

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652 Ibid., United Nations High Commissioner for Refugees, p. 54.
adults. The second concerns those children within other groups which are exposed to discrimination, such as children with disabilities and children living with HIV. These children experience aggravated disadvantage as a result of the intersection between their age and their other characteristics.

As a party to the Convention on the Rights of the Child (CRC), which it ratified in 1991, Ukraine is required to protect the rights of all children. Under Article 2(1) of the Convention, Ukraine is required to:

[R]espect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The CRC defines “child” as a “human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. The Family Code and the Law of Ukraine “On Child Protection” also define a child as a person under the age of eighteen. The number of children in Ukraine and the proportion of the population who are children has been steadily falling in the 21st century, from over 10 mln in 2002 (21.4% of the total population) to just under 8 mln in 2013 (17.6% of the total population).

**Legal and Policy Framework**

The Constitution contains a number of provisions on children’s rights. Article 51, which protects the family, provides, at paragraph 2, that “[p]arents are

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654 See above, note 204, Article 6; Article 1 of Закон України “Про охорону дитинства” (Відомості Верховної Ради України, 2001, № 30, с. 142) as amended between 2002 and 2014.


obliged to support their children until they attain the age of majority” and, at paragraph 3, that “[t]he family, childhood, motherhood and fatherhood are under the protection of the State”. Article 52 focuses specifically on children, stating that:

Children are equal in their rights regardless of their origin and whether they are born in or out of wedlock.

Any violence against a child, or his or her exploitation, shall be prosecuted by law.

The maintenance and upbringing of orphans and children deprived of parental care is entrusted to the State. The State encourages and supports charitable activity in regard to children.

In legislation, the rights of the child are primarily guaranteed by the Law of Ukraine “On Child Protection”.657 However, as its name suggests, this Law – and, indeed, state policy more broadly – considers children not as subjects in their own right, but as objects in need of protection. This policy position means that Ukrainian legislation on the rights of the child is largely declarative. The Committee on the Rights of the Child has noted that “domestic legislation on the rights of the child remains inadequate, with significant scope for further legislative implementation of the Convention and its Optional Protocols.”658

In particular, Ukrainian legislation gives little regard to the views of children when decisions are taken regarding matters affecting them. This is despite the requirement in Article 12(1) of the CRC that States Parties:

[A]ssure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being


given due weight in accordance with the age and maturity of the child.

In 2011, the Committee on the Rights of the Child stated:

_While noting as positive changes in the Family Code allowing for the child to be heard in the context of adoption, the Committee is nevertheless concerned that the views of the child remain unheard in the context of civil and administrative proceedings and in the administration of juvenile justice. In this context, the Committee regrets the lack of information on how respect for the views of the child is guaranteed in legislative, administrative and judicial decisions as well as in the family and in schools._

Article 3, paragraph 1 of the CRC requires that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Despite this, the Committee on the Rights of the Child has raised concern that “there is no systematic analysis of State policies and programmes in terms of the best interests of the child” and that “the principle is poorly integrated in laws and policies relating to children deprived of parental care and children in contact with the law”.

There is no state policy directed towards combating discrimination towards vulnerable and marginalised groups of children. For example, the National Programme “Youth of Ukraine” for the period 2009 to 2015, which is the basic programme setting out the activities of the Departments on Family, Youth and Sports in the regional administrations, contains nothing on vulnerable or marginalised groups of children. Further, state programmes and plans related to children generally are funded using the “leftover” principle, i.e. funds

659 Ibid., Para 33.

660 Ibid., Para 29.

661 Кабінет Міністрів України, Постанова від 28 Января 2009 р. № 41 "Про затвердження Державної цільової соціальної програми "Молодь України" на 2009–2015 роки".
are allocated where money is unspent, rather than through allocated specified share or amount of the total national budget.\textsuperscript{662} 

\textbf{Institutionalisation of Orphans and Children without Parental Care}

In 2011, the Committee on the Rights of the Child raised concerns “at the high rates of children deprived of their family environment at birth and in later stages of childhood”.\textsuperscript{663} As of the end of 2013, there were a total of 117,600 children in Ukraine (approximately 1.5\% of all children) being raised in a variety of institutions and family-type settings for orphans and children without parental care.\textsuperscript{664} The number of children classified as orphans or children without parental care has increased in the 21\textsuperscript{st} century, despite the overall decline in the number of children in Ukraine, increasing from approximately 98,000 in 2003, to 103,000 in 2006, to the current figure of 117,600.\textsuperscript{665}

Only a small proportion of this larger group is actually comprised of orphans. Of the 117,600 children in Ukraine being raised in institutions and family-type settings for orphans and children without parental care, only 13,000 are actually orphans in the true sense. The vast majority are what is known in Ukraine as “social orphans” – children who have at least one living parent but who have been removed from their family at birth or during childhood.\textsuperscript{666}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{662} Ukrainian Helsinki Human Rights Union, \textit{Human Rights in Ukraine 2011: Chapter XXI: Children's Rights}.
\item \textsuperscript{663} See above, note 658.
\item \textsuperscript{664} Адміністрація Президента України, Уповноважений Президента України з прав дитини, Звіт про здійснення Уповноваженим Президента України з прав дитини моніторингового дослідження стану функціонування закладів для дітей-сиріт та дітей, позбавлених батьківського піклування, дітей, які не мають необхідних умов для виховання та навчання в сім’ї, дітей з особливими потребами, ефективність використання такими закладами бюджетних коштів, спрямованих на забезпечення їх діяльності (на виконання Доручення Президента України № 1-1/1852 від 22 липня 2013 року), 2013, р. 3.
\item \textsuperscript{665} For the figures for 2003 and 2006, see above, note 655, Para 83.
\item \textsuperscript{666} УНІАН, "Українським дітям не місце в інтернатах", unian.ua, 20 November 2013.
\end{enumerate}
\end{footnotesize}
Table 7: Number of Children and Number of Orphans and Children without Parental Care in Ukraine

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Children</th>
<th>Number of Orphans and Children Without Parental Care (% of all children)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>10,306,976</td>
<td>Unknown</td>
</tr>
<tr>
<td>2003</td>
<td>9,878,630</td>
<td>96,112 (0.97%)</td>
</tr>
<tr>
<td>2004</td>
<td>9,503,315</td>
<td>97,590 (1.03%)</td>
</tr>
<tr>
<td>2005</td>
<td>9,129,178</td>
<td>97,829 (1.07%)</td>
</tr>
<tr>
<td>2006</td>
<td>8,801,969</td>
<td>102,912 (1.17%)</td>
</tr>
<tr>
<td>2007</td>
<td>8,536,066</td>
<td>102,924 (1.21%)</td>
</tr>
<tr>
<td>2008</td>
<td>8,325,687</td>
<td>103,542 (1.24%)</td>
</tr>
<tr>
<td>2009</td>
<td>n/k</td>
<td>Unknown</td>
</tr>
<tr>
<td>2010</td>
<td>n/k</td>
<td>Unknown</td>
</tr>
<tr>
<td>2011</td>
<td>n/k</td>
<td>Unknown</td>
</tr>
<tr>
<td>2012</td>
<td>n/k</td>
<td>Unknown</td>
</tr>
<tr>
<td>2013</td>
<td>7,971,000</td>
<td>117,600 (1.47%)</td>
</tr>
</tbody>
</table>

There are a variety of different institutions and family environments in which orphans and children without parental care reside. Despite the government’s repeated insistence that it considers the deinstitutionalisation of children to be a priority – and a variety of legislative and policy efforts towards this end – the vast majority of children remain in institutions. Many children live in state-run institutions, though there is a complex division of responsi-

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667 Figures taken from above, note 655, Para 33; Institute For Demography And Social Studies of the National Academy of Science of Ukraine, United Nations Children’s Fund and Ukrainian Centre for Social Reforms, Child Poverty and Disparities in Ukraine, 2010, p. 141; and Адміністрація Президента України, Уповноважений Президента України з прав дитини, Звіт, 2013, p. 3.

668 See, for example, Закон України “Про забезпечення організаційно-правових умов соціального захисту дітей-сиріт та дітей, позбавлених батьківського піклування” (Відомості Верховної Ради України, 2005, № 6, с. 147), as amended between 2006 and 2014, which foresaw a reduction in the use of residential schools for orphans and children without parental care, and Указ Президента України, Указ № 609/2012 “Про Національну стратегію профілактики соціального сирітства на період до 2020 року”, 22 October 2012, implementing a strategy involving the reduction of the number of children in boarding schools.
bility across government, such that institutions are regulated variously by the Ministry of Education and Science, the Ministry of Healthcare and the Ministry of Social Policy.

The Ministry of Healthcare operates so-called “baby houses” for children aged between 0 and 4 years old. These serve as the entry point into the institutional system and house all children, including both children with disabilities and those without.669 At age 4, children in these institutions are assessed to determine whether or not they have any disabilities and if so, whether they are “educable” or “non-educable”.670 On the basis of this information, a decision is made on whether a child should remain institutionalised and, if so, in which kind of institution. If the child is classified as “educable”, it will be referred to a “specialised boarding school”, regulated by the Ministry of Education. If they are judged to be “non-educable”, the child will be referred to an institution regulated by the Ministry of Social Policy.671

Only a small proportion of orphans or children without parental care are adopted or are in foster families or “family-type orphanages”.672 Indeed, the Committee on the Rights of the Child has expressed concern at the fact that “in the absence of a clear reform strategy, focus has not yet shifted towards deinstitutionalization”; the Committee has also stated that it “is concerned at the large number of children who remain in residential care and at the absence of services for family reintegration”.673

In 2013, the total annual funding for these various institutions was 5.7 bln hryvnia (approximately 233 million euro). However, only approximately 15% of this money is spent directly on the children’s food, accommodation, clothing and medication, with 66% of the total amount covering the salaries of staff personnel and the remainder allocated to the maintenance of the institutions.674

670 Ibid.
671 Ibid.
672 “Family-type orphanages” are state-supported institutions in which a family looks after at least five adopted children, up to a total of ten children (including their own children).
673 See above, note 658 Para 46.
Many concerns have been raised relating to children housed in residential establishments for orphans and children without parental care.\textsuperscript{675} There are reports of physical and sexual abuse and even torture which is, on occasion, instigated and even perpetrated by staff and older students at the establishments.\textsuperscript{676} Disability Rights International has reported that there is extensive evidence of systematic abuse throughout Ukraine’s entire institutional system, with thousands of children both with and without disabilities subjected to “severe emotional and physical pain, restraint, seclusion and dangerous or neglectful medical care”.\textsuperscript{677}

Many children are housed and educated in the same establishment and research indicates that the quality of education in these institutions is often low, such that “most orphans are not equipped with adequate knowledge or skills to successfully enter higher education or even mainstream society”.\textsuperscript{678} One commentator has stated that teachers and caretakers expectations of children in institutions are grounded in “genetic deficit ideology which posits that orphans are biologically inferior given their parents’ struggles with drugs and alcohol”, with the result that they “guide these children toward paths that make it a self-fulfilling prophecy”.\textsuperscript{679} Further, as a result of sub-standard quality education, the children are frequently placed in vocational schools, “the quality of which has deteriorated since the collapse of the Soviet Union” and which provide them with “obsolete” skills, no longer needed in a modern economy.\textsuperscript{680}

As a result of physical and sexual abuse, limited socio-economic opportunities and the psychological impact of institutionalisation many orphans become susceptible to alcohol, drugs, crime, prostitution, and suicide.\textsuperscript{681}

\begin{flushright}
\textsuperscript{675} For a thorough examination, see Korzh, A., \textit{Educational Inequalities and Ukrainian Orphans’ Future Pathways: Social Reproduction or Transformation through the Hidden Curriculum}, 2013.
\textsuperscript{676} \textit{Ibid.}, p. 128.
\textsuperscript{677} See above, note 659, p. 13.
\textsuperscript{678} See above, note 675, p. 4.
\textsuperscript{679} \textit{Ibid.}
\textsuperscript{680} \textit{Ibid.}, p. 5.
\textsuperscript{681} \textit{Ibid.}
\end{flushright}
Children in the Criminal Justice System

Article 40 of the CRC guarantees:

[T]he right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

Further, Article 37 provides, inter alia, that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

Ukraine started to introduce a separate juvenile justice system in 2008. Despite this, in 2011, the Committee on the Rights of the Child expressed deep concern at:

[T]he risk for retrogression towards a punitive approach with respect to children in conflict with the law, as indicated also in the frequent pretrial and trial detention of children, the high percentage of juveniles sentenced to imprisonment, and the high proportion of children in the prison population.\(^\text{682}\)

\(^{682}\) See above, note 658, Para 84.
There are reports of children being beaten by police or other investigators during questioning.\textsuperscript{683} In 2011, the Committee on the Rights of the Child expressed concern over

\[T]he significant number of allegations of physical ill-treatment of detainees, including children, notably during initial questioning in district police stations. In particular, the Committee is gravely concerned at alleged cases of torture and ill-treatment of juveniles by Militia officers to extract confessions and of migrant children while in the custody of the Ukraine State Border Guard Services.\textsuperscript{684}

**Children with Disabilities**

As of 1 January 2014, 168,280 children with disabilities were registered with the Ministry of Social Policy.\textsuperscript{685} However, as with the number of persons with disabilities more generally (see section 2.3. of this report), this figure is likely to be a significant underestimate. The WHO estimates that around 15\% of all people live with some form of disability,\textsuperscript{686} of whom 2–4\% experience significant difficulties in functioning.\textsuperscript{687} This would suggest an actual figure in Ukraine of around 1,200,000 children with disabilities and between 160,000 and 320,000 children with significant difficulties in functioning.

The Committee on the Rights of the Child has raised various concerns with respect to the rights of children with disabilities in Ukraine and “the persisting inadequacy of educational, social and health services for children with disabilities and their families”.\textsuperscript{688} In addition, the Committee has expressed its regret that:


\textsuperscript{684} See above, note 658, Para 41.

\textsuperscript{685} Державна служба статистики України, Соціальний захист населення України: Статистичний збірник, 2014, p. 70.

\textsuperscript{686} See above, note 255, p. 7.

\textsuperscript{687} Ibid., p. 8.

\textsuperscript{688} See above, note 658, Para 52.
[M]any obstacles remain in ensuring equal access to education for children with intellectual disabilities and that, due to the lack of early intervention and special education, many children with disabilities are placed in institutions. Furthermore, the Committee is concerned at the placement of children with or without disabilities during their first three years of age in infant homes and at the qualification of such children as having medical conditions, which negatively affects their development and quality of life and further reinforces institutionalization.689

On the basis of visits to various institutions for children with disabilities, Disability Rights International has concluded that Ukraine’s orphanages are:

[A] gateway to life-long institutionalization for children with disabilities. Children with disabilities rarely “graduate” from orphanages and are instead shuffled between adult wards in orphanages, psychiatric hospitals, and adult social care homes. Children who do graduate from orphanages face a harsh life on the streets – where suicide, trafficking, drug addiction and re-institutionalization are constant threats.690

As a result of their particular vulnerability, children with disabilities are at even greater risk of abuse than other children in institutions. Disability Rights International has catalogued various abuses which take place including medical neglect, forced abortions and sterilisations, physical and chemical restraints, and even sexual abuse.691

Children with disabilities who are deemed “non-educable” receive only a very basic education with no real support.692 The attitude of the directors of the institutions is invariably that the children will never be able to re-join the

689 Ibid.
690 See above, note 669, p. 2.
692 Ibid., p. 7.
community and so there is no need even to attempt to prepare children for independent living. Upon reaching 18, most young adults with disabilities are simply transferred to adult institutions where they will spend the rest of their lives.\textsuperscript{693} Few resources are provided to rehabilitate children with disabilities and to enable integration at a future point. Staff members are required to look after such high numbers of children that proper attention and care is essentially impossible.\textsuperscript{694}

\textbf{Children Living with HIV/AIDS}

Children in Ukraine risk HIV infection from a variety of sources and many children are born with HIV each year. As noted in section 2.4 of this report, Ukraine has one of the highest proportions of people living with HIV/AIDS in Europe. In 2013, the Joint United Nations Programme on HIV/AIDS estimated that there were 210,000 people living with HIV in Ukraine (0.47\% of the population).\textsuperscript{695} Other estimates put the figure slightly higher, at 238,000, (0.53\% of the population).\textsuperscript{696} However, as of August 2014, only 144,655 people were registered as having HIV/AIDS and under any kind of medical supervision, only around 60\% of the total number of people living with HIV/AIDS. A large number of people who have HIV/AIDS simply do not know it; indeed, in 2013, it was estimated that as many as 50\% of people living with HIV did not know about their status.\textsuperscript{697}

The Ministry of Health estimates that between 1995 and 2013, 36,557 children were born to mothers living with HIV, of whom 26,403 were HIV-negative, 2,929 were HIV-positive, 6,899 were children under the age of 18 months awaiting confirmation of their HIV status, 829 had AIDS and 326 children had

\textsuperscript{693} \textit{Ibid.}

\textsuperscript{694} \textit{Ibid.}, p. 18.


\textsuperscript{697} Український центр контролю за соціально небезпечними хворобами Міністерства охорони здоров'я України, Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року, 2013, p. 16.
died of AIDS. The Ministry of Health of Ukraine estimated in the same year that a total of 3,898 women living with HIV gave birth to a child in 2013. As of 1 January 2014, there were a total of 3,129 children born with HIV from mothers living with HIV and 6,195 children awaiting confirmation of their HIV status.

In addition, sexual health awareness amongst young people is low, resulting in a risk of HIV transmission. A study from 2012 indicated that only 44.8% of girls and 42.8% of boys aged between 15 and 24 years had correct and comprehensive knowledge about HIV/AIDS. The proportion of young people aged between 15 and 24 years who had had sexual contact carrying risk during the previous year was 69.5% amongst girls and 95.9% amongst boys. Only 72.7% of girls and 74.4% of boys had used a condom during their most recent sexual intercourse.

In 2011, the Committee on the Rights of the Child raised alarm “at the high rates of HIV infections and AIDS-induced deaths among children, and that, notwithstanding progress in prevention, the proportion of mother-to-child transmissions remains high”. The Committee was also concerned “at the lack of access to care and support services for children living with HIV/AIDS and at the limited funds for the requisite technology, equipment and treatment with respect to HIV/AIDS”.

Children living with HIV face discrimination on the basis of their HIV status, particularly in education. The situation of a claimant in a case supported by the Foundation for Strategic Affairs of the Coalition for Combating Discrimination is typical. The claimant in this case is the mother of a 13 year old girl living with HIV. On 17 April 2013, her daughter was called “holisticAIDSy”.

699 Ibid.
700 Фонд народонаселення ООН в Україні, Молодь – найбільш вразлива до ВІЛ група населення, 28 November 2012.
701 Ibid.
702 See above, note 658, Para 62.
703 Ibid.
704 Ibid.
by a schoolmate. The schoolmate told other students that anyone who made friends with her would “become infected with AIDS”. The following day, the same schoolmate beat her up. When the claimant arrived, the schoolmate shouted that her daughter did not deserve a place amongst “normal” children and that she was a danger to other children. She promised to do everything possible to stop her from attending the school.\textsuperscript{705}

\textit{Conclusions}

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. The institutionalisation of children is a significant 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, which have an adverse impact on children’s equal enjoyment of a wide range of human rights. Ukraine has failed to take effective measures to establish a system of juvenile justice which 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.

\textsuperscript{705} Коаліція з протидії дискримінації в Україні, Справи КПД, \textit{antidi.org.ua}, 16 May 2014.