



Compilation of CSOs' Alternative Reports

**UNIVERSAL PERIODIC REVIEW:
AN ALTERNATIVE DIMENSION**

The third UPR Cycle, Ukraine



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STAKEHOLDERS REPORT

UKRAINE

**THE REPORT IS SUBMITTED FOR THE UNIVERSAL
PERIODIC REVIEW BY THE UNITED NATIONS
TWENTY-EIGHTH SESSION OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL
ON THE UNIVERSAL PERIODIC REVIEW
(the third cycle)**

prepared by
THE COALITION OF UKRAINIAN HUMAN RIGHTS ORGANIZATIONS
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The Coalition for the Preparation of the Universal Periodic Review is an informal association of non-governmental, human rights organizations and independent experts who are specialists in the relevant field. The Coalition carries out its activities since 2012 and it performs training and advocacy of the UPR, II cycle. In 2015, the Coalition prepared a report on interim reporting for the Universal Periodic Review.

Ukrainian Helsinki Human Rights Union is a public union that unites 27 NGOs from different regions of Ukraine. The Ukrainian Helsinki Human Rights Union promotes the development of humane society based on respect to human life, dignity and harmonious relations between a person, state and nature through creation of a platform for cooperation between the members of the Union and other members of the human rights movement.

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Centre of Law Enforcement Activities Research (CLEAR), established in 2014 as an analytical and expert organization and it operates in the field of strengthening of public control over law enforcement, problem analysis and reform of the law enforcement bodies.

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The Ukrainian Coalition for Legal Aid is an association of 15 non-profit organizations around the country which provide free legal aid to vulnerable citizens of Ukraine. Our purpose is to ensure access to justice through the ongoing development of a network of skilled legal aid centers, to raise awareness about legal issues and to improve the national legal framework. The Coalition specializes in three areas of the law that are important for disadvantaged populations: labor relations, property rights and patient rights.

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Green World Environmental Humanitarian Organization was established in 1997 to preserve the natural, historical and cultural heritage, as necessary conditions of harmonious life, and the protection of environmental rights.

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Environment-People-Law (EPL) International Public Interest Environmental Law Organization was founded in 1994 with the aim to help in protecting environmental rights of citizens and organizations, to promote development of nature protection, environmental education, science and culture. Environment-People-Law (EPL) International Charitable Organization.

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Territory of Success NGO was founded in May 2008. The main areas of work of the organization remain: helping individuals to protect their rights and freedoms; conduct research in the field of human rights and fundamental freedoms and publish them at thematic public events; influence on state and regional human rights policy and legal education of citizens, as well as networking with other public organizations and initiatives that share common goals and vision.

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Charitable organization Right to Protection CF (a Ukrainian non-profit organization operating in close partnership with the global NGO HIAS; dedicated to protecting rights of refugees, asylum seekers, internally displaced persons, stateless/at risk of statelessness and undocumented migrants).

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All-Ukrainian Public Association Ukrainian National Assembly of People with Disabilities established in 2001 and unites 120 NGOs of people with disabilities. Our mission is to protect the rights of persons with disabilities and promote their integration into society.

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All-Ukrainian Civic Association Coalition for the Rights of Persons with Disabilities in the Results of Intellectual impairments is a self-governing non-profit organization, established in 2004. It consists of 116 organizations and institutions from 23 regions of Ukraine. It carries out representation of the rights and interests of people with intellectual violations, their relatives / guardians, as well as organizations of the members of the Coalition UNGO before the authorities of the national level; lobbying for the adoption of legislative guarantees for the observance of the rights of citizens with disabilities.

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1. THE PROBLEM OF ENFORCEMENT OF JUDGMENTS

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97.45 Continue fully and effectively perform the judgment of the European Court of Human Rights¹.

1.1. By the judgments of the international jurisdictional bodies is being repeatedly stressed that the right to a fair trial is an ephemeral right without providing by the state the proper implementation of every judgment rendered by its name².

1.2. Disappointing remains the situation with the implementation of judgments of the European Court of Human Rights. Thus, there were 1.052 judgements concerning Ukraine of the European Court of Human Rights under the control of the Cabinet of Ministers of Ukraine in 2015. This is 41 judgement more than in 2014. At that, in 2015 Ukraine made all payments on time only under 23 cases. However, there were only 4 such cases in 2014. The amount of compensation paid under the judgements of the ECHR was also decreased in 2015 (Euro 966,357 against Euro 7.684,574 in 2014)³.

1.3. The Committee of Ministers of the Council of Europe identified eight main areas in which there are systematic problems with the implementation of activities of a general nature. This refers to the following challenges:

- ineffective enforcement of national courts⁴;
- too long duration of trial⁵;

¹ Recommendation is provided by Armenia: A/HRC/22/7/Add.1

² For example in the pilot ECHR judgment Yuriy Mykolayovych Ivanov against Ukraine

³ According to the official report of the Committee of Ministers of the Council of Europe

⁴ The judgement Zhovner against Ukraine and pilot judgement Yuriy Mykolayovych Ivanov against Ukraine.

⁵ Judgement Svetlana Naumenko against Ukraine and Merit against Ukraine. There are 268 similar cases on the control.

- torture by the police, lack of effective investigation⁶;
- inadequate conditions for convicted⁷;
- manipulation with the law by prosecutors and judges for illegal deprivation of freedom of the applicants⁸;
- functioning of the judicial system in Ukraine⁹;
- lack of clear and understandable legislation that regulates the freedom of assembly¹⁰.

There were no changes in performance of these judgments since 2014.

1.4. As of 28.02.2017 Ukraine is the leader in the number of cases pending in the ECHR – 18,850 (21.5%). The majority of the cases concerns non-compliance of judgements¹¹. The court in 2012 and 2014 twice noted the state's failure to take effective measures to ensure the proper implementation of judgments by setting a deadline for eliminating the shortcomings of the enforcement system.

1.5. Meanwhile, certain measures were pursued at the legislative level. In 2010, according to the new version of the Act of Ukraine On Enforcement Proceedings, were granted additional powers to the public bailiff, including access to information on registered property of the debtor and their bank accounts, introduced the system of online auction of the seized property.

1.6. In 2016 was adopted the Act of Ukraine On the Bodies and Persons engaged in the Enforcement of Judgments and Decisions of other Bodies and the new version of the Act of Ukraine On Enforcement Proceedings. By the Acts, in particular, since January 2017 it is provided an implementation of private bailiffs who will act on behalf of the state and under the same rules as public bailiffs. Their reward is being formed by 10% of the debt. However, during this period, the Ministry of Justice had failed training and qualification assessment of private bailiffs that did not allowed an introducing the institute in terms specified by the Act.

1.7. The system of judgments enforcement remains ineffective. The existing apparatus of state bailiffs is overloaded. In 2016, there were more than 1.100 judgements per public bailiff per year. The salary of the bailiffs remained at the level of EUR 50-60 per month. By the end of the year, of all the judgments that had been submitted for enforcement, only 18% were actually executed and as a rule, the rest of the proceedings are being completed on the other grounds (referral to the new place of execution, lack of debtor's property, etc.)¹². Moreover, the statistics of collected amounts is even worse. Of the nearly UAH 700 billion presented for execution in 2016, about UAH 13 billion were actually recovered, that is, no more than 2% of the amounts that had to be recovered under judgments and other executive documents.

1.8. The problem remains an enforcement of judgments in the Autonomous Republic of Crimea, Donetsk and Luhansk regions, where the government does not exercise their powers. As a rule, the government refers to the inability to check the actions of judgments bailiffs¹³.

⁶ *Afanasiev against Ukraine and Kaverzin against Ukraine. There are 37 similar cases on the control.*

⁷ *Judgement Kharchenko against Ukraine. There are 33 similar cases on the control.*

⁸ *Judgement Tymoshenko against Ukraine and Lutsenko against Ukraine.*

⁹ *Judgement Alexander Volkov against Ukraine*

¹⁰ *Verentsov against Ukraine*

¹¹ http://www.echr.coe.int/Documents/Stats_pending_2017_BIL.pdf

¹² *In accordance with official statistics.*

¹³ *In connection with the holding of ATO and resumption of hostilities, at the moment it is not possible to check out the facts stipulated in the applications of the applicants about the actions of officials of state executive service, to provide a comprehensive information and take appropriate measures in response. // Annual Report of the Verkhovna Rada of Ukraine Commissioner for Human Rights on Situation Concerning the Compliance and Protection of Human Rights and Citizen in Ukraine 2016. – K., p.500.*

RECOMMENDATIONS

1. Accelerate the process of reforms in the enforcement of judgments;
2. Provide qualification selection of private bailiffs;
3. Solve the issue of increasing the financial motivation of state bailiffs by raising wages and rewards for the timely and effective enforcement of judgments;
4. Strengthen the control over the judgments enforcement in the territory of Donetsk and Luhansk regions.

2. OBSERVANCE OF ENVIRONMENTAL RIGHTS

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97.132. Ensure implementation of environment protection legislation¹⁴.

2.1. The untimely publication by the Ministry of Natural Resources of Ukraine the main source of environmental information – National Reports on the state of the environment¹⁵, has become traditional. Moreover, in the violation of the law, the National Reports are not being submitted to the Verkhovna Rada of Ukraine for many years.

2.2. However, some executive authorities continue illegally restrict the access to environmental information by adopting their own bylaws¹⁶. The information of the State Water Cadastre should also be public¹⁷. However, such system does not currently established. Printed report Annual Data on the Surface Water Regime and Resources is not being replicated to the public. It can only be obtained on a contractual basis, for additional payment¹⁸.

2.3. The requirements of the Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement in respect of greenhouse gas is not also being performed by Ukraine¹⁹. However, greenhouse gas collection system is not being carried out properly. Low concentrations of methane according to the accounting for emissions is not being recorded, although in essential concentration they can significantly affect air quality and climate change. Government approval of the Concept of state policy in the field of climate change for the period till 2030 adds an optimism²⁰.

¹⁴ Recommendation is provided by the Islamic Republic of Iran on the basis of A/HRC/22/7/Add.1

¹⁵ At the beginning of 2017 the most urgent report on the website of the Ministry was for 2014. // <http://www.menr.gov.ua/index.php/dopovidi>

¹⁶ Thus, the State Agency of Forest Resources of Ukraine (DALRU) after amending the list of information constituting an official information in DALRU, continues illegally conceal large amounts of information, classified as limited access data, on the condition of the state forest fund and forest inventory activity // http://dklg.kmu.gov.ua/forest/control/uk/publish/article;jsessionid=B1DA47F07BBD070CEFD5B2D6D901A376?art_id=82020

¹⁷ This cadastre is created for state budget funds to provide government agencies and citizens with the necessary data on water resources by means of an automated information system. // <http://zakon0.rada.gov.ua/laws/show/1102-2011-%D0%BF>

¹⁸ In accordance with the List of Paid Services for Fire Prevention, approved by the government Decree. // <http://greenworld.in.ua/index.php?id=1485006408>

¹⁹ Such register wasn't maintained in 2016. // https://ukr.lb.ua/economics/2016/07/19/340592_ukraina_rik_vela_reiestru_vikidiv.html

²⁰ December 2016. // <http://zakon2.rada.gov.ua/laws/show/932-2016-%D1%80>

2.4. The challenge may be the Government's plans to develop waterpower engineering; in particular, the Dniester river basin may threaten the expanding capacities of the Dniester hydro power plant and the construction of a cascade of hydroelectric power station. At least, it goes about a possible violation of a number of international and bilateral treaties in the environmental field²¹.

2.5. The return by the President of draft bills approved by the Parliament on environmental impact and strategic environmental assessment does not promote a positive image of Ukraine²². These assessment types are separate environmental assessment mechanisms used to prevent any possible negative effects of economic development for the environment and human health.

2.6. The potential damage to ecological security inflicted extended to the end of 2017 a moratorium for state controlling bodies, including State Environmental Inspectorate (SEI), the planned supervisory measures of economic activity²³, which operates over the last few years.

2.7. The Act of Ukraine on the implementation of integrated approaches to water management by basin principle will promote preservation and restoration of water resources²⁴.

RECOMMENDATIONS:

1. Adopt a strategic environmental and environmental impact assessment at the legislative level.
2. Observe the plan for implementing the national legislation with EU Directives affecting the observance of environmental rights, in particular: 98/83/EC Drinking Water, 91/676/EC Protection of Waters against Pollution caused by Nitrates from Agricultural Sources, 2008/50/EC On Ambient Air Quality and cleaner Air for Europe and so on.
3. Ratify the Treaty between the Republic of Moldova and Ukraine on cooperation in the field of protection and sustainable development of the Dniester River Basin.
4. Establish functioning of a mechanism for monitoring of compliance with environmental requirements by the business entities.
5. Make a revision of hydropower programs.
6. Keep recreational areas and objects of natural reserve fund within cities and to acknowledge that the existence of such zones is the guarantee of the rights of poor layers of population to natural resources use and recreation.

²¹ On June 13, 2016 the Government adopted the Development Program of Waterpower Engineering for the period up to 2026 (<http://zakon2.rada.gov.ua/laws/show/552-2016-%D1%80>). Prior to making this decision the Ministry of Environment provided the program developer – MFE of Ukraine (Ministry of Fuel and Energy) – their own critical observations and proposals for its project (<http://menr.gov.ua/press-center/news/123-news1/5110-minpryrody-vyslovylo-svoiu-pozytiiu-shchodo-prohramy-rozvytku-hidroenerhetyky-na-period-do-2026-roku>). The Ministry of Environment stressed the serious negative consequences of the implementation of the Program, including transboundary basin of the Dniester. The capacity building projects of the Dniester Pumped-storage hydroelectricity (PSH) and construction of the Dniester HPP Cascade violate several acts of Ukraine and its international obligations, including the Aarhus Convention, the Espoo Convention and the Treaty between the Republic of Moldova and Ukraine on cooperation in the field of protection and sustainable development of the Dniester River Basin (<http://zakon2.rada.gov.ua/laws/show/942-2012-%D1%80>). The Government ignored a proposition by the Ministry of Environment as for holding a strategic environmental assessment of the Government Program on holding a strategic environmental assessment (SEA) of the Program in accordance with the Article 4 of the Minutes on SEA for Espoo Convention.//The response of the Ministry of Environment to the application by Green World EHO No. 5/3-5/7-7409-16 dated 05.08.2016– <http://greenworld.in.ua/index.php?id=1471622636>

²² On October 4, 2016, the Verkhovna Rada adopted the Draft Bill On Environmental Impact Assessment (http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58257) and On Strategic Environmental Assessment (http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56730). On October 31, both Draft Bills were defeated by the President and returned to the Verkhovna Rada.

²³ The Act of Ukraine On Specific Features of the Exercise of State Supervision (Control) in the Field of Business // <http://zakon2.rada.gov.ua/laws/show/1728-19>

²⁴ On Amendments to some legislative Acts of Ukraine on the Implementation of Integrated Approaches to Water Management by Basin Principle // <http://zakon3.rada.gov.ua/laws/show/1641-19>

3. THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

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97.124. Implement recommendations made by independent electoral observation missions in relation to election rights.

3.1. Obstacle to exercise the right of the citizens to participate in public affairs is, in particular, the lack of transparency of election procedures (financing and spending of electoral funds, change of between-election constituency, the formation of election commissions, etc.) that do not provide free will of voters and transparency of formation of government bodies and local government agencies through elections. Need an improvement the mechanisms for the implementation of direct democracy, as well as the mechanisms for interaction between civil society and state authorities, local authorities in the decision-making process, including on issues of local importance.

3.2. By the legislation on local elections in 2015 it was introduced the simultaneous application of three electoral systems, increasing the threshold for political parties to 5%, limiting the right to participate in the election of independent candidates, a significant limitation the observers in their rights, the difficulty of voters' access to information about candidates, the prohibition to include voters in a list of voters on the voting day even by a court judgement. The problem of participation of internally displaced persons in the voting was not solved. Among the positive aspects was the introduction of a gender quota – 30% representation of persons of the other sex in the lists of parties, but the Act did not provide for any sanctions for non-compliance with this provision.

3.3. On October 25, 2015, it was held a regular local elections of deputies of local councils and rural, settlement, city heads. On the territory temporarily occupied by the Russian aggression (Crimea, Sevastopol, certain districts of the Donetsk and Luhansk regions), local elections did not take place officially. In addition, the elections did not take place in separate settlements in the Donetsk and Luhansk regions, where voting could be dangerous for the lives of citizens because of their proximity to military actions.

3.4. Significant obstacles to the implementation of the electoral law arose in the parliamentary elections of 2014. In some areas of Luhansk and Donetsk regions, electoral campaign was coming against the background of military actions, in an atmosphere of violence and intimidation.

3.5. The introduction of the electronic petition as a form of involving citizens in the decision-making process by the authorities may be welcomed²⁵.

3.6. However, the formation of regulatory and legal acts distinguishes instability and political motivation for changes. Electoral legislation has not been codified yet. Changes are made only to the acts on separate types of elections. These changes often were made in the operative mode and were a response to the problems

²⁵ According to the applicable legislation of Ukraine, a special form of collective appeal of citizens to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the local government is an electronic petition that is submitted and considered in accordance with the procedure provided for in Article 23-1 of the Act of Ukraine On Public Appeals, which is a mechanism of real application of the fifth article of the Constitution of Ukraine.

that arose during the organization of the electoral process. The Act On All-Ukrainian Referendum remains imperfect

RECOMMENDATIONS:

1. Avoid legislative initiatives that carry potential features of discrimination. Accept, where necessary, positive actions with a view to the participation of all categories suffering from discrimination in the political life of society.

4. GENDER EQUALITY AND PROBLEM OF POVERTY

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97.47; 97.48. Use a gender sensitive approach in poverty alleviation programs.

4.1. The level of real income of the population in Ukraine is decreasing. Since 01.05.2017, the state has established a living wage of UAH 1.399 per month (\$ 56). Approximately 25% of the population is below the poverty line. In the structure of total household spending, consumer spending are up to 92.9% with a total reduction of food consumption. Even in conditions where both parents work and receive wages 20-30% higher than the minimum, the family anyway feels poor. The emergence of second and subsequent child puts the family in a more difficult situation. In the worst situation are large families, where the risk of monetary poverty for them is 2.4-2.6 times higher than the average. The risk of poverty increases with decreasing the sizes of settlements – rural poverty level (29.7%) is almost twice exceeds such rate in large cities (17.1%). Rural women constitute the particular risk group.

4.2. During the last 4 years, Ukraine adopted a number of strategic regulations aimed at overcoming poverty, reducing the difference in labor remuneration for men and women²⁶. However, gender factor in these documents was almost not taken into account, and the proposed measures are not effective.

4.3. Gender gap index (World Economic Forum) in Ukraine registers an increase of a gender pay gap in Ukraine. In 2014, Ukraine held 56-th place in 2015 – 67-th, in 2016 – 69-th place²⁷. One of the components of this index is economic equality and opportunities. Accordingly, in 2014 women got wages by 23.67%, in 2015 by 25.1%, in 2016 by 25.71% less than men did. Men are more often involved into work with heavy, harmful, especially heavy and especially harmful work environment, and to work at night, which implies an increased payment. Payments from the social insurance fund for temporary loss of working capacity depend on the insurance period. In particular, with an insurance period of at least three years, 50% of the

²⁶ The Decree of the Cabinet of Ministers of Ukraine No. 34-r of January 21, 2015 On Approval of the Plans developed by the Ministry of Social Policy for the Implementation of EU Legislation <http://zakon3.rada.gov.ua/laws/show/34-2015-%D1%80>; www.kmu.gov.ua/document/.../Action%20plan_78_13.01.15.pdf; The state program for ensuring equal rights and opportunities for women and men for the period until 2016, approved by Resolution of the Cabinet of Ministers of Ukraine No. 717 of September 26, 2013 // <http://zakon5.rada.gov.ua/laws/show/717-2013-%D0%BF>; The Order of the Cabinet of Ministers of Ukraine dated March 16, 2016 No. 161-r On the Approval of the Strategy for Overcoming Poverty // <http://zakon2.rada.gov.ua/laws/show/161-2016-%D1%80>; The Order of the Cabinet of Ministers of Ukraine of August 8, 2016 No. 573-r On Approval of the Action Plan for 2016 – 2017 to implement the Strategy for overcoming poverty // <http://zakon2.rada.gov.ua/laws/show/573-2016-%D1%80>

²⁷ 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

average wage is paid, and the length of service from three to five years is 60%. From 5 to 8 – 70%, over 8 years – payments are held in one hundred percent. Therefore, young women who have children of tender years suffer from this practice.

4.4. In Ukraine remains the prohibition for women to engage in more than 450 activities, that grossly violates their right to work, and equality with men in the labor field²⁸. This is accompanied by a gender imbalance in the public service system, where no more than 32% of women occupy leading positions at the oblast level.

4.5. The above problems are exacerbated by the lack of effective dialogue with civil society organizations, aimed at improving communication practices and investigate discrimination cases. In addition, women are not in the focus of the judicial power of Ukraine, there is almost absent judicial practice in cases of discrimination in wages based on sex²⁹.

RECOMMENDATIONS:

1. To provide for financing of the guarantees of observance of socio-economic rights enshrined in the legislation in full, stop the practice of 'manual management' when establishing the amount of social payments to households.
2. Avoid discrete increases of the minimal pension; introduce indexation rule, in which the increase in pensions will be tied to the consumer price index, calculated for the population groups with different incomes.
3. Start training courses on gender issues for students, civil servants, judges and candidates for judges.
4. Assure the implementation of judgments of national courts relating to the payment of social aid, where the state is the defendant.

5. PROTECTION OF RIGHTS OF ASYLUM SEEKERS, REFUGEES AND PERSONS IN NEED OF COMPLEMENTARY PROTECTION, WITHIN THE FRAMEWORKS OF IMPLEMENTATION OF THE "NON-REFOULEMENT" PRINCIPLE AND PROCEDURAL GUARANTIES AGAINST FORCIBLE RETURNS

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97.143. Ensure respect of the principle of non – refoulement and that the asylum seekers are not deported to countries where they might find themselves at risk.

97.144. Respect the principle of non-refoulement.

97.145. Ensure the protection of refugees and asylum seekers and reconsider cases in which asylum seekers are to be forcibly returned.

5.1. The non-refoulement principle is stipulated by the Act On Refugees³⁰, which provides protection from forced return and extradition of asylum seekers.

²⁸ https://humanrights.org.ua/material/v_ukrajini_zhinkam_dosi_zaboroneni_ponad_450_profesij_zvit

²⁹ http://zib.com.ua/ua/95247-u_verhovnomu_sudi_ukraini_obgovorili_gendernu_problematiku_u.html

³⁰ The Act of Ukraine On Refugees and Persons in Need of complementary or temporary Protection // <https://goo.gl/giByfP>

Nevertheless, and in spite of certain legislative measures that were taken in order to improve national legal framework on the situation with the asylum seekers, recognized refugees and persons in need of complementary protection, there is still a list of remaining problems. The main problems concern issues with access to the territory, legislative gaps in the refugee status determination leading to a low recognition rate of asylum seekers in Ukraine, and documentation of asylum seekers. All of the above results in non-compliance with effective implementation of the principle of non-refoulement.

5.2. It is unlikely for asylum seekers to apply for asylum easily, in case of being not admitted to the territory of Ukraine by the SBGS³¹, without the provision of legal assistance. Even in cases of accepting the asylum application by the SBGS officers, there is no comprehensive and well-regulated procedure of transferring such application to the nearest RMS³² office. There are no effective procedural instruments for protecting the rights of persons apprehended at the airport transit zones, as they are usually deprived of food, water, and decent hygiene routine. The asylum seekers that were not admitted to the territory of Ukraine, and which asylum applications were not transferred for the consideration of the SMS³³, after being apprehended at the transit zones of the airports and/or other SBGS checkpoints, are “pushed back” from the country in violation of the non-refoulement principle.

5.3. Asylum seekers whose applications are accepted and registered are issued with MSID³⁴, which is valid for the whole period of the state migration procedure, and entitles its holder to certain social and economic rights, like employment and education. However, in practice, it is problematic for them to be legally employed, easily enter universities and/or schools, and it is not foreseen for them to register marriage with the MSID. The asylum seekers’ claims are often rejected as manifestly unfounded or abusive claims before their consideration on the merits due to, among other, insufficient expertise of the RMS staff and, as a result of low state budget, failure to provide interpreters during the registration and interviews. Asylum seekers rejected by the RMS to be registered and/or admitted to the asylum procedure, as well as asylum seekers whose claims were rejected by the SMS on the merits have only 5 days for appealing the decision. In case of failure to appeal a negative decision, they automatically become a subject to expulsion from Ukraine in violation of the non-refoulement principle. The MSIDs of those asylum seekers, who exhausted all domestic remedies in appealing a negative RMS/SMS decision, become invalid putting such asylum seekers under the risk of refoulement due to their illegal stay in the territory of Ukraine.

5.4. Those asylum seekers who have been detained either in MACs³⁵ for deportation purposes, or, in extradition cases, in PTDCs³⁶ have the right to apply for asylum, which is provided by the Act On Foreigners³⁷. Yet, in practice, the legal procedure for transferring or registering an application by asylum seekers who have been detained is poorly regulated and potential asylum seekers are often deprived of their guaranteed right for asylum.

5.5. It is also stipulated in the Act On Foreigners, that asylum seekers released from the MAC were entitled to the “tolerate status” document, which is a Temporary Residence Permit (TRP) in Ukraine issued for 1 year. In practice, those documents are valid only with the residence registration of the asylum seekers, and there is no positive practice enabling asylum seekers to extend the document easily for another 1-year term. TRP holders, who are actually former asylum seekers, without registration in their document, and those, whose document is expired after 1 year, automatically return to the situation, where they are under risk of refoulement, as there are no further steps envisaged in legislation for such persons.

³¹ *State Border Guards Service of Ukraine;*

³² *Regional Departments of the State Migration Service of Ukraine;*

³³ *State Migration Service of Ukraine;*

³⁴ *Migration Service ID (ID for asylum seekers);*

³⁵ *Migration Accommodation Centre (there are two of them in Ukraine: in Chernihiv oblast and in Volyn oblast);*

³⁶ *Pre-Trial Detention Centre;*

³⁷ *The Act On Legal Status of Foreigners and Stateless Persons // <https://goo.gl/YRl0sz> (UA)*

RECOMMENDATIONS:

1. It is necessary to set out well-regulated legislative procedure on:

- transferring applications of asylum seekers detained at the SBGS checkpoints, in MACs and PTDCs;
- adopting a set of amendments to current legislation in order to enable MSID holders to have unopposed access to social and economic rights (employment, education, marriage registration, financial services, receiving residence permit on the grounds of marriage with the citizen of Ukraine/having a child born in the territory of Ukraine);
- providing an alternative instrument to apprehension while the case on refoulement is considered/appealed;
- effective integration of asylum seekers into Ukrainian society.

6. RIGHTS OF DISABLED PEOPLE

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97.16, 97.43, 97.134. Adopt a national action plans and revise national legislation for implementation of the UN Convention on the Rights of Persons with Disabilities³⁸ and observance of rights of this group of citizens.

6.1. Two program documents were approved to implement the standards of the Convention on the Rights of Persons with Disabilities. In addition, measures to implement the CRPD are included into the action plans aimed at ensuring human rights³⁹.

³⁸ In 2012 was adopted the State Program National Action Plan on the Implementation of the Convention on Rights of Disabled Persons for the Period till 2020. // <http://zakon0.rada.gov.ua/laws/show/706-2012-%D0%BF>. In 2016 it was accepted the Resolution by the Cabinet of Ministers of Ukraine On Approval of the Action Plan on the Implementation the Recommendations contained in the concluding Observations given by the UN Committee on the Rights of People with Disabilities to the First Report of Ukraine on the Implementation of the UN Convention on the Rights of Persons with Disabilities for the Period till 2020. // <http://zakon2.rada.gov.ua/laws/show/1073-2016-%D1%80>

³⁹ This refers to the National Human Rights Strategy approved by the Decree of the President of Ukraine of August 25, 2015, No. 501/2015. // <http://zakon5.rada.gov.ua/laws/show/501/2015>. Action Plan for the Implementation of the National Human Rights Strategy for the Period till 2020, approved by the Decree of the Cabinet of Ministers of Ukraine of November 23, 2015 No. 1393-p. // <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>. On the Approval of the Action Plan for 2016-2017 on the Implementation of the Poverty Reduction Strategy, Order of the Cabinet of Ministers of August 8, 2016 No. 573-r. // <http://zakon3.rada.gov.ua/laws/show/573-2016-%D1%80>. And on annual action plans to implement the Convention on the Rights of the Child. // <http://zakon2.rada.gov.ua/laws/show/590-2016-%D1%80>

6.2. NGO's note some progress of legal approximation with the standards of the UN Convention on the Rights of Persons with Disabilities, but are concerned about the situation with the implementation of the adopted legislative and normative acts/programs and financial support for their implementation⁴⁰. Declarative actions and corruption lead to violation of the rights of people with disabilities in various fields.

6.3. Concerns are caused by the areas: combating discrimination on the basis of disability; healthcare; education; rehabilitation and care, including the provision of services at the place of residence; employment; equality before the law and access to justice; freedom of speech.

6.4. The main trends that do not suggest the implementation of CRPD standards are:

- misunderstanding and unwillingness to implement the model of disability, based on human rights such medical model dominates in health care field. International Classification of Functioning, Disability and Health is not being applied in full, an architectural inaccessibility of medical facilities remains the same; there is no information adapted for people with disabilities and educational activities for women and men with disabilities regarding their reproductive rights, for parents of children with functional impairment as to provide services at the place of their residence⁴¹;
- there was not provided the principle of reasonable accommodation for the realization of human rights by persons with disabilities. There are marked the cases of abused enforcement of judgments, where was stated discrimination based on disability⁴²;
- rehabilitation system does not meet international standards⁴³;
- care of persons with psychosocial and intellectual disabilities in boarding schools remains dominant⁴⁴. Deinstitutionalisation is not introduced;
- there is no system of early intervention and support that is needed for children with functional disabilities and families;
- there were not developed any state standards for evacuation and support of persons with disabilities during military operations, humanitarian and disaster situations⁴⁵;
- there were not created any conditions for the direct and indirect participation of people with disabilities at all stages of the legal process; administrative buildings are architecturally inaccessible; system of training of persons who work in the administration of justice needs to be improved;
- Inadequate provision of a decent standard of living⁴⁶.

⁴⁰ The level of budget programs funding aimed at people with disabilities is extremely unsatisfactory. Programs to ensure disabled people with aids are funded for 70% of the demand (sticks, crutches, wheel chairs, prostheses and orthoses for limbs, etc.) and for certain categories of persons with disabilities providing with aids is even worse. At the same time, programs to ensure people with disabilities medicinal products and medical devices (prosthetic eye implants, colostomy and urine-collecting bags) depending on the drug names, products and regions are financed by 20% of the demand.

⁴¹ Access to services of families and children. Report on the results of focus groups in the pilot regions on the project "Development of early intervention in Ukraine.", NAIU, K. 2016

⁴² Ukrzaliznytsia was reminded of the website available for people with disabilities. // https://humanrights.org.ua/material/ukrzaliznici_nagadali_pro_nedostupnij_sajt_dlja_ljudej_z_invalidnistju

⁴³ Evaluation of the rehabilitation system in Ukraine, December 2015.// http://www.physrehab.org.ua/tl_files/Docs/Assessment%20of%20the%20Rehabilitation%20System%20in%20Ukraine.%20Summary%20rstr%20UKR.pdf

⁴⁴ According to All-Ukrainian NGO Coalition for Rights Protection of Disabled Persons in the Results of Intellectual Disabilities, for the last 3 years the number of people from this group dependent on outside help, who are forced to get boarding care has doubled: 30 thousand at the end of 2013 and 60 thousand in February 2017. There is no access to supported living.

⁴⁵ Not enough attention is paid to safety issues for people with disabilities at planning of evacuation in emergency cases that especially became a problem because of the military actions in the Eastern Ukraine. For example, hardware of warning systems – alarms "Attention all!" are inaccessible to the deaf. Actions of Civil Protection are unable to provide evacuation of people with disabilities and provide an assistance.

⁴⁶ Amount of disablement payout, including for children, is preferably less than USD 50 in a month. It is impossible to live for these funds through continuous expensiveness. According to NGOs, mothers of disabled children are recently going on strike because of scarcity of payments. There are restrictions on the disablement payout for childcare because of parents' employment. Certain categories of persons with disabilities (primarily Group III), are also partially or completely denied disablement payout. The size of monetary compensation instead of sanatorium vouchers, independent sanatorium treatment (paid every two to three years depending on the category), the annual amount of monetary compensation for transport services, and the annual amount of monetary compensation for petrol, repairs and maintenance of vehicles are USD 7-20 per year.

97.133. Ensuring the right to education for children with disabilities.

6.5. The state has made some positive steps to enforce the right to education of persons with disabilities⁴⁷.

6.6. However, NGO's of disabled people note the following: the majority of educational institutions remain architecturally inaccessible; training of teachers and administrations of schools and kindergartens for inclusive education are not systemic; the lack of material support of educational institutions; there are no funding mechanisms for inclusion of reasonable accommodation for students with disabilities; interdepartmental coordination is either formal or absent; mechanisms of penalties compensation for human rights infringement are not applied. In addition, there are insufficient practices to ensure access to education for persons with intellectual disabilities and persons with complex disabilities⁴⁸.

6.7. The existing system of professional and higher education is not ready to accept young people with disabilities, even with legislative guarantees, primarily because of the inadequacy of the environment and the educational process for persons with disabilities, and insufficient training of all pedagogical workers.

97.133. Establishing a barrier-free living environment.

6.8. Despite the presence in Ukraine of legislative and regulatory requirements for the creation of accessible environment, NGO's of disabled people note the lack of effective means of influence and monitoring⁴⁹ of their compliance. This applies to both new public facilities, ranging from design and construction, and previously constructed facilities in which various services are provided to the public. At the same time, the voice of people with disabilities is almost levelled off⁵⁰.

97.135. Protection of persons with mental disabilities in psychiatric hospitals.

6.9. It looks like positive one the potential possibility of imposing judicial control over hospitalization of persons recognized as incompetent⁵¹, normalizing the use of means of fixation and/or isolation of patients in a state of exacerbation, entrusting to boarding schools the task of rehabilitation of wards⁵².

6.10. At the same time, there remains the practice of violations of the rights of patients in psychiatric hospitals and inpatient facilities for social protection. Patients in inpatient facilities either do not have access to justice, or it is significantly hampered, including their placement in the institution⁵³.

⁴⁷ *Changes in the basic laws in the field of education were made, it was developed and adopted the Concept of State Policy on Reforming of Secondary Education New Ukrainian School till 2029, the existing primary school programs were improved, amended the procedure for external evaluation, which will give an opportunity to disabled children to pass it with others.*

⁴⁸ *Progress towards implementation in Ukraine of Articles 7, 8, 24 of the UN Convention on the Rights of Persons with Disabilities. The report survey in five regions. Natalia Sofiy, Larisa Baida, April 2016 // http://naiu.org.ua/wp-content/uploads/2016/08/Ukraine-research-report_ukr.pdf*

⁴⁹ *According to the Resolution of the CMU of August 13, 2014 No. 408 On the Limitation of Interventions a moratorium was imposed on inspections of state architectural and construction control of scheduled and unscheduled inspections of new construction sites. This led to the commissioning with impunity of newly constructed barrier buildings and premises, roads without transitions for mobility impaired people (underground or groundless are without ramps and elevators).*

⁵⁰ *Entering into force in 2011 of amendments to the Act of Ukraine On Regulation of Urban Development virtually eliminated the possibility of influence of Availability Committees to decisions in the field of construction.*

⁵¹ *On June 1, 2016, the Constitutional Court of Ukraine declared unconstitutional the proposal of the first part of Article 13 of the Act of Ukraine On Psychiatric Care, according to which the incapacitated person should be hospitalized at the request of their guardian.// <http://zakon2.rada.gov.ua/laws/show/v002p710-16>*

⁵² *Standard provisions on the Psychoneurological Boarding School approved by the Resolution of the Cabinet of Ministers of Ukraine on December 14, 2016, No. 957. // <http://zakon0.rada.gov.ua/laws/show/957-2016-%D0%BF>*

⁵³ *Apparent cases of use of psychotropic substances as a physical restraint punishment. There is no respect for the privacy of patients in residential institutions. In addition, treatment is mainly based on methods of using medicines, less on rehabilitation. In NGOs suspect the conducting experiments on patients at the individual institutions. More information at: The Rights of Persons with Mental Health Problems: Compliance of National Legislation with International Standards. The Context of Human Rights in Neuropsychiatric Residential Institutions. Analytical Report by Ukrainian Helsinki Human Rights Union / R.E. Imerelli, R.I. Kravchenko, B.S. Moysa / Ukrainian Helsinki Human Rights Union. – Kyiv, KVITS, 2015. – 40 p.; The Rights of People with Mental Health Problems. Human Rights in Psychiatric Hospitals. Analytical Report by Ukrainian Helsinki Human Rights Union / R.E. Imerelli, K.P. Kazachinska, B.S. Moysa / Ukrainian Helsinki Human Rights Union. – K.: KIT, 2016 – 34 p.*

RECOMMENDATIONS:

1. Implement a system of early intervention for children with developmental disorders and the possibility of such violations and their parents according to place of residence.
2. Ensure the implementation of the International Classification of Functioning, Limitation of Life and Health. Conduct training for all relevant government institutions on this issue.
3. Provide training on disability issues for civil servants, specialists, to understand the rights of persons with disabilities set forth in the UN Convention on the Rights of Persons with Disabilities.
4. Provide a comprehensive and coherent legislative and programmatic framework for inclusive education, and provide for a clear and sufficient period for its implementation, as well as sanctions for violations.
5. Legislatively ensure the introduction of the practice of supported decision-making and the de-institutionalization of care services for persons with disabilities.
6. Ensure control and effectiveness of sanctions for non-compliance with regulations and standards in the field of unhindered access to buildings, transport and information.
7. Ensure an improvement of normative and legal acts on the issues of informing (alerting) and evacuating the population in the event of public emergency and martial law, armed conflict, act of terrorism, emergency and/or the threat thereof, taking into account the needs of persons with disabilities, including violations of the organs of vision, hearing, musculoskeletal system, with intellectual and mental disabilities, and other mobility impaired groups of the population, including those who are in the institutions of the penitentiary system, health, education and social protection), having provided without limitation, provisions for maintenance of such persons and their families (if any) and their location into agencies and institutions premises, adapted for service of these individuals and providing them with appropriate affordable housing.

7. STRATEGIC CHALLENGES FOR UKRAINE RELATED TO ARMED CONFLICT

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7.1. The result of the conflict on both sides (2014-2017) were 9.400 victims, where about 2 thousand of civilians and more than 21 thousand were wounded, nearly 1.6 million people became IDPs⁵⁴. Losses from the destruction of infrastructure during military operations reach USD 15 billion⁵⁵. The conflict zone is polluted with heavy metals (titanium, vanadium, strontium) due to shell attacks. Flooding of mines, poisoning of drinking water and the emergence of radioactively contaminated waters of the Azov Sea and the Siverskyi Donets can lead to an ecological catastrophe of the Chernobyl level. Combat actions are accompanied by massive deforestation, use of reserved facilities for military purposes, uncontrolled mining of the territory.

⁵⁴ Report on the Situation of Human Rights in Ukraine 16 February – 15 May 2016 // Office of the United Nations High Commissioner for Human Rights [Electronic resource] – Access mode: http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf

⁵⁵ Consequences of War: Will Donbas become a dead Economic Area [Electronic resource]. – Access mode: <http://link.ac/4XgB7>

By the fires of a military nature were affected 17% of forests and 24% of steppes. The actions of combatants caused significant damage to cultural monuments as a result of shelling, robbery and their use as defence buildings.

7.2. The challenges of the hybrid-armed conflict, imposed by Russia, revealed the inability of the traditional system of criminal justice to protect fundamental human rights. Investigation of crimes committed in the conflict zone is conducted independently and uncoordinated by three different bodies – the Main Prosecutor’s Office, the Security Service and the Ministry of Internal Affairs of Ukraine in accordance with their jurisdiction. However, such a distribution does not provide an opportunity to draw up a comprehensive picture of Russian aggression, and accordingly, to draw up an evidence base for the consideration of materials in the International Criminal Court. As a result, Ukraine does not have a single database of people who died during the conflict, base of damaged real estate, a separate base of combatants suspected/accused of crimes committed in the conflict zone.

7.3. The problems of investigating war crimes, mechanisms for swap of prisoners, reparation to victims of conflict, social protection of IDPs, movement of citizens through the fire demarcation line require the state to implement the principles of Transitional Justice and reform of the civil security sector. However, the state lingers with the ratification of the Rome Statute, the provisions of Art. 124 of the Constitution of Ukraine prohibit the introduction of hybrid and international courts, and the term Transitional Justice is known only to single parliamentarians.

RECOMMENDATIONS:

1. Apply necessary efforts to develop the legal mechanisms for the swap of prisoners, fixing of cases of civilian targets shelling, compensation for harm to civilians.
2. Strengthen the ability of Ukrainian specialists who work in the field of documenting and investigating of war crimes and violations of the international humanitarian law through educational specialized programs.
3. Develop a transparent mechanism for determining and distributing compensation for damaged and lost property with obligatory publication of results on the websites of local communities.
4. Support of civil society initiatives to implement the Transitional Justice mechanisms in the work of law enforcement and judicial bodies of Ukraine. To direct the expert potential for the formation of national truth-telling mechanisms aimed at reconciliation and not causing an additional trauma to the victims of the conflict (centralized database, mutual work of government bodies and non-governmental sector, documentary recovery of events).
5. Conduct a national discussion on civil security sector reform, developing of relevant policies and strategies to protect the right to life of the population during military and emergency situations.

8. RIGHT TO PEACEFUL ASSEMBLY

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97.123 Implement a law on freedom of assembly that complies with applicable standards under article 21 of the IC CPR⁵⁶.

8.1. The obstacles to the realization of freedom of peaceful assembly in Ukraine continues to be the subject of consideration by the international organizations. Therefore, as of February 2017, there were 8 cases against Ukraine on communications in the European Court of Human Rights, which are mainly connected with the events of Euromaidan and the Revolution of Dignity 2013-2014⁵⁷.

8.2. The recognition of the unconstitutional Decree of the Presidium of the Supreme Soviet of the USSR⁵⁸ looks positive⁵⁹, which fixed the permissive order of holding of assemblies and obliged to file an application for holding no later than 10 days in advance, and contained a number of other restrictions⁶⁰.

8.3. The provisions of Part 5 of the Article 21 of the Act of Ukraine On Freedom of Conscience and Religious Organizations is also recognized as unconstitutional, according to which religious assemblies outside religious buildings and adjoining territories could be conducted only with the permission of the relevant local state administration, the executive body of village, town or city council⁶¹.

8.4. A number of legislative initiatives on the realization of the freedom of peaceful assembly, including as separate special acts, have been submitted to the Parliament for consideration. The Venice Commission considered two Draft Bills included in the agenda of the fifth session⁶² of the Verkhovna Rada. However, the Office of the United Nations High Commissioner for Human Rights has sharply criticized the Draft Bill of the special Act On Protests No. 3587⁶³.

8.5. Unfortunately, there are no normative acts on the regulation of police actions during the organization and holding of peaceful assemblies, the adoption of which was planned in 2016. It is impossible to evaluate the effectiveness of certain training programs for police officers⁶⁴.

8.6 However, in recent years, there was not made a decision regarding liability for unlawful obstruction of peaceful assembly. An investigation of violations of freedom of assembly remains ineffective⁶⁵.

RECOMMENDATIONS

1. To amend the current legislation of Ukraine on freedom of assembly, to exclude the Article 1851 of the Code of Ukraine on Administrative Offences, to amend Article 182 of the Code of Administrative Judicial Proceedings of Ukraine (clarify the procedure for restricting freedom of assembly and provide for an effective appeals mechanism), to amend the Acts of Ukraine On the Procedure for Resolving of Collective Labor Disputes (Conflicts) (exclude special regulation of holding peaceful assemblies outside of enterprises during strikes), On Court Fee (exempt from court fees defendants in cases of restrictions on freedom of assembly), etc.

⁵⁶ The recommendation provided by the United States under A/HRC/22/7/Add.1

⁵⁷ M. Kamenev, *Freedom of Assembly. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations*: <https://helsinki.org.ua/svoboda-zibrann-kamenjev/>

⁵⁸ Order dated July 28, 1988 No. 9306-XI On the Procedure for Organizing and Holding Meetings, Rallies, Marches and Demonstrations in the USSR

⁵⁹ The judgment of the Constitutional Court of Ukraine No. 6-rp / 2016 dated September 8, 2016

⁶⁰ M. Kamenev, *Freedom of Assembly. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations*: <https://helsinki.org.ua/svoboda-zibrann-kamenjev/>

⁶¹ *Ibidem*.

⁶² *Annual Report on the Monitoring of the Implementation of the National Strategy for Human Rights (December 1, 2015 – December 1, 2016).* – K. – 2016. – 60 p.

⁶³ M. Kamenev, *Freedom of Assembly. // Human Rights in Ukraine in 2016. Report of Human Rights Organizations*: <https://helsinki.org.ua/svoboda-zibrann-kamenjev/>

⁶⁴ *Ibidem*.

⁶⁵ *Ibidem*.

SUBMISSION FOR THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

COALITION OF HUMAN RIGHTS ORGANIZATIONS "AGAINST TORTURES"

The Coalition was created with the aim of combating torture and ill treatment in law enforcement bodies, prisons, psychiatric institutions, social institutions, places of temporary stay of migrants and other places of detention both legitimate and established illegally, and the impunity of those who commit these crimes.

For more detailed information, please, see the Memorandum of the Coalition:

<http://pk.khpg.org/index.php?id=1490722033>

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I. GENERAL OVERVIEW

1. The dynamics of depopulation in 2016 remains: the death rate is significantly higher than the birth rate¹. Experts say that such a high death rate is connected with the environmental situation in the country; particularly air pollution is the main reason².
2. Another widespread cause of death rate in Ukraine is the death from traffic accidents; in particular four thousand people died in traffic accidents in 2016³.
3. The statistics of death from suicide is disappointing too. According to statistics the number of suicides had decreased since 2000, but in the last 2-3 years this number increased. Ukraine leads the European countries in the number of suicides – 22 suicides for 100 thousand people.
4. Psychologists explain that for almost 3 years Ukrainians have lived in difficult circumstances. Armed conflict in the East, inflation, unemployment, meager pension's payment, the lack of medical care cause depression and push people to commit suicide.

II. STATE MEASURES AIMED AT PROTECTING LIFE OF PERSONS UNDER ITS CONTROL

5. The essential problem is the numerous violations of the right to life in prisons or pre-trial detention centers. Terrible living conditions, unavailable or inadequate medical care can lead to the detainees' death.
6. Despite significant decrease of the number of prisoners, they still kept in conditions which lead to spread of various diseases from time to time resulted to death. The average cost of detention for the past three years has almost tripled – from UAH 50.87 in 2013 to 135.85 UAH a day in 2016⁴.
7. According to the State penitentiary service, 523 detainees died in the prisons (123 died in pre-trial detention centers), 60 (17 in pre-trial detention centers) detainees committed suicide in 2016⁵.

III. STATE OBLIGATIONS TO ENSURE EFFECTIVE INVESTIGATION

8. According to prosecutors, 5,870 murders and 1,057 other crimes that caused death were committed in Ukraine by the end of 2016. However, only 1,585 people were noticed on suspicion⁶.
9. It shows that the new CCP had to solve existing problem with lack of effective investigation investigations, particularly in cases of deaths of persons being under control of law-enforcement, unusual ones in course of military service without combats or just caused in traffic accidents.

¹ <http://www.ukrstat.gov.ua/>

² <http://glavnoe.ua/news/n285136>

³ http://www.sai.gov.ua/uploads/filemanager/file/dtp_12_2016.pdf

⁴ <http://ua.112.ua/statji/chomu-v-ukrainskykh-viaznytsiakh-vynykaiut-bunty-i-iak-zhyvut-uviazneni-336435.html>

⁵ <http://ukrprison.org.ua/expert/1485844155>

⁶ http://www.gp.gov.ua/ua/stst2011.html?dir_id=112659&libid=100820&c=edit&_c=fo#

10. In such cases, having been commenced on the fact of finding of a corpse, the investigations are conducted just formally, with termination of the investigation without detecting of the perpetrators or without charging them, and in certain cases, with the conclusion of a suicide.

11. After ratification by Ukraine the Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention) the European Court of Human Rights (ECtHR) became the last and often the only resort for the victims. The ECtHR has found violation of the right to life in more than 50 cases against Ukraine. The statistic dynamics of the judgments against Ukraine is depressing: eight – in 2013, four in 2014, 10 in 2015, 12 – in 2016⁷.

12. Mostly, the ECtHR in cases against Ukraine have recognized ineffective investigation of cases of murder and inadequate medical care for prisoners.

IV. GENERAL OVERVIEW OF THE SITUATION IN EASTERN UKRAINE

13. The conflict in Eastern Ukraine has lasted for almost three years and led to huge casualties among both military and civilian population. In total, from mid-April 2014 to 15 November 2016, 32,453 casualties among Ukrainian armed forces, civilians and members of the armed groups were recorded by international organizations. This includes 9,733 people killed and 22,720 injured⁸.

14. As a result of non-selective shelling nearly 2,000 civilians have been killed since April 2014.

FREEDOM FROM TORTURE AND ILL-TREATMENT

I. GENERAL OVERVIEW

15. Previously the ECtHR and other international institutions have found systematic violations in relation to physical abuse during pre-trial investigation, lack of medical treatment and degrading conditions in prisons, and the problems continue to be of current interest. Only 6 % of Ukrainian citizens believe in victory over tortures, one in three has dealt with ill-treatment somehow and 30 – 35 % is frightened of tortures nowadays⁹.

16. Recently Ukraine has faced a new crucial test – Russian military aggression. Over these years, the rate of tortures increased due to grievous breaches by Russian-backed separatists.

17. According to the Report by the Office of the Ombudsperson, more than 21 thousands civilians have been wounded since April 2014 in Donetsk and Luhansk regions. The most common cause of damage was a mine-explosive¹⁰.

⁷ [http://hudoc.echr.coe.int/eng#{"sort":\["kupdate Descending"\],"languageisocode":\["ENG"\],"respondent":\["UKR"\],"violation":\["2""2+P6-1""2-1""2-2"\]}](http://hudoc.echr.coe.int/eng#{)

⁸ http://www.un.org.ua/images/ENG_16th_HRMMU_Report.pdf

⁹ Amnesty international: http://www.bbc.com/ukrainian/politics/2015/06/150626_torture_police_amnesty_international_report_sd

¹⁰ http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf

II. TORTURES AND DEGRADING TREATMENT IN EASTERN UKRAINE

18. Armed terrorists regularly captured both military officers and civilians on the territory of Donetsk and Luhansk regions under their control. Hostages several times were exchanged to fighters of so-called Luhansk or Donetsk people republic. The Security Service of Ukraine (hereinafter – the SSU) specified 108 people as captives at the end of 2016, approximately 3086 captives had been exchanged¹¹. In accordance with the statistic research more than 80 % of captured people were tortured just for once. More than 65 % of them were regularly beaten in unlawful detention canthers. In civilians' cases about 50 % of unlawfully detainees complained on physical abuse¹². In many cases persons have been tortured to death.

III. PRISONERS LEFT ON THE OCCUPIED TERRITORY

19. From the very beginning of conflict, prisoners became one of the most vulnerable categories of people in Eastern Ukraine. The guard did not lead them to bomb-proof shelters to secure from shelling. Among others, Chernuhin correctional colony was totally destroyed; the ones in Donetsk and the Makiyivska were essentially damaged, more than five prisoners died, decades were injured. None of the colonies have been evacuated due to negligence of the officials¹³.

20. Only 160 people were evacuated in two years from more than 9000 prisoners in Donetsk and 4500 in Luhansk regions. They all suffered from inhuman conditions as in December 2014 the Government discontinued funding colonies on the territories. The prisoners are left starving (new guards did not feed them appropriately), thirsty and freezing (in winter the temperature in cells fell to 5 – 10 degrees Celsius)¹⁴.

IV. GENERAL OVERVIEW OF NATIONAL AND INTERNATIONAL COURTS' PRACTICE

21. In 2012 – 2015 the ECtHR delivered 84 judgements against Ukraine under Article 3 of the Convention. Mostly, the ECtHR found systematic violations when the police ill-treated suspects to get confession (see, Kaverzin v. Ukraine № 23893/03, judgement of 15 May 2012 and more than 40 other cases aftermaths).

22. The new CCP abolished “the inquiry” as a stage of pre-trial investigation but it have not led to effective investigation. The State Investigative Bureau has not been founded yet, whilst prosecutors commonly do not start the investigation. Even having been commenced by an investigative judge's order through the victim's complaint on the prosecutor's inactivity, typically, it is terminated without charging of perpetrators

23. According the Unified State Register of judicial decisions (hereinafter – the Register), only 421 verdict against police officers for the decade. In 2016 courts delivered 26 such verdicts (that is less than in 1000 times than the number of complaints)¹⁵ while only in November 2016 the Prosecutor's Office started 102 criminal proceedings¹⁶.

¹¹ <http://tyzhden.ua/News/176895>

¹² <http://library.khpg.org/files/docs/1451397149.pdf>

¹³ <http://ukrprison.org.ua/publication/1430856171>

¹⁴ Annual report by the Ombudsperson: <http://www.ombudsman.gov.ua/ua/all-news/pr/5515-qv-schorichna-dopovid-upovnovazhenogo-pro-standerzhannya-ta-zaxistu-pr/>

¹⁵ <http://www.reyestr.court.gov.ua/>

¹⁶ http://www.gp.gov.ua/ua/stst2011.html?dir_id=110381&libid=100820&c=edit&c=fo

I. GENERAL OVERVIEW

24. Significant decrease in the number of people held in penitentiary institutions can be noted. Thus, according to statistics of the State Penitentiary Service of Ukraine as of 1 September 2016 in prisons and detention facilities located on the territory controlled by the Ukrainian authorities 60,771 people were kept¹⁷. For comparison, in early 2012 the number of such persons amounted to 153,430 people¹⁸.

25. Such abrupt reduction in the number of people in institutions of deprivation of liberty can be explained, firstly, by the adoption of the new CCP, which sets limits for detention during the preliminary investigation to 12 months, secondly, a part of prisoners remains in Crimea and non-controlled Donbass territory; thirdly, adoption in 2015 of so-called "Savchenko's Act", under which the time of pre-trial detention is counted on as two days of imprisonment.

II. SYSTEMATIC PROBLEMS

26. Some systemic problems to which the ECHR has repeatedly drawn attention in its judgments, remain urgent, including:

- according to the Register, national courts while choosing and extending a detention on remand do not conduct thorough analysis of the accused's personal circumstances and do not mention specific risks preventing choose of alternative measures¹⁹;
- lengthy detention of persons whose criminal cases are considered by court;
- while satisfying motions about choosing detention on remand, courts ignore the lack of "reasonable suspicion";
- compensation system for illegal arrest or pre-trial detention is not effective in practice. There are only two cases with judgment on monetary compensation for the victims came into force;
- when issuing rulings on extradition arrest or on refusal to quash the prosecutor's decisions on extradition in the most cases courts do not pay sufficient attention to circumstances that may prevent the extradition;
- courts refuse to consider the time of temporary arrest (up to 40 days) arrest as part of the overall 12-month limit of extradition arrest, resulted to unlawful detention of the persons beyond the statutory limit.

III. SHORTCOMINGS OF NATIONAL LEGISLATION

27. The new CCP greatly expanded the guarantees for detainees and introduced alternative preventive measures such as house arrest and bail. However, it has certain shortcomings that cause the systematic violation of the rights of suspects and accused for liberty.

¹⁷ <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/628075>

¹⁸ <http://ukrprison.org.ua/statistics/1329133962>

¹⁹ <http://reyestr.court.gov.ua/Review/49919886>; <http://reyestr.court.gov.ua/Review/43858654>

28. The new CCP greatly expanded the guarantees for detainees and introduced alternative preventive measures such as house arrest and bail. However, it has certain shortcomings that cause the systematic violation of the rights of suspects and accused for liberty particularly, the possibility of “automatic” prolongation of pretrial detention (selected during pretrial investigation) at court’s preparatory hearing (Article 315 of the CCP)²⁰ and even non-reconsidering up to two months the necessity to prolong the detention when the matter has not determined at preparatory hearing and the term of the detention set by the investigating judge have expired (Article 331). The last problem was stressed by the ECtHR in Chanyev versus Ukraine case; however no legislative amendments have been introduced.

29. In addition, according to § 5 of Article 176 of the CCP alternatives to detention preventive measures cannot be applied to persons suspected or accused of committing crimes related to encroachment on national security and terrorism. In our view, such a legal ban obliges courts to make decisions in favour of deprivation of liberty, which is incompatible with international standards provided in the Convention and ICPR.

30. Also, in 2014 the CCP was supplemented by Article 615, which stipulates that in areas which has legal regime of martial law, state of emergency, the antiterrorist operation in case of impossibility to perform the functions by an investigating judge his/her powers, these functions are performed by an appropriate prosecutor. Thus, that article gives the prosecutor the authority to depriving people of liberty for up to 30 days without any judicial review of the legality of detention that is serious violation of the Constitution of Ukraine and international norms.

RIGHT TO FAIR TRIAL (CRIMINAL ASPECT)

I. GENERAL CONSIDERATIONS

31... Since previous reporting periods Ukraine mostly accomplish the recommendations given by the UN HRC concerning administration of justice and securing the right to a fair trial in aspect of constitutional and statutory reforms. From other side, the special report of the Ombudsperson pointed out that very often judges in trial and appeal had violated certain rules, showed prejudice and non-objectivity²¹. The Ombudsperson also found some disproportionate restrictions of defence in comparison with prosecution, notably during consideration of motions submitted by parties²².

II. PRESUMPTION OF INNOCENCE

32. Despite of the presumption of innocence foreseen by § 2 Article 14 of the ICCPR, prosecuting authorities often announce about guilt of the person being prosecuted before court verdict²³.

²⁰ Узагальнення судової практики щодо обрання ТПВ: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

²¹ *ibid.*, p.119, p.131.

²² *ibid.*, p.88, p.118.

²³ http://khar.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=148128

III. RIGHT TO DEFENCE

33. Despite implementation in the national legislation the requirement of § 3 (a) Article 14 of the ICCPR of prompt informing the defendant in detail of the nature and cause of the charge against him, in practice this rule was violated either during arrest or court proceedings²⁴.

34. Para 3 (b) of Article 14 of the ICCPR set out the right to have enough time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

35. The lack of time for preparation the defence often happened when legal aid is given to a newly detained person. Some practical restrictions before the initial interrogation exist, namely in time of communication between the suspect and his/her lawyer and in access to the case-file papers. If lawyers are engaged for participation in a procedural action, usually they did not have enough time to prepare defence since the action is conducted urgently. The same situation often happens while preparation to hearing on motion of choosing of preventive measure. Until completion of pre-trial investigation investigators wish to provide the defence minimum information on the case and often misuse the power to restrain access to case-files when “familiarization with it on this stage of criminal procedure would cripple the pre-trial investigation²⁵. The requirement of conditions of confidentiality of communication between a suspect and a lawyer is not always provided^{26 27}.

36. According to judicial statistics, the right of an accused to be tried without undue delays foreseen by § 3 (c) Article 14 of the ICCPR is not always respected. In particular, in 2016 the number of unconsidered cases increased: cases which have been being tried for more than a half year – plus 58.8%, more than 1 year – plus 87.7%, more than 2 years – in 2 times²⁸.

37. Criminal proceeding on the basis of agreement is new for Ukraine. However, in practice some shortcomings appear²⁹. In particular, signing a plea bargain under pressure of prosecution. According to the Register³⁰ (official judicial statistics is not available) in 2016, 9% of verdicts passed on the basis of bargain with a victim and 9% with prosecution. Since 15 February 2015, plea bargain proceedings must be conducted only in presence of defence counsel³¹. This provision is called to protect the defendant from pressure of prosecution to agree with the bargain when he is innocent or if there is no enough evidence of his guilt. Obviously, it can help for defendant to make the deliberate and voluntary choice.

IV. LEGAL AID LAWYERS ACTIVITY

38. Implementation of free legal aid system has improved defendants’ right to legal aid foreseen by par. 3 (d) Article 14 of the ICCPR.

39. There are shortcomings in legal aid lawyers’ work. In view of the lawyers’ inactivity in proceedings, the Ombudsperson recommended the National Bar Association and the Coordinating Centre for Legal Aid to

²⁴ *The special report of Ombudsperson*, p.98. http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf, p. 56.

²⁵ *CCP, Article 221*

²⁶ *ibid.*, p.42

²⁷ *Report «Procedural guarantees for detainees»*, p.74: http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf

²⁸ [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(documents\)/FC0243F91293BFEEC22580E400478576](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/FC0243F91293BFEEC22580E400478576).

²⁹ *Case law analysis on plea bargaining proceedings*, c.57: http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

³⁰ *Unified state register of courts' decisions*: <http://www.reyestr.court.gov.ua/>.

³¹ *The Code of criminal procedure of Ukraine, Article, стаття 52.*

assure measures for more active use by lawyers all available procedural means to protect rights, freedoms and interests of defendant³².

40. The ECtHR have found violations of the right to fair trial in cases, when legal aid had had just a nominal nature³³.

41. Procedure of changing counsel, particularly when he/she does not work properly is provided by the Law "On Free Legal Aid". However, the CCP contains no provisions on this issue. Experts of the Council of Europe recommended establishing a clear procedure of changing counsel, including upon court decision³⁴. On the other hand, sometimes wrong changing lawyer takes place. A counsel of a defendant's own choosing already participating in the case can be temporarily substituted by a legal aid lawyer appointed under a pretext of urgent necessity to conduct a certain investigative action. Particularly, it happens at bail-or-jail hearings when the "primary" lawyer has not been timely informed³⁵.

42. On 25 February 2014, the Ministry of Justice of Ukraine enacted the Quality Standards of Legal Aid in criminal proceedings. The Council of Europe experts recommended to overview these standards³⁶.

V. ADVERSARY PROCEEDINGS AND EQUALITY OF PARTIES

43. Positive effect of the CCP's novel – providing a defendant with the right to hire experts for conducting examinations³⁷ – is practically nullified by the fact that the most important types of examinations: criminalistics, forensic medical and forensic psychiatric are conducted exclusively by the state institutions³⁸. This makes impartial examination virtually impossible. Moreover, expenses on hiring experts are not foreseen in the free legal aid system's budget³⁹.

44. As for the right of a defendant to examine or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions provided by §3 (e) Article 14 of the ICCPR, one can say the following. The new CCP rule that court may reason its conclusions only with oral testimonies at trial⁴⁰ or at hearing given to investigating judge.⁴¹ It solved the old CCP's problem of using evidence obtained by the prosecution during pre-trial procedures.

45. Nevertheless, the CCP allows questioning witnesses from other premises in a way, which makes their identification impossible. This creates additional obstacles for defence. This procedure is allowed only in extraordinary cases with a purpose to protect security of witness. However, questioning of anonymous witnesses-buyers in controlled drug purchase cases is always conducted in this "closed" mode. The ECtHR stated for many times, that a person cannot be found guilty when the charge is based solely or to decisive extent on anonymous statements⁴².

³² *ibid*, c.47, p.120, p.131.

³³ *Yaremko v. Ukraine*, judgement of 12.09.2008, §90.

³⁴ *Evaluation of system of free secondary legal assistance in Ukraine in the light of standards and best practices of the Council of Europe. February – June 2016*, p.51: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806aab13>.

³⁵ *ibid*, p.44-45.

³⁶ *ibid*, p. 66.

³⁷ CCP, Article 243.

³⁸ *Law of Ukraine «On forensic examination, Article 7.*

³⁹ *Evaluation of system of free secondary legal assistance in Ukraine in the light of standards and best practices of the Council of Europe*, p.80: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806aab13>.

⁴⁰ CCP, Article 95

⁴¹ CCP, Article 95

⁴² *Van Mechelen and Others v. the Netherlands*, §55; *Al-Khawaja and Tahery v. The United Kingdom*, §37.

Nevertheless, violations of this rule still take place, especially using the most restrictions, eg., voice changing by acoustic noises. In many cases using of such witnesses – police agents – is combined with previous provocation of crime⁴³, which is strictly prohibited by the CCP⁴⁴.

46. Although questioning of witnesses by investigating judges before the trial may take place only in cases when life or health of witness/victim is in danger, abuses of this rule happen quite often. They also create obstacles to defence as there is no information about the witnesses at this moment and this makes impossible the adequate preparation. In practice, questioning of witnesses according to this procedure happens under fictional pretext, eg., when a witness has flu or s/he is going to move to other place.

47. A separate significant problem is the heterogeneous practice of the cassation court on opening of cassation proceedings or refusal in this, resulted from uncertainty of the court's requirements regarding substantiation of unlawfulness or groundlessness of the challenged judgment. As the CCP itself⁴⁵ does not specify which substantiation should be provided, for instance, referring to the case file, certain provisions of the CCP, any cassation appeal can be returned with the standard reasoning "the appeal is unsubstantiated". According to the Register, the number of cassation appealed returned to prosecutors two times less than ones returned to defence counsels. Commonly, such the refusal of cassation appeals is applied only to defence.

VI. RIGHT TO INTERPRETATION

48. The right of an accused to have the free assistance of an interpreter, provided by Article 14 § 3 (f) of the ICCPR, in practice is not observed when the need in translation into one or another language occurs.
VII. Judicial control over pre-trial investigation⁴⁶.

49. The possibility to impeach evidence is not very actively used by the counsels. Even in the presence of apparent violations in getting the evidence, it is very seldom recognized inadmissible by court; moreover the recognition of the evidence inadmissible before issuing a judgement hardly takes place⁴⁷.

50. Provided by Article 206 of the CCP the duty of investigating judge, in the event of obvious violations of human rights (in particular, the presence of bodily injuries on a suspect's body) to order to the investigating body to conduct the examination of that, and to ensure immediate forensic medical examination of the person, is not fulfilled by judges. Complaints on subjecting a person to illegal violence are often refused⁴⁸. Security measures for such persons as foreseen by the CCP⁴⁹, are not applied, and this significantly reduces the ability of victims to pursue their applications (complaints).

51. The complaining procedure against decisions, actions or omission of investigator, prosecutor to investigating judge⁵⁰ is not effective instrument of judicial control over the pre-trial investigation. It has limited scope, only those actions can be challenged that concern application of witness protection measures; and only omissions related to non-commitment of actions that must be performed within a

⁴³ <http://versii.cv.ua/news/provokatsiya-zlochynu-v-zakoni/36831.html>

⁴⁴ CCP, Article 271.

⁴⁵ CCP, Article 427.

⁴⁶ Report "Procedural guarantees of detainees", p.155: http://ulaf.org.ua/wp-content/uploads/2017/02/UA_Inside_Police_Custody_in_Ukrainian.pdf.

⁴⁷ Special report of the Ombudsperson, p.69, p.82, p.103, p.108, p.109: <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>.

⁴⁸ *ibid.*, p.48.

⁴⁹ CCP, Article 55, Article 206.

⁵⁰ *ibid.*, Section 26.

period specified by the CCP. As for decision of investigator or prosecutor, even when investigating judge revokes it, he has no power to order own decision or give instructions to the official to issue a specific decision. So, investigator may issue the same decision over and over again⁵¹.

52. Hence, generally the institute of the investigating judge, whose responsibilities include the implementation of judicial control over compliance with the law, human rights, freedoms and interests of individuals in criminal proceedings, has not become an effective instrument of judicial control.

VIII. APPLICATION OF THE CASE LAW OF THE ECtHR BY THE NATIONAL COURTS

53. According to the CCP (2012), the criminal procedural legislation of Ukraine shall be applied relying to the case law of the ECtHR⁵². After coming into force of the CCP, it has turned out that the courts are not ready for practical implementation of approaches and positions of the ECtHR, often they use the abstract reference to the case law of the ECtHR without referring to specific judgments. Often the judgments contain a link to a particular judgement of the ECtHR, but without specifying its correlation with domestic law and the circumstances of the case⁵³.

RIGHTS OF MIGRANTS AND ASYLUM SEEKERS

I. GENERAL OVERVIEW

54. One of the problems with human rights in Ukraine that is emphasized both by national⁵⁴ ⁵⁵ ⁵⁶ and international⁵⁷ ⁵⁸ organizations, is attitude by the state to refugees, asylum seekers and stateless persons.

55. According to the United Nations High Commissioner for Refugees, Ukrainian legislation in the area does not fully comply with international standards.⁵⁹ The main problem of providing the status of a refugee or an asylum seeker is lack of interpretation, despite the obligation of the State Migration Service of Ukraine (hereinafter – SMS) to keep the register of interpreters⁶⁰.

II. PROCEDURE OF ARREST AND TEMPORARY DETENTION OF FOREIGNERS

56. The forced return of foreigners and stateless persons (hereinafter – SP) is regulated by the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons” and the corresponding Instruction. After issuance of the decision on forced return, the foreigner/SP is “accompanied” by public authorities to the border crossings checkpoint.

⁵¹ http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.htm.

⁵² CCP, Article 9.

⁵³ http://sc.gov.ua/ua/uzagalnennja_sudovoji_praktiki.html.

⁵⁴ Report “Human Rights in Ukraine” – 2014”.

⁵⁵ Report “Human Rights in Ukraine” – 2015”.

⁵⁶ <http://ua.odfoundation.eu/a/7982,zvit-ukrayina-dopomagaie-postradyanskim-derzhavam-peresliduvati-politichnih-oponentiv-ta-bizhenciv>

⁵⁷ UNHCR Report for 2013 “Ukraine as a country of asylum, observations on the situation of asylum seekers and refugees in Ukraine.”

⁵⁸ Overview of UNHCR for November 2016 “Refugees and asylum seekers.”

⁵⁹ http://unhcr.org.ua/img/uploads/docs/Comments%20on%20Law%20of%20Ukraine%20on%20Refugees_UKR%20_Full.pdf

⁶⁰ <http://zakon3.rada.gov.ua/laws/show/z0801-13>

A person who is forcibly expelled from Ukraine is not informed about the country of return, and therefore cannot declare the risk of ill-treatment there. As he/she generally is not provided with a lawyer and an interpreter, one is actually unable to appeal against this decision.

57. Law enforcement officials, try not to register the fact of detention of foreigner/SP, since otherwise they are obliged to inform the Free Legal Aid Centre, and in the presence of a lawyer foreigner/SP is not so vulnerable, and can appeal against the decision.

58. Foreigners/SP informed about cases when they were detained incommunicado by the Security Service of Ukraine (the SSU), placed to hidden “prisons” located in the SSU premises without registration. The SSU officers beat and tortured them demanding to confess in participation in terrorist organizations. If they refused to confess, officers photographed the detainees with the flag of the terrorist organization “ISIS” and threatened them with sending these pictures to the security services of countries of their origin. The detainees were deprived of hygiene means, proper nutrition. During such detentions the foreigners/SP are taken away their money, phones, passports (available at the time of their identification upon arrest) and placed to the Foreigners Temporary Detention Centres (hereinafter – Centres). According to the Register, there are cases of placing foreigners to the Centres without court order later recognized as unlawful by judicial decisions.

III. REVIEW OF THE NATIONAL COURT PRACTICE

59. A positive step is setting jurisdiction of the courts above the decision on expulsion and detention of foreigners/SP⁶¹. However, the mere fact of court consideration of such cases does not guarantee the rights of these people. Courts often do not ask persons who are being expelled, whether they were informed about the country where they would be expelled, about the possibility of applying for the status of refugee or asylum seeker in Ukraine, and whether they were provided with an interpreter and were aware of the possibility to get legal aid. There are cases when both the SSU officers ill-treated the foreigners/SP and the SMS officers threatened and forced them not to object the officer’s statements in court, are present at the hearing.

60. Examination of the asylum applications by the migration service is conducted without consideration of reports of international NGOs and the ECtHR opinions on the general situation in the country of origin. Foreigners/SP placed into the Centres are not provided with computers and Internet to collect evidence in support of their applications for asylum. They are given only five days to appeal against the refuse of the SMS in providing a refugee status.

61. Despite such a short period of appeal, courts often delay the hearings up to several months^{62 63}.

62. There is no legal certainty on the matter when the decision on expulsion of the person appealing to the refugee status may be executed, as §1.12 of the Instruction contains ambiguous provision.^{8 64}

⁶¹ <http://zakon2.rada.gov.ua/laws/show/1379-19/paran30#n30>

⁶² <http://reyestr.court.gov.ua/Review/64171635>

⁶³ <http://reyestr.court.gov.ua/Review/64148383>

⁶⁴ <http://zakon3.rada.gov.ua/laws/show/z0806-12>

I. RIGHT TO PROPER MEDICAL AID

63. The prisoner's death rate in Ukraine increased by 25% during the previous year⁶⁵. The main reason for that is lack of proper medical aid. Human Rights organizations have pointed out that prophylaxis and treatment of prisoners' diseases do not take place. They are provided only with symptomatic treatment. Medical equipment is poor and old, medical premises are in a terrible condition and medical staff is not full. The ECtHR has drawn State's attention to these points for many times.

64. Particular judgments of the ECtHR concerning the lack of proper medical aid for prisoners in Ukraine:

- a) On 22 October 2015, the ECtHR issued judgments in cases: "Lunev v. Ukraine", "Sergey Antotnov v. Ukraine", "Sokil v. Ukraine" and "Savinov v. Ukraine"⁶⁶. Each applicant had a HIV-positive status and was not provided with adequate medical treatment in a place of confinement during 2012-2013.
- b) On 24 March 2016, in "Korneykova and Korneykov v. Ukraine" case the ECtHR found a violation of Article 3 of the Convention when a young mother held in custody with her newborn in a detention centre without adequate medical supervision and care. Also the Court recognized as inhuman treatment examinations of this pregnant woman with handcuffing her to a gynecological chair⁶⁷.
- c) in many cases the Court established the necessity to apply temporary measures under Rule 39 towards prisoners who suffered from grievous diseases, mostly to subject them to urgent adequate medical treatment.

Release from serving punishments due to serious disease.

65. "The List of grave diseases" for release from serving punishment" was changed in 2014. It still contains mainly incurable diseases on their final stages. According to the Register, 119 prisoners died having not got the judge's release decision⁶⁸.

66. Mr. K. has been serving his punishment in the Sofiyvka correctional colony no. 45 since 2007. He has high amputation of the both legs, high amputation of right hand and amputation of left hand on the level of forearm. Apparently, he cannot maintain himself. Lawyers filed a number of motions on his release but two special medical commissions have reached a "scientific" conclusion that Mr. K. is capable to continue serving his punishment⁶⁹.

67. Pursuant to amendments to article 116 of the Correctional Code of Ukraine (hereinafter – the CorC) of 2014 and corresponding regulations, the medical treatment of prisoners must be conducted according to general health protection standards, including the possibility to choose a doctor for won expense^{70 71}.

II. PRISONERS' RIGHT TO LABOUR.

68. According to the Article 118 of the CorC of 2016, labour became the prisoner's right, not duty. However,

⁶⁵ http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=201956

⁶⁶ <http://khpg.org/index.php?id=1445524938>

⁶⁷ [http://hudoc.echr.coe.int/eng#{"fulltext":\["Korneykova"\],"itemid":\["001-161543"\]}](http://hudoc.echr.coe.int/eng#{)

⁶⁸ <http://www.reyestr.court.gov.ua>

⁶⁹ <http://khpg.org/index.php?id=1458223448>

⁷⁰ <http://zakon2.rada.gov.ua/laws/show/1186-18/paran155#n155>

⁷¹ <http://zakon2.rada.gov.ua/laws/show/z0990-14>

prison administration has many ways to transform it de facto back to duty⁷². Firstly, they may impose systematic penalties on those prisoners, who do not work, that make impossible parole for them.

69. Now enterprises at the colonies are self-governed legal entities. According to the Article 118 of the CorC, prisoners shall work on the basis of individual work contract with colonies⁷³. However, monitoring visits to colonies revealed that prisoners have not provided with the contracts yet.

70. Prisoners' salary is extremely low (in average less than less than 10% of state-established minimum) due to manipulations of the administration with "work participation ratio" (set about 0.15, while standard is 1), marking down of the workers' qualification, despite of complexity of the work, reducing their hourly remuneration comparing with with civic enterprises and cost prices of produced goods up to 10 times and more from market prices. Aiming to get maximum illegal profit from unaccounted production produced by prisoners, the colony administrations force them to work two shifts in series (sometimes presenting it as the voluntary will of the prisoners), under the pretext of their bad working efficiency during the first shift.

RECOMMENDATIONS:

1. To overcome police' impunity in abuse cases as well as in cases of unnatural deaths, the investigating authority should stop the practice of refusal to start investigations in such cases and to secure their effectiveness.
2. To evacuate prisoners from occupied territory. If not, the Parliament of Ukraine should pass an Amnesty Law to release the prisoners.
3. To found a new department in the Ministry of Justice on implementation of judgements of the ECtHR.
4. To amend the CCP provision so as the courts will be obliged to review expediency of continuation of pre-trial detention urgently after receiving an indictment by court (§3 Article 315 in conjunction with §3 Article 331 of the CCP).
5. To repeal amendments to § 5 of Article 176 of the CCP of 07.10.2014, setting non-alternative detention on remand to for certain categories of crimes.
6. To revoke the provision of Article 615 of the CCP authorising a prosecutor with the judge's power to apply pre-trial detention.
7. To introduce a system of election and dismissal of judges of the lowest (district) courts with involvement of local communities.
8. The Supreme Court of Ukraine should pass resolutions of its Plenary on procedural issues, namely: (un)lawfulness of detention of suspects without court order, (in) admissibility of evidence; practical aspects of securing by the court the principle of equality of arms and limitation on use restrictions of the right to defence (use of anonymous witnesses at trial, non-disclose of certain evidence of prosecution to the defence etc.), taking into account legal positions of the UN bodies and case law of the ECtHR.
9. To ensure that all detained persons are promptly informed on their rights and provided with a lawyer on own choosing and (if necessary) with an interpreter.
10. To enhance the quality standards of criminal defence for legal aid lawyers and expand them on all lawyers.

⁷² <http://zakon2.rada.gov.ua/laws/show/1492-19/paran270#n270>

⁷³ <http://zakon2.rada.gov.ua/laws/show/1129-15/paran875#n875>

11. To take the necessary measures for the proper training of judges on the matter of preliminary detention, to ensure compliance with provision of the CCP and the case law of the ECtHR.
12. To subordinate the prison medical staff to the Ministry of Health of Ukraine.
13. To adjust regulations on provision of medical aid in accordance with international standards, including legal practice of the ECtHR.
14. To provide proper financing prisoners' medical aid.
15. To establish a clear system of penalties and encouragements for prisoners.
16. To establish public control over prisoner's labour and nutrition.
17. To open access for lawyers and other representatives of foreigners/SP to the Registry of interpreters and provide lawyers with possibility to be involved in any legal procedure on deportation or expulsion.
18. To adjust national legislation on asylum seekers in accordance with the international standards.
19. The national courts should apply international standards and approaches in area of migrants and asylum seekers while considering the cases on expulsion, extradition, deportation and denial to grant the status of asylum seeker.

UKRAINE

JOINT SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 28TH SESSION OF THE UPR WORKING GROUP

Submission by CIVICUS:

WORLD ALLIANCE FOR CITIZEN PARTICIPATION,
NGO IN GENERAL CONSULTATIVE STATUS WITH ECOSOC

and

CENTER FOR CIVIL LIBERTIES AND DEJURE FOUNDATION

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1. (A) INTRODUCTION

1.1. CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.

1.2. The Center for Civil Liberties (CCL) was founded in Kyiv in 2007 to promote and implement the values of human rights in Ukraine and on the territories of the newly independent states. CCL focuses on encouraging realization of the reforms concerning human rights, establishing public control over the actions of law enforcement organs, judges, and local self-government bodies; documenting cases of political persecution in the Crimea and international crimes in the Donbas; educational activities for promoting the values of human rights; and participating in different programs of international solidarity.

1.3. The DeJuRe Foundation (DeJuRe) developed out of a long-term cooperation of experts of the judicial reform group of the Reanimation Package of Reforms. As its main task, the organisation focuses on the development of and support for the implementation of laws appropriate for safeguarding the rule of law and democracy in Ukraine. The expert staff of DeJuRe Foundation includes both Ukrainian and foreign lawyers.

1.4. In this document, CIVICUS, CCL and DeJuRe examine the Government of Ukraine's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Ukraine's fulfilment of the rights to freedom of association, peaceful assembly, and expression since its previous UPR examination in December 2012. To this end, we assess Ukraine's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations. Ukraine is listed in the 'obstructed' category on the CIVICUS Monitor which rates protection of the freedoms of expression, association and peaceful assembly.¹

1.5. During the 2nd UPR cycle, the Government of Ukraine received 11 recommendations relating to the above mentioned rights. Of these recommendations, 7 were accepted and 4 were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented two of them. Positively, laws restricting freedom of expression based on sexual orientation have not been brought forward and progress has been made on preventing discrimination against workers based on sexual orientation and gender identity. New protest laws have also been drafted and, although certain concerns remain about their scope, the government of Ukraine has sought international advice as to their coherence with international standards on the freedom of peaceful assembly. New laws on combatting problems of concentration of media ownership and protection of journalists have also been introduced since Ukraine's last review, although, in practice, both of these issues remain serious concerns for freedom of expression in the country.

1.6. CIVICUS, CCL and DeJuRe are particularly concerned by the impact on journalists, civil society organisations and human rights defenders of the armed conflict between Ukraine and Russian-backed de facto authorities in self-proclaimed autonomous areas of the country in Donbas and Crimea. The conflict is having a seriously detrimental impact on the quality of civic space in conflict zones and areas under occupation by Russia and pro-Russian illegal armed formations. The conflict also has wider implications, particularly for freedom of expression, across the whole of Ukraine.

¹ See: <https://monitor.civicus.org/country/ukraine/>

1.7. CIVICUS, CCL and DeJuRe are further alarmed by the continued failure to ensure justice for the victims of the killings during the EuroMaidan protests of 2013 and 2014. While we commend the Government of Ukraine's positive moves to introduce new peaceful assembly legislation, ensuring that the perpetrators of mass killings during earlier protests are held accountable is equally important to ensuring that Ukrainian citizens have confidence in the state's ability to protect their basic right to protest peacefully.

1.8. Finally, CIVICUS, CCL and DeJuRe highlight concerns about the recent introduction of new laws which require staff of NGOs to submit asset declarations. These new rules could be abused for political purposes and specifically to silence anti-corruption advocacy by Ukrainian civil society.

- In Section B, CIVICUS, CCL and DeJuRe examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning the treatment of human rights defenders, civil society activists and journalists.
- In Section D, we examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.
- In Section E, we examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards related to freedom of peaceful assembly.
- In Section F, we make a number of recommendations to address the concerns listed.

2. (B) FREEDOM OF ASSOCIATION

2.1. Under the 2nd UPR cycle, the government received two recommendations related to the right to freedom of association of LGBTI people. Through these, Ukraine was urged to respect its 'international commitments on fundamental rights related to non-discrimination'² and to adopt laws and other measures to 'correct and prevent discrimination based on sexual orientation'.³ The Government of Ukraine has partially implemented both of these recommendations, taking an important step in this regard in November 2015 when, following public protests and a series of recommendations from the European Commission⁴, it amended the Labour Code to prohibit discrimination on a range of grounds including sexual orientation, gender identity, race, colour, political, religious and other beliefs, membership in a trade union or other association.⁵

2.2. Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Ukraine is a state party, guarantees the freedom of association. The constitution of Ukraine, in article 26, recognises the right of citizens to associate in order to advance 'political, economic, social, cultural and other interests'.⁶ In Ukraine, the process to register and form an organisation is straightforward, and the legal framework for civil society is mostly open and supportive.⁷ While, in practice, some infringements of the right to freedom of as-

² Recommendation from France, A/HRC/22/7

³ Recommendation from Uruguay, A/HRC/22/7

⁴ Fifth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation, at pages 9-10, European Commission 8th May 2015, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fifth_progress_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf

⁵ See: <http://112.international/ukraine-and-eu/eu-congratulated-adoption-of-non-discrimination-amendment-to-ukraines-labour-code-1459.html>

⁶ Full English text of Ukraine's constitution from The Constitute Project, here: https://www.constituteproject.org/constitution/Ukraine_2014?lang=en

⁷ See: http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf; see also: <http://helsinki.org.ua/en/freedom-of-associations/>

sociation continue to be committed through the uneven enforcement of legislation, in general, a favourable environment for the creation and activities of associations prevails. The government does not have wide scope to deregister an organisation and there are no documented cases of illegal or arbitrary dissolutions of organisations.⁸

2.3. On 13 July 2016, new regulations were passed which updated registration procedures for not-for-profit institutions and organisations in Ukraine. Under the new rules, all not-for-profit organisations registered before mid-2015 are required to submit their founding documents which were not already held in official electronic databases, and an application form to the relevant authorities no later than 31st December 2016. Ignoring this requirement would result in the loss of an organisations' not-for-profit status.⁹ As a result, thousands of CSOs were forced to start the procedure of submitting their statutory documents. Following an outcry from CSOs, the re-registration term was extended until July 1, 2017.

2.4. On 27th March 2017, the president signed Law No. 6172 on Amendments to Article 3 of the Law of Ukraine on Prevention of Corruption.¹⁰ This law expands the list of persons who are obliged to declare their income to the authorities to include NGO staff. This places the staff of NGOs on the same footing as government officials, and exposes them to criminal liability for the failure to make declarations. This move has been heavily criticised by civil society organisations who fear that it may allow the state to target specific organisations, restrict the operations of activities who receive foreign funding and pose a threat to the personal security of people employed in NGOs.¹¹

2.5. In areas of Ukraine controlled by armed groups allied to the Russian Federation, CSOs have been targeted and forced to leave, including CSOs that carry out primarily humanitarian work¹², such as the Responsible Citizens Initiative. In Crimea, independent CSOs have been particularly and seriously targeted by the occupying authorities, causing an "exodus" of activists from the peninsula. Organisations including the Committee on the Rights of the Crimean Tatar People, Mejlis of the Crimean Tatars and the League of Crimean Tatar Women have all been prosecuted or oppressed in some way by the occupying authorities, through their selective use of repressive Russian legislation.¹³ Organisations engaged in cultural activities, for example, the Ukrainian Cultural Centre in the Crimea, have also been persecuted as part of this crack-down.

3. (C) HARASSMENT, INTIMIDATION AND ATTACKS AGAINST HUMAN RIGHTS DEFENDERS, CIVIL SOCIETY ACTIVISTS AND JOURNALISTS

3.1. Under Ukraine's previous UPR examination, the government received no recommendations specifically related to the protection of human rights defenders, journalists and civil society representatives. Despite an absence of recommendations related to human rights defenders during Ukraine's last UPR examination, in the intervening period human rights defenders and civil society activists were subject to a range of unwarranted restrictions on their activities including arbitrary arrest, abduction and enforced disappearances.

⁸ See 'Enabling Environment for Civil Society in the Black Sea Region : Towards a Regional Strategy for Cooperation', Black Sea NGO Forum and Balkan Civil Society Development Network, August 2015: http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf

⁹ 'Conflict with Russia causes restrictions on media freedoms', CIVICUS Monitor 11th October, 2016: <https://monitor.civicus.org/newsfeed/2016/10/11/conflict-russia-and-occupation-crimea-lead-restrictions-media-freedoms-ukraine/>

¹⁰ See: <https://www.unian.info/politics/1844874-poroshenko-enacts-law-on-e-declaration-for-ngos.html>

¹¹ See: <http://en.interfax.com.ua/news/economic/412081.html>

¹² See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

¹³ 'Peninsula of Fear', CCL and others, March 2016, at P.46: <http://ccl.org.ua/en/reports/the-peninsula-of-fear-chronicle-of-occupation-and-violation-of-human-rights-in-crimea/>

3.2. Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, international law and national legislation are being applied in the territory of the occupied Crimea and parts of Donbas not controlled by the Ukrainian government. On 21 May 2015, the Ukrainian parliament approved a derogation from Ukraine's obligations under the ICCPR and the Convention for the Protection of Human Rights and Fundamental Freedoms. The derogation, which was subsequently communicated to the Council of Europe and the UN Secretary-General, states that Ukraine is not responsible for upholding all of the rights enshrined in those international agreements in all of its territory, based on the fact that Russia is in de facto control of parts of Donbas and the Crimea peninsula.¹⁴ It also states that a derogation applies to the full application of certain rights in territory under its control until such time as full sovereignty is returned to all of its territory.¹⁵

3.3. Prior to the fall of the previous government at the end of February 2014, the Ukrainian authorities used legal mechanisms and extra-legal methods to prosecute activists, journalists, human rights defenders. After the fall of the regime, as a result of the Revolution of Dignity, deliberate government policies to harass or target civil society have not been observed. Nevertheless, there are a number of individual cases that give cause for concern.

3.4. Repressive legislation illegally introduced by the Russian Federation in the territory of the occupied Crimea is used to prosecute members of civil society. For example, the de facto authorities of Crimea opened a criminal case on charges of terrorism against human rights defender, and member of the Crimean Contact Group on Human Rights, Emir Usein Kuku. Amnesty International has recognised Kuku as a prisoner of conscience¹⁶ and reports indicate that he has been mistreated in custody.¹⁷ His family has also been put under pressure and intimidated by the security services.

3.5. In parts of Donbas not controlled by the Ukrainian government, abduction, torture and extrajudicial executions aimed at pro-Ukrainian activists have become widespread practice.¹⁸ In such circumstances, the activities of human rights defenders have become almost impossible. Responsibility for these violations lies with the Russian Federation as the state which exercises both overall and effective control over the self-proclaimed Donetsk People's Republic (DPR) and Lugansk People's Republic (LPR) and therefore over the part of Donetsk and Luhansk oblasts controlled by them.

3.6. By the same token, international rights groups and the United Nations Office of the High Commissioner for Human Rights¹⁹, have documented serious violations related to human rights abuses – including arbitrary execution, abduction and enforced disappearances – committed by Ukrainian security forces as part of its conduct of the war against against illegal armed formations in the east of the country.

¹⁴ Council of Europe website, *Declarations in force for Ukraine as of 15th March, 2017*: <http://bit.ly/2mlzCM0>

¹⁵ *Accountability for killings in Ukraine from January 2014 to May 2016*, OHCHR: http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf

¹⁶ *Ukraine: Detained Rights Defender's Family at Risk: Emir-Usein Kuku Meriem Kuku and Bekir Kuku*, Amnesty International, 19th October 2016: <https://www.amnesty.org/en/documents/eur50/4953/2016/en/>

¹⁷ *Crimean activist Kuku reported about the deterioration of health and psychological pressure*, Crimean Human Rights Group, 13th January 2017: <http://crimeahrg.org/en/crimean-activist-kuku-reported-about-the-deterioration-of-health-and-psychological-pressure/>

¹⁸ *Detentions Enforced Disappearances and Torture in Eastern Ukraine*, Amnesty International and Human Rights Watch, 21st July, 2016: <https://www.amnesty.org/en/documents/eur50/4455/2016/en/>

¹⁹ *Accountability for killings in Ukraine from January 2014 to May 2016*, OHCHR: http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf

4. (D) FREEDOM OF EXPRESSION, INDEPENDENCE OF THE MEDIA AND ACCESS TO INFORMATION

4.1. Under the 2nd UPR cycle, the government received ten recommendations relating to freedom of expression. By accepting eight of these recommendations, the government pledged to undertake a number of reforms including “prevent the adoption of a law prohibiting freedom of expression with regards to homosexuality” and “further promote freedom and pluralism of the media as key elements for enabling the exercise of freedom of expression.”²⁰ In the intervening period, Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented one.²¹

4.2. Article 19 of the ICCPR, to which Ukraine has been a State Party since 1973, guarantees the right to freedom of expression and opinion.²² Article 34 of the Constitution of Ukraine 1996 (as amended in 2014) states that everyone is guaranteed the ‘right to freedom of thought and speech, and to the free expression of his or her views and beliefs’ and the ‘right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.’ The same article provides for lawful restrictions on these rights, which allows measures to be taken in the interests of national security, territorial indivisibility or public order.²³

4.3. Regarding the recommendation made to ensure no laws would be passed which could impinge upon the free expression rights of the LGBTI community, although initial attempts²⁴ were made to introduce such laws in 2012, no further attempts were made after the removal of the government following the EuroMaidan protests. In December 2014, the Secretariat of the Parliamentary Committee on Freedom of Speech and Information Policy confirmed that no such laws were to come before the Verkhovna Rada.

4.4. International assessments indicate that since Ukraine’s last UPR assessment in 2012, conditions for freedom of expression and press freedom in Ukraine have improved. Ukraine’s position on the World Press Freedom Index initially fell from 126th in 2012 to 129th in 2015, however it rose to 107th in 2016 following the implementation of a number of reforms and the maintenance of a fragile ceasefire in the east.²⁵ According to Freedom House, Ukraine’s press remains “partly free”, however, its press freedom score improved from 48/100 in 2015 to 53/100 in 2016.²⁶ At the time of writing, Ukraine was rated “obstructed” on the CIVICUS Monitor.²⁷

4.5. The level of respect for free expression and press freedom has varied widely across Ukraine since the country’s last UPR review. The primary reason for this has been the armed conflict which erupted in 2014 and the eventual occupation by Russian-affiliated military forces of certain parts of the country. The most significant impact of this occupation has been on Crimea, where Russian forces effectively annexed the territory and imposed a system of authoritarian rule which has seen free speech severely curtailed.²⁸ In April 2016 Crimean journalist Mykola Semena was charged with violating the territorial integrity of

²⁰ Report of the Working Group on the Universal Periodic Review – Ukraine, AHRC/22/7: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/10/PDF/G1218910.pdf?OpenElement>

²¹ Please refer to Annex I to this submission for more detail on this.

²² Information from UN OHCHR Website on status of ratifications of ICCPR: Ukraine signed the ICCPR in 1968 and ratified it in 1973. It also accepted ICCPR individual communications procedure in 1991: <http://indicators.ohchr.org/>

²³ Full English text of Ukraine’s constitution from The Constitute Project, here: https://www.constituteproject.org/constitution/Ukraine_2014?lang=en

²⁴ For instance draft law № 10290 proposed by MP Kolisnichenko on March 30, 2012 and draft law № 10729 submitted by MP Zuravskiy on July 7, 2012.

²⁵ Reporters Without Borders 2016 World Press Freedom Index: <https://rsf.org/en/Ukraine>

²⁶ Freedom House Freedom of the Press 2016: <https://freedomhouse.org/report/freedom-press/2016/ukraine>

²⁷ CIVICUS Monitor ratings assess the level of respect, in law and practice, for the freedoms of association, peaceful assembly and expression: <https://monitor.civicus.org/country/ukraine/>

²⁸ ‘Hostages of the Kremlin’, <http://ccl.org.ua/en/reports/28-hostages-of-the-kremlin/>

Russia by means of media. The reason for the charges was an analytical article about the illegal Russian annexation of Crimea, prepared by Semena for publication in Radio Free Europe (RFE/RL). By means of the malware installed on Semena's laptop, the Russian FSB was tracking his computer activity and made screenshots of the article.

4.6. There is significant evidence of serious human rights abuses committed by de facto authorities in the self-proclaimed Donetsk People's Republic (DPR) and the Lugansk People's Republic (LPR) and their Russian Military backers against journalists in parts of eastern Ukraine under their control. A joint CCL-FIDH report from 2015 documented several cases where journalists had been abducted because of their reporting, held in detention for long periods and often beaten. These include the case of Espresso TV journalist Egor Vorobiev who was detained for covering the conflict on 30 August 2014 and released on 7 November as part of prisoner exchange. Foreign journalists were also targets of abuse in Eastern Ukraine during this period. On 16 June 2016, Russian journalist Pavel Kanygin was detained, aggressively questioned and beaten by men in camouflage before being expelled to Russia. Even ordinary citizens attempting to use the internet to inform relatives about the conflict have been targeted and sometimes brutally murdered, as in the case of Lera Kulish's family.²⁹ In November 2016, bloggers Eduard Nedeliaev and Gennady Banitsky were detained, later they were charged with espionage.

4.7. Journalists have also faced threats in other parts of Ukraine since the last UPR review. Ukrainian-Belarusian journalist Pavlo Sheremet was killed in a car bomb on 20th July 2016.³⁰ He had worked for *Ukrainska Pravda*, one of the most popular publications in Ukraine, for almost five years. Sheremet is one of many journalists killed in a country that has become increasingly dangerous to the profession as a result of Ukraine's ongoing conflict with Russia.

4.8. Restrictions on media freedoms have also affected Ukrainian journalists and bloggers, typically accused of being too sympathetic to Russia, or opposing Ukraine's continuation of the armed conflict with separatist groups. Disproportionate reactions narrowing the space for criticism have included an arson attack on 5 September 2016 against the headquarters of TV Inter, a Ukrainian television station considered to be pro-Russian.³¹ In a separate case, journalist Ruslan Kotsaba was arrested and charged with high treason following the release of a video in which he criticised the ongoing war and tore up his conscription papers. An appeals court overturned his conviction in July 2016.³²

4.9. Furthermore, in accordance with the general recommendation made to ensure that there is freedom and pluralism within the media, a new law on public broadcasting³³ aims to address the concentration of ownership of private outlets in a small group of businesspeople, as a way of increasing media plurality.³⁴ Law No. 674-VIII on Amending the Legislative Acts of Ukraine Concerning Transparency of Mass Media Ownership and Implementation of State Policy in the Field of Television and Radio Broadcasting prohibits ownership of television and radio companies by national and local government authorities, individuals and legal entities registered in the offshore zones, political parties, religious organisations and professional unions. The law also provides that information on those individuals who own 10% or more of a television or radio broadcasting company must be published on the company's website and sent to the national regulator. The law also gives the regulator the right to impose fines for incorrect or insufficient information on ownership.³⁵

²⁹ *Eastern Ukraine Civilians Caught in the Crossfire*, FIDH and CCL, October 2015: <http://ccl.org.ua/en/reports/zvit-tsyvilne-naselennya-pid-perehresnym-vohnem/>

³⁰ See: <http://www.kyivpost.com/article/content/ukraine-politics/ukrainian-belarusian-journalist-pavlo-sheremet-killed-in-kyiv-419071.html>

³¹ See: <https://www.theguardian.com/world/2016/sep/05/pro-russia-tv-inter-kiev-evacuated-fire-ukraine>

³² See: <http://www.counterpunch.org/2016/12/16/interview-with-ukrainian-journalist-jailed-for-speaking-out-against-the-war-in-ukraine/>

³³ See: <http://zakon5.rada.gov.ua/laws/show/271-19>

³⁴ See: <http://www.aljazeera.com/indepth/features/2016/04/owns-ukraine-media-160405130121777.html>

³⁵ See: <https://www.loc.gov/law/foreign-news/article/ukraine-new-law-on-tv-ownership/>

4.10. In practice, however, concentration of media ownership in the hands of a few wealthy businesspersons remains a serious problem in Ukraine. The Media Ownership Monitor a project of Reporters Without Borders, reports that, although the new law imposes some limits on ownership, it fails to 'define objective criteria to calculate concentration and therefore appropriate control is in fact missing'.³⁶ This failure has allowed the most influential media and the largest media groups in Ukraine to be owned by the some of the richest Ukrainians, including the President of Ukraine and owner of Channel 5 Petro Poroshenko.³⁷

4.11. On 14 May 2015, the Parliament adopted "amendments to several legislative acts of Ukraine regarding strengthening guarantees of legal professional activity of journalists". According to the Prosecutor General, in 2016 a total of 31 proceedings related to the violation of journalists' rights were investigated and taken to court, an almost three-fold increase on the figure in 2015. Media organisations link the increase in the number of cases to the positive practice of filing complaints which was not previously performed by the Prosecutor's Office.

4.12. In February 2017, the Ukrainian president signed the information security doctrine, which grants the state the powers of continuous online monitoring, and also provides for vaguely formulated legislative proposals to block and remove information from websites. Ukrainian civil society organisations raised concerns that these new powers would allow the authorities to block the internet and restrict freedom of expression.³⁸

5. (E) FREEDOM OF PEACEFUL ASSEMBLY

5.1. During Ukraine's examination under the 2nd UPR cycle, the government received one recommendation on the right to freedom of assembly. Ukraine accepted this recommendation and committed to 'implement a law on freedom of assembly that complies with applicable standards under article 21 of the ICCPR'.³⁹ This recommendation has not been implemented.

5.2. Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 39 of Ukraine's constitution states that citizens have the 'right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations', as long as they notify the authorities in advance. The constitution states that all restrictions must be provided for in law and necessary in 'the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons'.⁴⁰

5.3. In respect of the recommendation made during the 2nd UPR cycle, and in response to serious violations during the Euromaidan protests in 2013, in May 2016 Ukraine asked the Council of Europe's Venice Commission for an opinion on two draft laws to protect the freedom of peaceful assembly.⁴¹ The Venice Commission outlined a number of improvements that could be made to the drafts, including making sure that the concept of assemblies is properly defined to capture the "gathering of people for expressive purposes"; properly providing for spontaneous assemblies; and harmonising grounds for restricting assemblies with Ukraine's

³⁶ *Media Ownership Monitor for Ukraine*, by Institute of Mass Information and Reporters Without Borders: <http://ukraine.mom-rsf.org/en/ukraine/findings/indicators/#!c52f062c62d85adccb383a70d5340d95>

³⁷ 'Politics, Businesses and the Media – three Pillars of Ukrainian Oligarchs' Empires', *Media Ownership Monitor for Ukraine*, <http://ukraine.mom-rsf.org/en/ukraine/findings/oligarchy/>

³⁸ See: <http://www.ukrweekly.com/uwwp/ukraines-information-security-doctrine-breakthrough-or-veneer-of-change/>

³⁹ – Report of the Working Group on the Universal Periodic Review – Ukraine, AHRC/22/7: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/10/PDF/G1218910.pdf?OpenElement>

⁴⁰ Full English text of Ukraine's constitution from *The Constituent Project*, here: https://www.constituteproject.org/constitution/Ukraine_2014?lang=en

⁴¹ Full English text of the two draft laws can be found on the Council of Europe's website, here: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)046-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)046-e)

constitution.⁴² The bills sparked sharp criticism from some civil society activists concerned that the law could legalise the forced dispersal of protests.⁴³

5.4. In practice, Ukrainian authorities have had a mixed record of protecting the right to protest since the last UPR review. During the Euromaidan protests from November 2013 to February 2014, many protestors were deliberately targeted in an abhorrent manner by the authorities. Grave violations of protest rights and civil liberties included murder, torture, kidnapping, unlawful arrest, fabricated criminal cases and other methods. These crimes led to the deaths of at least 114 people, including 94 Euromaidan activists, and physical injuries to over a thousand activists.⁴⁴ ⁴⁵ The government also passed legislation to criminalise the demonstrations.⁴⁶ Perpetrators have not been properly held to account for the killing of protestors and other human rights violations during this period.⁴⁷ According to the Prosecutor General, the courts issued 35 sentences in these cases, but only one person was sentenced to actual imprisonment. The trial on charges of murder of protestors on 20 February 2014 is still in progress.

5.5. More recently, the government has been more tolerant of demonstrations, but the police have still failed to protect protestors from clashes with counter demonstrators.⁴⁸ In May 2017, a court in the city of Lviv banned the Equality Festival initiated by LGBT groups because of an inability to ensure security measures. Organizers moved the event indoors, but the venue was surrounded by a group of right-wing radicals in masks. As a result the organisers decided to cancel the event. In July 2016, the March of Equality by LGBT groups in Kyiv, unlike in previous years, took place without incident, although radical groups had threatened to turn it into a “bloody mess”. Safety for the march’s 1,500 participants was provided by about 6,000 policemen.⁴⁹

5.6. Freedom of peaceful assembly continues to be significantly violated in the territories controlled by armed groups.⁵⁰ In the Donbas region, from the beginning of the armed conflict the illegal armed formations used the threat of violence to prevent civilians from gathering in public. As a result, individuals and groups which openly challenged the armed formations (journalists, civil activists, and human rights defenders) were physically attacked or forced to leave the territory, and the remaining population lives under fear of intimidation and violent attack.

5.7. Despite some positive developments in the implementation of positive obligations of the state for the protection and promotion of peaceful assembly, a number of systemic problems remain which can cause risks to the safety of protestors. For example, on 31 August 2015, protests against the amendments to the Constitution took place near the Parliament. The confrontation resulted in the deaths of four members of the National Guard, and, according to official data, 179 people sought medical assistance after clashes between police and protestors. During this incident, police failed to selectively neutralise aggressive individuals and separate them from the majority of peaceful protestors. Moreover, there were many instances of excessive use of physical violence by law enforcement officers contrary to the criteria of necessity and proportionality.⁵¹

⁴² Council of Europe, Venice Commission's opinion here: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282016%29030-e>

⁴³ See: <http://uacrisis.org/47882-silovij-rozgoniv-mirnih-zibran>

⁴⁴ 'The Price of Freedom' by Center for Civil Liberties and other human rights organisations provides a detailed account of the brutality meted out to Euromaidan protestors in 2013 and 2014: <http://ccl.org.ua/en/reports/the-price-of-freedom/>.

⁴⁵ <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>

⁴⁶ Freedom House, Freedom of the World 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/ukraine>

⁴⁷ See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

⁴⁸ See: http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf

⁴⁹ <http://amnesty.org.ua/nws/richna-dopovid-2016-2017-ukrayina/>

⁵⁰ See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

⁵¹ <http://ccl.org.ua/en/reports/events-outsidethe-parliament-of-ukraine-31-august-2015-through-he-prism-of-human-rights/>

5.8. Many peaceful assembly violations have also taken place in Crimea, since its occupation by Russian forces. On 6 December 2016, a Crimean Tatar from Bakhchysarai Enver Sherfiyev was convicted by a Russian Court of taking part in an 'unauthorised rally' and fined 15,000 roubles (or approximately US\$260).⁵² According to the organisation, Human Rights in Ukraine, Sherfiyev was the fourth Crimean Tatar to have been prosecuted merely for coming out onto the street on 12 May, and for questioning the presence of security forces and the arrest in handcuffs of their neighbours. Observers believe that Russian authorities in Crimea are threatening pro-Ukrainian activists in order to frighten people into staying at home and not protesting.⁵³

5.9. In the two years preceding this, the Russian authorities in Crimea routinely violated the protest rights of people in Crimea, and particularly those of pro-Ukrainian activists and Crimean Tatars.⁵⁴ This crackdown on the right to protests began at the very beginning of the occupation through the use of persecution through the courts and extra-legal methods including beatings, kidnapping and even murder. Even cultural events were prohibited. In March 2017 activists in Simferopol received a warning about "the inadmissibility of law violations" from Russian law enforcement officers in response to a request about a campaign to mark the birthday of Ukrainian writer Taras Shevchenko.

6. (F) RECOMMENDATIONS TO THE GOVERNMENT OF UKRAINE

CIVICUS, CCL and DeJuRe call on the Government of Ukraine to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6 on Protecting Human Rights Defenders, 27/5 on the Safety of Journalists and 27/31 on Civil Society Space.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1. Regarding freedom of association

- Abolish Law No. 6172 requiring staff of non-governmental organisations to submit asset declarations to the authorities.
- Repeal article 186-5 of the Code of Ukraine on Administrative Offences establishing liability for the leadership or participation in unregistered associations of citizens;
- Amend the Law of Ukraine "On public associations", by including, under article 21 of this law, the right of associations to represent and protect the rights of their members and other persons, upon their request to initiate actions on issues of public interest;
- Amend part 2 of article 50 of the Code of Administrative Procedure of Ukraine, by including in the list of plaintiffs in the administrative case, public associations without the status of legal entity;

⁵² See: <http://khpg.org/en/index.php?id=1481147711>

⁵³ See: <https://www.kyivpost.com/article/opinion/op-ed/halya-coynash-crimean-tatars-tried-fined-solidarity-victims-persecution.html>

⁵⁴ 'Freedom of Assembly in Crimea Occupied by the Russian Federation', Center for Civil Liberties and E-SOS, <https://drive.google.com/file/d/0B01VVzdDt2OTHHrVGNvbm9JYjg/view>

- Adopt changes to the Law of Ukraine “On political parties” to bring it into line with international standards;
- Simplify rules for the creation of trade unions and their associations in accordance with the requirements of the Convention on Freedom of Association and Protection of the Right to Organize (C87), in particular, to allow the possibility of their creation without registration.

6.2. Regarding freedom of expression, independence of the media and access to information

- Ensure the effective investigation of all cases of obstruction of journalistic activities and violence against and death of journalists;
- Cancel the procedure of permitting registration of the print media, which is not consistent with the requirements of article 10 of the European Convention for the Protection of Human Rights;
- Eliminate technical obstacles for the creation of a public broadcaster, its adequate funding and to ensure a rapid process of reorganization of the regional companies and their adherence to the National Television Company of Ukraine;
- Refrain from imposing disproportionate restrictions on freedom of speech, using rhetoric against Russian armed aggression.

6.3. Regarding freedom of assembly

- Urgently complete the investigation of widespread violations of freedom of assembly during the events on Maidan in 2013 and 2014, the events of May 2014 in Odesa, attacks on the Equality March in Kyiv in 2015, and all other cases involving the use of violence or excessive force during peaceful protests;
- Adopt a special law envisaging the guarantee of freedom of peaceful assembly, for the implementation of the decision of the European Court of Human Rights in the case “Verentsov against Ukraine”;
- Cancel local government provisions, which impose rules on peaceful assembly which run contrary to article 39 of the Constitution of Ukraine;
- Ensure effective investigation and prosecution of perpetrators of unlawful obstructions of freedom of assembly;
- Increase police capacities to protect participants of peaceful assemblies in strict compliance with the principle of non-discrimination. To achieve this, align departmental normative documents and update the system of training of the National Police.

6.4. Regarding access to UN Special Procedures mandate holders

Given the challenges described in this submission, the government should engage with the UN Special Rapporteur on the independence of judges and lawyers to analyze the situation in the occupied Crimea, where the prosecution of lawyers defending political prisoners is a serious problem. Additionally, the Government should extend an open invitation to all UN special procedures to visit the country and report on the human rights situation.

6.5. Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with a wide range of civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include civil society organizations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.
- Incorporate the results of this UPR into its action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a mid-term evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

**JOINT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF UKRAINE
BY ARTICLE 19, CENTRE FOR DEMOCRACY AND RULE OF
LAW, ANTI-CORRUPTION RESEARCH
AND EDUCATION CENTRE, HUMAN RIGHTS INFORMATION
CENTRE, HUMAN RIGHTS PLATFORM,
AND REGIONAL PRESS DEVELOPMENT INSTITUTE**

For consideration at the 28th Session of the Working Group
in November 2017

30 March 2017

EXECUTIVE SUMMARY

1. The submitting organisations welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Ukraine. This submission focuses on Ukraine's compliance with its international human rights obligations, in particular in respect to the right to freedom of expression and information.

2. The submission notes positive progress in protecting these rights since Ukraine's last review, related to reforms implemented by the Poroshenko government, in power since 2014 following popular protests and the fall of the Yanukovich government.

3. It addresses the following areas of concern:

- Attacks on journalists, media workers and activists
- Media pluralism
- Restrictions on freedom of expression related to national security
- Access to public information
- Freedom of expression in Crimea and the Donbas

ATTACKS ON JOURNALISTS, MEDIA WORKERS AND ACTIVISTS

4. Ukraine accepted recommendations from Austria, Chile and France on improving protections for journalists during their last UPR. There has been progress in this regard: the Institute for Mass Information reported a decline in the number of violations of journalistic rights, encompassing physical assaults, other forms of censorship and restricting access to information, from 496 to 264 during the period 2013-2016.¹ This includes a significant decline in the number of assaults and beatings cases, from 97 instances in 2013 to 31 cases in 2016. This was with the exception of 2014, when there were 286 registered cases of violence against the media, primarily related to violence during the EuroMaidan protests.² There has also been a marked shift in the perpetrators of violence against journalists: while in 2013-2014 the majority of assaults against journalists were committed by law enforcement agencies and local officials, in recent years the main aggressors were usually private individuals.³

5. In 2015, the Ukrainian Parliament amended the Criminal Code to ensure better protections for journalists, including strengthening liability for threats or violence against journalists, intentional destruction or damage to journalists' property, and hostage-taking of a journalist. In 2016, the Parliament also amended Article 163 of the Criminal Code, increasing protections for the confidentiality of media correspondence. While welcome, these protections need to be strengthened: at present, they are only afforded to journalists affiliated with a journalists' union or an accredited media outlet, meaning that protections often do not include photographers or camera operators, and are not usually extended to unaffiliated journalists, in particular bloggers and online journalists, who make up an important part of Ukraine's media environment.

6. Despite improvements, journalists and media outlets continue to face physical assault and other forms of harassment, including destruction of equipment, and other obstructions, restricting their ability to report on sensitive issues. Journalists who are covering corruption, who are accused of spreading Russian

¹ The number of violations increased in 2014 up to 995 cases, due to the Euromaidan events. Source: <http://imi.org.ua/news/56087-u-2016-rotsi-v-ukrajini-zafiksovano-264-porushennya-svobodi-slova-imi-onovleno.html>

² Provided figures do not include violations in Crimea and non-controlled territories of Donetsk and Lugansk regions.

³ Institute for Mass Media (2016), 'Khronika Svobodi Slova 2015' (Chronicle of Free Speech 2015); <https://drive.google.com/file/d/0B289wOojYGWZzIUd3BJQ0ZBRmc/view> and Institute for Mass Media (2015), 'Khronika Svobodi Slova 2014' (Chronicle of Free Speech 2014) http://imi.org.ua/docs/Hronika_2014_A4_11-print.pdf

“propaganda”, or are covering the conflict in Eastern Ukraine, are most likely to be targeted. The two most serious incidences of violence perpetrated since the change of government are the murders of journalist Pavel Sheremet (July 2016) and media personality Oles Buzina (April 2015). Sheremet, a journalist working for online investigative newspapers *Ukrayinska Pravda* and *Radio Vesti*, was killed in a car explosion on 20 July 2016. The car belonged to Olena Prytula, editor at *Ukrayinska Pravda*, but she wasn’t in the car at the time. Buzina, a TV presenter and former editor-in-chief of the Russian language Kyiv-based newspaper *Segodnia*, was gunned down on 16 April 2015 by an unknown gunman. Buzina was a controversial figure in Kyiv, known for his support for Russian activities in Crimea and the East of Ukraine. Other examples include:

- On 2 October 2015, journalist Mykhailo Tkach and camera operator Kyrylo Lazarevych were detained by the Ukrainian security services (SBU) in Kyiv while filming a broadcast on luxury cars owned by SBU personnel. Both were working for the anti-corruption investigation program “Skhemy: Corruption in Detail”, broadcast jointly on Radio Liberty and the TV channel UA:Pershy. SBU officers used force against the journalists when detaining them, and damaged their equipment. Although one of the perpetrators was sentenced to two days military detention for illegal deprivation of liberty under the SBU’s internal disciplinary statute, a parallel criminal investigation under the Criminal Code of Ukraine into the obstruction of journalists’ activity was closed.
- In September 2016, Inter TV Channel faced an attempted arson attack. The channel had previously been subject to protests for its pro-Russian sympathies and the Minister of Interior had publicly accused the channel of being “anti-Ukrainian”, and transmitting Russian “propaganda”.⁴
- In May 2016, Myrotvorets (Peacemaker) website published the names and personal data of several thousand Ukrainian and international journalists accredited by the Press Centre of the self-proclaimed Donetsk People’s Republic, accusing them of “cooperating with terrorists”, resulting in many of those listed reporting threats and intimidation. Ukrainian prosecutors opened an investigation into the leak; however a number of prominent Ukrainian officials, including the Minister of the Interior, welcomed the website’s actions.

7. Investigations by law enforcement agencies into attacks on journalists are often ineffective: the victim’s status as a journalist is often not registered and perpetrators’ intent to restrict freedom of expression is rarely proved. 2016 Statistics from the Prosecutor General’s office show that although 141 cases of alleged crimes against journalists were reported to the police, there were only court proceedings in 31 cases, including relating to alleged crimes registered with law-enforcement in previous years.⁵

8. Impunity for murders of journalists perpetrated under previous governments and the current government remains a problem. An egregious case of continuing impunity concerns the kidnapping and murder of investigative journalist Giorgi Gongadze in September 2000: although four men directly involved in the murder have been convicted, no one has been convicted for ordering the killing. There is continuing impunity for the February 2014 murder of journalist Viacheslav Veremii, who died from injuries sustained during an attack by a gang of unknown assailants while covering the EuroMaidan protests in early 2014; the investigations have also stalled.

9. Impunity also persists for other forms of violence against journalists perpetrated under the last government, in particular during the EuroMaidan protests. Numerous journalists were attacked and had their equipment confiscated or destroyed. Although these incidences occurred under a different government, the Ukrainian authorities have thus far failed to adequately investigate or compensate for these incidences.

⁴ <https://www.facebook.com/arsen.avakov.1/posts/1120221481401290>

⁵ Institute of Mass Information ‘In 2016, the police submitted 31 cases of violations of journalists’ rights to the court’, 06/03/2017 <http://imi.org.ua/news/56672-in-2016-the-police-submitted-31-cases-of-violations-of-journalists-rights-to-the-court.html>

10. Physical attacks on activists and human rights defenders are rare; however, as in cases of violence against journalists, impunity for such attacks committed under previous governments continues to cast a chilling effect on freedom of expression. The murder of human rights defender and environmentalist Volodymyr Honcharenko, head of the NGO For the Rights of Citizens to Environmental Safety, is of particular concern. Honcharenko was attacked and beaten by a group of unknown assailants on 1 August 2012 and died in hospital a few days later. The attack came four days after Honcharenko publicly denounced the illegal transfer of 180 tons of contaminated, highly toxic metal waste through Kryvy Rih in July 2012. He had received threats related to his activism prior to this murder, and spoken prolifically on corporate negligence and government corruption. Ukrainian civil society report that there are still very few activists willing to speak out on environmental rights.

RECOMMENDATIONS:

11. Prevent and protect against threats and violence against journalists, media workers and activists, and end impunity for such crimes, including by ensuring impartial, prompt, thorough, independent and effective investigations into all alleged crimes and hold those responsible to account; including to:

- i. Expand the definition of journalist in the Criminal Code and other legislation offering increased protections to journalists and media workers, to include anyone involved in gathering and transmitting information to the public, and not be limited by membership in a professional association or employment with an accredited media outlet;
- ii. Conduct training and awareness-raising among law enforcement officers and military personnel regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists;
- iii. For public authorities to publicly, unequivocally and systematically condemn all violence and attacks against all journalists and other media workers, as well as against activists;
- iv. Dedicate the resources necessary to investigate and prosecute attacks. Particular attention should be paid to investigating past murders.

MEDIA PLURALISM

Media ownership, concentration and public service media

12. Ukraine has a largely pluralistic media environment; however, problems with the media landscape persist, due to delays in privatising state-owned media outlets and the concentration of ownership of major media outlets by a small number of oligarchs, who use them as tools of economic and political power.

13. Ukraine has made significant progress in transforming state-owned television and radio stations into independent public service broadcasters. In April 2014, Parliament adopted Law No. 271-VIII on Public Service Broadcasting and, on 19 January 2017, the Public Broadcasting Company of Ukraine was registered. A Supervisory Council, including a number of civil society representatives is already functioning and a management team is currently being appointed and is expected to be in place by May 2017. As the broadcaster starts to function, it will be important to ensure adequate funding and guarantees of editorial independence.

14. With regard to state-owned press, on 1 January 2016 parliament adopted Law No. 917-VIII on the reform of state-owned and communal print media. The Law provides a legislative basis for the privatisation of local press publications, currently owned and financed by municipal and national state bodies, and frequently used by political figures for advancing their political agendas. The law envisaged two stages of reform: an initial 'pilot'

period, running until 31 December 2016, during which time media outlets would volunteer to enter the reform process and transfer ownership to independent companies; and a second stage, starting in 2017 when all media outlets would be obliged to undergo reforms to guarantee their independence. However, the process of reform has been slow, and by the end of the first stage no media outlet has been reformed. This is related to delays by the government in adopting an act needed to initiate the reforms; the reluctance of local authorities to approve reform decisions; and a weak legislative basis to overcome these obstacles.

15. Issues also remain regarding media ownership and concentration. The majority of national mass media outlets are owned by a small number of wealthy individuals, with significant political and business interests in other spheres. Poroshenko continues to own the influential Channel 5. These channels are highly partisan and often used to advance political agendas: they have been involved in smear campaigns against competitors,⁶ and are used by their owners as the tools for political campaigning.⁷

16. In October 2015, a Law on Media Transparency was passed. While it requires TV and radio broadcasters to publish their ownership schemes on their own websites and enables the National Broadcasting Council to establish sanctions for non-compliance, it does not include any provisions on financial transparency, undermining its effectiveness in practice. The ownership of two popular Channels, 112 and Radio Vesti, remains unclear, as is the ownership of some smaller, local channels. The Law also does not cover the print and Internet media.

Libel lawsuits

17. Officials and other public figures often bring civil libel cases against journalists in order to limit critical reporting. This is facilitated by the lack of independence of the judiciary, and susceptibility to pressure from authorities and business interests. There have been two high profile cases where members of the judiciary have themselves sued media outlets to try to prevent them from reporting on matters of public interest.

- In March 2016, Vladislav Kutsenko, General Prosecutor of the Zaporizhia District, sued Andrei Bartyish, editor of local newspaper Gorazhanin Inform, for 100,000 UAH (3800 USD) in moral damages due to a series of articles published by the paper investigating Kutsenko's alleged involvement in a number of criminal cases, including embezzlement and land fraud.⁸ The case was partially satisfied in Kutsenko's favour and Gorazhinin was compelled to retract most of the statements and to pay minimal non-pecuniary damages of 1000 UAH (35 USD).
- In December 2016, Judge Oleksandr Tymoshchuk brought a case against local journalists who had investigated allegations that he was involved in a traffic incident resulting in death. The judge sought 200 000 UAH (7600 USD) of moral damages; however the case was dismissed.

18. In a positive development, in 2014, the parliament adopted Law No. 1170-VII, which eliminated Article 277 (3) of the Civic Code, which stated that defamatory statements of fact are presumed to be false, subject to proof by the defendant that the statements were true. This placed an unreasonable burden on the defendant, at least in relation to statements on matters of public concern, exerting a significant chilling effect on freedom of expression, as individuals will refrain from making statements not because they are false or believed to be false, but out of fear that they cannot be proven to be true in a court of law or because of the high cost of defending a defamation suit.

⁶ Media Sapiens (2014), 'Моніторинг: Опозиційність «Інтера» та «України» і продовження війни олігархів' (Monitoring: Opposition between Inter and Ukraine and the continuation of the war of the Oligarchs), 17 December http://osvita.mediasapiens.ua/monitoring/monitoring_overview/monitoring_opozitsiynist_intera_ta_ukraini_i_prodozhennya_viyeni_oligarhiv/

⁷ Media Sapiens (2017) 'Топ-десять найбільших порушень у теленовинах грудня за версією «Детектора медіа»' (The top ten major disturbance in TV news: December version of the Media Detector), 13 January http://osvita.mediasapiens.ua/ethics/standards/topdesyat_naybilshikh_porushen_u_telenovinakh_grudnya_za_versieyu_detektora_media/

⁸ Ukrainiski Novini (2016), 'Прокурор Куценко судиться с областной газетой и требует 100 тыс. Гривен' (Prosecutor Kutsenko is suing local paper and demands 100 thousand grivna), 29 March <http://ukranews.com/news/419109-prokuror-kucenko-sudytsya-soblastnoy-gazetoy-y-trebuet-100-tys-gryven>

19. On the other hand, in May 2015, amendments to legislation on court fees cancelled progressive scale charging court fees in cases of protection of honour, dignity and business. This scale established a proportionate increase in court fees where the plaintiff sought unusually high compensation for moral damages. By abolishing this system, it is much less costly for a plaintiff to request higher sums in damages, creating the possibility of abusive litigation seeking excessive damages, casting a chilling effect on freedom of expression with the potential to particularly affect those investigating and reporting on corruption.

20. A further issue is the lack of an expiration period for defamation claims: currently, the only limitation concerns retraction and response claims, which must be filed within one year from the date of publication. There is no limit on when a case claiming for financial compensation may be filed, allowing cases to be initiated long after the statements on which they are based have been disseminated and undermining the ability of those involved to present a proper defense.

RECOMMENDATIONS:

21. Media ownership, concentration and public service media

- i. Amend the Law on the reform of state-owned and communal print media and the Law on public service broadcasting of Ukraine to ensure reforms of state-owned media are implemented in line with international standards, guaranteeing that the Ukrainian population have access to independent, public service print and broadcast media.
- ii. Ensure the effective implementation of the Law on media ownership and promote the adoption of specific legislation guaranteeing media pluralism and preventing excessive concentrations of ownership. In developing policy, ensure possible conflicts of interest in media ownership are considered.

22. Libel lawsuits

- i. Circumscribe the ability of public figures to bring civil libel cases against the media by requiring them to prove actual malice (i.e. that the publisher of the statement knew it was false; or acted with reckless disregard) when bringing such cases.
- ii. Establish a clear expiration period of not more than one year for all claims relating to defamation.

NATIONAL SECURITY RESTRICTIONS ON FREEDOM OF EXPRESSION

Restrictions on media

23. Ukrainian authorities may have recourse to restricting freedom of expression where this is provided for by law and necessary and proportionate to a legitimate national security interest, which is particularly relevant in light of the ongoing conflict in the Donbass. Ukraine may also be faced with propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which States are required to prohibit under Article 20 of the ICCPR.

24. While acknowledging the security threats faced by Ukraine, efforts by the Ukrainian authorities to tackle Russian “propaganda” may however unduly restrict freedom of expression. At present, 15 Russian TV channels are currently blocked from broadcasting on cable within Ukraine, raising concerns about censorship, in particular the necessity and proportionality of these measures.

25. Most recently, in January 2017, the National Television and Radio Broadcasting Council of Ukraine banned Dozhd, an independent Russian TV channel known for its criticism of the Russian government,

from broadcasting on cable television inside Ukraine. The Council justified their decision on the grounds that the channel had (a) violated advertising regulations, which prohibit media from non-EU countries or countries that have not ratified the European Convention on Transfrontier Television from broadcasting advertisements; and (b) repeatedly identified Crimea as a part of Russia's territory, in violation of Article 28(1) of the Law of Ukraine On Information, which prohibits calls for violating the territorial integrity of Ukraine. Between March and May 2016, the National Broadcasting Council sent Dozhd several warnings about breach of advertising regulations, which they state that Dozhd failed to address. Further to the decision, Dozhd TV remains accessible online and on satellite channels.

26. ARTICLE 19 is concerned that the banning of Dozhd unjustifiably restricts the diversity of views available in the public sphere, and that the Council's decision may not meet the requirements of necessity, proportionality and pursuit of a legitimate aim, which must be met to warrant a restriction of freedom of expression under Article 19(3) of the ICCPR. With regard to the accusation of breach of advertising regulations, the banning of a channel seems to be a disproportionate response. Ukrainian legislation does not provide for more appropriate sanctions. With regard to the charges of calls to violate Ukraine's territorial sovereignty, ARTICLE 19 believes it difficult to see how the broadcasting of the map would exert an urgent threat to national security, which would justify a restriction.

27. In April 2015, President Poroshenko approved Law No. 159-VIII on Amending Legislative Acts Concerning Protection of Ukrainian TV and Radio Media Space, which prohibits the broadcast of films and other audio-visual content produced in an "aggressor state" after 2014; as well as content produced since August 1991 that promotes state agencies of an "aggressor state" or that promote aggression against Ukraine. Russia is the only country to have been declared an "aggressor state". By not requiring prohibitions on a production to be justified on the basis of individualised evidence of their necessity and proportionality, for example to protect national security or prevent incitement to violence, or limited in duration, these prohibitions are over broad and do not comply with international human rights law.

28. The authorities have also sought to restrict access of international journalists to Ukraine. In September 2015, President Poroshenko signed a decree banning at least 41 international journalists from entering Ukraine, in a list of 388 individuals. The decree stated that the individuals included on the list represented an "actual or potential threat to national interests, national security, sovereignty and territorial integrity of Ukraine"; however, it did not provide any detailed information or evidence of how the individuals threatened Ukraine's security. Following an international outcry, the authorities removed the majority of Western journalists from the list; and the decree was amended on 16 September 2016. Those remaining on the list are primarily Russian journalists and a few journalists from other countries who have publicly endorsed the Russian actions in Crimea and Donbass. Despite their political views, international journalists should have access to freely report on the situation in Ukraine, unless they pose a direct and immediate threat to Ukraine's national security.

Ban on symbols related to "communist and Nazi totalitarian regimes"

29. On 9 April 2015, the Ukrainian Parliament adopted Law no. 317-VIII "On the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols". The law prohibits the production, dissemination and public use of Communist and Nazi symbols in public spaces, providing criminal sanctions of up to five years' imprisonment (up to ten years, if committed by a person holding public office). While recognising that protecting the interests of national security and territorial integrity is a legitimate aim, the Venice Commission of the Council of Europe criticised the legislation, finding it too broad in scope, with the potential to "stifle an open and public debate in national media."⁹

⁹ CDL-AD(2015)041-e Joint Interim Opinion on the Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and

30. The Venice Commission also raised concerns about the Law's potential impact on political speech, warning that the legislation might "effectively discourage people from engaging in public affairs."¹⁰ In December 2015, the Law was used to ban Ukraine's Communist Party (CPU). The decision was made by the Kyiv District Administrative Court following an application from the Justice Ministry, on the grounds that the CPU had refused to remove Communist symbols from its documentation.¹¹ Although the CPU is free to re-register under a different name and without displaying communist symbols, ARTICLE 19 believes that this decision nevertheless violates the rights to freedom of expression and association and that the legislation needs to be amended.

31. The Ukrainian parliament is currently considering a draft law on amendments to the legislation to mitigate concerns around freedom of expression. Any amendments must ensure that the law does not obstruct historical or other debate, or political expression.

Online content

32. On February 2017, President Poroshenko approved an Information Security Doctrine. This identified a need to adopt legislation to enable blocking of online content that is deemed to endanger the life and safety of Ukrainian citizens, or include propaganda of war or incitement to war, national and religious hatred. The doctrine does not elaborate on what this would look like, and has drawn concerns from Ukrainian Internet experts that this may precipitate extra-judicial blocking of content, beyond what is justifiable under international law.¹² The adoption of a Law on Protection of cinematography on 23 March 2017, which enables the takedown of content that violates copyright without the need for review by an independent body, have accentuated concerns that these powers may be applied too broadly or extended to material deemed as a threat to national security.

RECOMMENDATIONS:

33. Guarantee that legislation aimed at countering Russian propaganda is not used to unjustifiably restrict the right to freedom of expression, including by ensuring that the dissemination of films and other media content are only restricted on the basis of a court decision and individualised evidence that such restrictions are necessary and proportionate to a legitimate aim.

34. Ensure that decisions to revoke broadcasting licenses, including on the grounds of protecting national security, are only taken as a measure of last resort by an independent regulatory body, in line with the requirements of legality, legitimate aim, necessity and proportionality.

35. Ensure that journalists are not denied entry to Ukraine on the basis of their political affiliation, and that decisions to deny entry are based on an individualised assessment of the necessity and proportionality of those measures to achieve a legitimate aim, such as the protection of national security.

36. Amend or repeal the Law on the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols, to ensure that it is not used to stifle debate or restrict political participation.

37. Ensure that any future mechanism aimed at blocking Internet content corresponds to the requirements of necessity and proportionality and that any such limitation shall only be enforced through court decisions.

prohibition of propaganda of their symbols [http://www.venice.coe.int/webforms/documents/?pdf=CDLAD\(2015\)041-e](http://www.venice.coe.int/webforms/documents/?pdf=CDLAD(2015)041-e)

¹⁰ *Ibid*

¹¹ Decision №826 / 15408/15, District Administrative Court of Kyiv, 16 December 2015 www.reyestr.court.gov.ua/Review/54392066

¹² Digital Report (2017), 'Председатель ИНАУ раскритиковал Стратегию кибербезопасности Украины' (Chairman of the Ukrainian Internet Association criticises Cyber Security Doctrine of Ukraine), 21 March <https://digital.report/predsdatel-inauraskritikoval-strategiyu-kiberbezopasnosti-ukrainyi/>

38. There have been significant improvements in legislation regulating access to public information since Ukraine's last periodic review. On 17 April 2014, President Poroshenko signed Law 1170-VII "On Amendments to Certain Legislative Acts of Ukraine in relation to the adoption of the Law of Ukraine "On Information" (new version) and the Law of Ukraine "On Access to Public Information". The Law sought to eliminate contradictions between various earlier legislative acts on access to information and to elaborate clearer principles and mechanisms to promote access to public information, such as requirements to government bodies to publish information online and fines for unfounded nondisclosure of information. The Law also sought to fight corruption, by requiring the disclosure of public officials' declarations of assets. In April 2015, parliament approved amendments to Law #319-VIII on Open Data. This also requires various government agencies to regularly publish information online in the machine-readable format. Currently about 12 000 data sets are available on the Unified State Web-Portal of Open Data.¹³ Ukraine has also taken innovative steps in cooperation with civil society, opening up access to information and data on public procurement with the ProZorro initiative, and implementing the Open Contracting Data Standard.¹⁴

39. Despite improvements in access to information legislation, implementation remains problematic. Civil servants, even at higher levels, lack knowledge about requirements on disclosure of information and understanding of how to process requests, resulting in too many public interest requests being denied. For example, access to information on assets of officials, municipal land plots and public funds is often unlawfully restricted. Although the Law establishes a three-part harm test to establish whether a refusal is justified (Article 6), this is rarely referred to and refusals are usually ungrounded. There are at least nine cases pending before the European Court of Human Rights regarding denied access to information cases.

40. Access to judicial information is particularly important, given the low level of trust in the judicial system in Ukraine and widespread allegations of corruption among court officials. During the last UPR, Ukraine accepted recommendations from Slovakia, Spain and Poland on ensuring the transparency of the judicial system; however, courts continue to disregard access to information legislation, including with regard to court budgets and salaries of judicial personnel. The current judicial reform requires greater transparency, especially with regard to personal assets and professional activities of the individuals who are applying for a judge position.

41. The Secretariat of the Ukrainian Parliament Commissioner for Human Rights is responsible for oversight of the implementation of access to information legislation. However, due to excessively short time frames for challenging violations of the right to information before a court, the large number of complaints, lack of financial and human resources, the Ombudsman Secretariat cannot ensure full and effective implementation of access to information legislation. In a positive move, the Ombudsman has joined forces with independent civil society organisations in order to monitor implementation of access to information legislation and provide recommendations to officials on best practices.

42. Apart from addressing the violation of one's right to access information to the Ombudsperson, there is a procedure of filing appeal directly to the administrative courts. However, legal costs have been recently raised and are prohibitively high.

43. In a bid to address some of these issues, Draft Law #2913 "On amendments to certain laws of Ukraine in the sphere of access to public information regarding the improvement of some of its provisions" has been developed. It aims to strengthen oversight powers to control the sphere of access to information, and to

¹³ <http://data.gov.ua/>

¹⁴ <http://www.open-contracting.org/why-open-contracting/showcase-projects/ukraine/>

introduce more precise wording on legitimate exemptions to access to information requests, in order close any loops holes that enable officials to refuse requests. Even though it has been approved by the Parliamentary Committee on Freedom of Speech and Informational Policy, the Draft Law still has not been considered by the full Parliament.

44. Additionally, an independent institution responsible for the oversight of access to information legislation is currently under discussion and members of Ukrainian Parliament have introduced a draft bill proposing amendments to the Constitution to introduce an independent information commissioner.¹⁵ If established, it will be essential to ensure the independence and sustainability of any independent body to oversee access to information legislation.

Protection of Whistle-blowers

45. Ukraine currently has limited protections for whistle-blowers who have disclosed private or classified information in the public interest. Those doing so have faced dismissal from employment and costly legal battles. For example, in 2010 Yuri Chumak, a police employee, disclosed information about a decision by the local prosecutor's office to close a case into alleged police brutality. He lost his job, and faced two lawsuits against him. As Ukraine seeks to fight corruption, a whistle-blowing law could promote transparency and help bring to light important information, while addressing Ukraine's culture of state secrecy – a legacy of the Soviet past.

46. A draft law #4038a "On Whistleblower Protection and Disclosure of Information about Harm and Threat to the Public Interest" is currently being debated in parliament. The draft law defines organisational and legal grounds for disclosures of information about harm or threat to the public interests, and the rights to, guarantee of, and mechanisms of, whistle-blower protection. It provides the three-tiered disclosure system that gives whistle-blowers the freedom to choose the path they wish to take to expose wrongdoing and also introduces the proper and effective compensation model along with the mechanisms of immediate protection of a person from the moment of disclosure.

RECOMMENDATIONS:

47. Ensure the proper implementation of the access to information legislation and implement policy measures to ensure transparency of the expenditure public funds, public land plots and other information of public interest.

48. Establish an independent body with responsibility for overseeing implementation of access to information legislation, with adequate financial resources; and appropriate safeguards to ensure its political independence.

49. Adopt Draft Law #4038a Law "On Whistleblower Protection and Disclosure of Information about Harm and Threat to the Public Interest".

¹⁵ Ukrainian Parliament Commissioner for Human Rights (2017), 'Ms. Iryna Kushnir: "Introduction of new institute of the Information commissioner have to be realized by amendments to the Constitution of Ukraine", 19 January <http://www.ombudsman.gov.ua/en/allnews/pr/26117-xb-ms-iryna-kushnir-introduction-of-new-institute-of-the-information-comm/>

50. Severe, systemic violations of the right to freedom of expression occur in Crimea and the Donbas. The Ukrainian authorities are unable to respond to these violations; however, they are briefly included in this submission for context. With regard to Crimea and Donbas, the submitting organisations recommend that the Ukrainian authorities simplify processes for journalists to gain access to these regions to ensure access to information about what is occurring there. Currently, Cabinet of Ministers decree No. 367 requires foreign journalists to travel to Kyiv to gain a permit to access Crimea. Applicants must submit documents in Ukrainian. This should be replaced with a system of prior notification, which can be completed from abroad in other languages.

Freedom of Expression in Crimea

51. Following the annexation of Crimea by the Russian Federation in March 2014, Crimean and Russian authorities have sought to silence criticism of Russia, as well as support for Ukraine, pursuing a crackdown on independent media, opposition politicians and activists.

52. Crimean Tatars have been particularly affected by the annexation. According to the Human Rights Information Centre, 43 people – primarily Crimean Tatars – expressing dissent have been forcibly disappeared since the annexation.¹⁶ In April 2016, the Supreme Court of Crimea banned the Mejlis, a Crimean Tatar elected representative body, on the grounds that it was an “extremist organisation”. The decision was upheld by the Russian Supreme Court in September 2016.¹⁷ Members of the Mejlis have been subject to violence, assault and threats. Many are now in exile. In September 2016, Ilmi Umerov, deputy head of the Mejlis, was convicted under Article 208.1 of the Russian Federation (“incitement to separatism”) and forcibly placed in a psychiatric ward in September 2016.¹⁸

53. Following the annexation, media outlets operating in Crimea were required to re-register under Russian regulations. Of the over 3,000 media outlets registered under Ukrainian regulations only 232 were given permission to continue to operate.¹⁹ Ukrainian channels that previously broadcast in Crimea have been blocked. Due to a change in radio frequency in February 2015, 7 radio stations were closed. From August 2016, access to a number of Ukrainian online media has been blocked, including Radio Liberty’s section on Crimea, *Ukrainskaya Pravda*, and the website of ATR, a Crimean Tatar media outlet now operating from Kyiv. According to Ministry of Information Policy of Ukraine, 60 Ukraine online media outlets have been blocked.²⁰

54. Dissenting journalists are also subject to restrictive Russian legislation. Most recently, Nikolay Semena, a Radio Free Europe journalist, whose article on an energy blockade of the Peninsula by Ukrainian authorities was considered as a “call to action aimed at violating the territorial integrity of the Russian Federation.” Semena’s trial began in February 2017.

¹⁶ Information Centre for Human Rights (2017) ‘Правозащитники впервые представляют все случаи насильственных исчезновений в Крыму за 3 года аннексии’ (Human Rights Defenders present all incidences of enforced disappearances during 3 years of annexation), 17 March https://humanrights.org.ua/ru/material/pravozahisniki_vpershe_predstavljat_vsi_vipadki_nasilnickih_zniknen_v_krimu_za_3_rocki_an_eksiji

¹⁷ Human Rights Watch (2016), ‘Crimean Tatar Elected Body Banned in Russia’, 29 September, <https://www.hrw.org/news/2016/09/29/crimean-tatar-elected-body-banned-russia>

¹⁸ Human Rights Watch (2016), ‘Human Rights Council: Maintain scrutiny of situation in Ukraine’, 12 December. <https://www.hrw.org/news/2016/12/12/human-rights-council-maintain-scrutiny-situation-ukraine>

¹⁹ Freedom House, ‘Crimea Freedom of the Press 2016’, <https://freedomhouse.org/report/freedom-press/2016/crimea>

²⁰ Ministry of Information Policy (2016), ‘MIP: Ukraine presented the issues of violations of freedom of speech in Crimea and the Eastern Ukraine at the OSCE meeting in Warsaw’, 23 September <http://mip.gov.ua/en/news/1459.html>

55. The de facto authorities in Crimea also harass human rights lawyers and those speaking out on the situation in Crimea. For example, on 25 January 2017 Nikolay Polozov, lawyer of Ilmi Umerov, was detained by the security services and released 2.5 hours later. He had just returned from the Parliamentary Assembly of the Council of Europe in Strasbourg, where he had presented human rights violations in Crimea. On 26 January Emil Kurbedinov, lawyer of the journalist Nikolay Semena, was detained by representatives of Crimea's Centre for Counteracting Extremism. The same day he was accused of extremism and sentenced to 10 days of administrative detention.²¹

Freedom of Expression in Donbas

56. The situation for the right to freedom of expression in the self-proclaimed People's Republic of Donetsk (DNR) and the self-proclaimed People's Republic of Luhansk (LNR) remains exceptionally difficult. Since 2014 here have been several cases of harassment, torture, threats and detention of journalists perpetrated by the armed formations controlling the Donetsk and Luhansk regions, without investigations or accountability for those responsible. Cases include:

- In 2014, Serhiy Sakhadinsky, editor of Politika 2.0 news website was beaten and held for five months in the basement of the University of Luhansk.²²
- In 2015, a correspondent of Novaya Gazeta, Pavel Kanygin, was detained and beaten by the "DNR authorities". He was later released and expelled from "DNR"-controlled territory.²³

57. Armed formations in both the "DNR" and "LNR" also target bloggers. For example, Eduard Nedelyaev, who frequently posted articles criticising the de facto authorities in the "LNR", was forcibly detained in November 2016 and is now in detention, accused of "espionage" and "treason".

58. People living in the "DNR" and "LNR" have very restricted access to media. At least 100 Ukrainian online media outlets have been blocked²⁴ and all Ukrainian TV channels disabled. Access is given only to local pro-governmental channels, as well as channels registered in the Russian Federation.

²¹ Human Rights Watch (2017), 'Crimea: Defense Lawyers Harassed', 30 January, <https://www.hrw.org/news/2017/01/30/crimeadefense-lawyers-harassed>

²² US Department of State (2015), '2015 Country Reports on Human Rights Practices: Ukraine', <https://www.state.gov/j/drl/rls/hrrpt/2015/eur/252911.htm>

²³ The Guardian (2015), 'Russian journalist beaten and detained by Ukrainian separatists', 15 June, <https://www.theguardian.com/media/greenslade/2015/jun/18/russian-journalist-beaten-and-detained-by-ukrainian-separatists>

²⁴ Reporters Without Borders, 'Summary of attacks on media', <https://rsf.org/en/news/summary-attacks-media>

**THE REPORT OF THE CIVIC UNION EDUCATIONAL
HUMAN RIGHTS HOUSE CHERNIHIV
FOR THE UNIVERSAL PERIODIC REVIEW**

(THE THIRD CYCLE)

Educational Human Rights House in Chernihiv is the coalition of seven rights protection organizations from throughout Ukraine. The founders of the House are seven NGOs.

The main goal of the Union is to enhance the educational component of the human rights movement and improvement of the access to public education in human rights field, legal aid, support for business partners and the members of the Union, including other human rights NGOs.

The Union owns a large educational center, on the basis of which regularly occur schools nationwide and international human rights and civic activity. The Union also acts as a resource center and baseline venue for seminars on human rights in part of the National Educational Program Understanding Human Rights.

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THE RIGHT TO EDUCATION AND EDUCATION IN THE FIELD OF HUMAN RIGHTS

This report raises issues of the current situation with respect for the standards of the right to education in Ukraine and the fulfilment of the relevant international obligations by the state. Particular attention is paid to ensuring the right to education for people affected by armed conflict and the occupation of the Crimea, parts of the Luhansk and Donetsk Oblasts. In this report, there is also the Assessment of the fulfilment of state obligations in the context of providing educational services to Roma people and individuals with disabilities.

1. GENERAL ASSESSMENT OF THE SITUATION REGARDING THE RIGHT TO EDUCATION

1.1. According to the Constitution of Ukraine, a complete general secondary education in Ukraine is compulsory. The state ensures the availability of preschool, full general secondary, vocational and higher education in state and municipal educational institutions.

1.2. During the reporting period, there were no qualitative changes in the realization of the right to education. The problem remains that already implemented and planned reforms in the education system have not systemic nature, and the way of their implementation often leads to current results, far from expected.

1.3. MES declares the possibility of participation of NGOs and experts in the process of developing and evaluating of the educational policy in Ukraine. In particular, public activists were involved into developing and adoption of the Draft Bill On Education and documents of a conceptual nature (in particular, the draft concept of the New Ukrainian School). Since 2015, on the website of the Ministry of Education and Science of Ukraine have been introduced electronic consultations with the public, which consist in the discussion of educational policies and procedures, but there is no mechanism for submitting proposals and feedback from the public.

1.4. According to the State Statistics Service of Ukraine, a significant number of school-age children remain unreached by training in pre-school and general education schools. According to the State Statistics Service of Ukraine, the number of students aged 6-17 years who do not study for complete secondary education is 23.028 children and most of them are from rural areas¹. Criteria under which the data collecting is performed on the reasons for not attending the school by children, have not changed over the years, children for health reasons, are admitted in special schools for children requiring correction of their mental development, learn a profession without obtaining a secondary education and by the other reasons. As of 01.09.2016, the largest percentage of such children is in the Transcarpathian, Odessa, Dnipropetrovsk, Lviv, Luhansk, Zaporizhia and Donetsk Oblasts. The state does not properly analyse the causes of this problem and does not perform an appropriate respond. According to statistics, the number of children who do not get an education by the other reasons has increased significantly, and there is 48% of such children as at 2016/2017 academic year².

1.5. The problem of admitting Roma children with secondary education, children whose families are registered as crisis ones, who are below the poverty line, etc., remains practically unresolved. Human rights organizations have repeatedly pointed out this. This was highlighted in the NGO report, which was presented at the XIV session of the UN Human Rights Council for the UPR³.

¹ <http://www.ukrstat.gov.ua/>

² <http://www.ukrstat.gov.ua/>

³ https://helsinki.org.ua/wp-content/uploads/2017/02/UPR_Ukraine_Stakeholders_Mid-Term_FullReport_2015_ukr.pdf

1.6. The situation with the education of children who are permanently residing in boarding schools of the Ministry of Social Policy remains a problem. Children with mental health problems and physical disabilities actually do not have access to education. There are no special programs and state educational standards for such children.

1.7. The information on access to education of children who get treatment in narcological dispensaries is not available. Rehabilitation work is being conducted mainly in the medical aspect, and the methods of working with juvenile drug addicts for the purpose of their re-socialization are not developed.

1.8. Since 2016, Ukraine began the reform to optimize the system of general secondary education through the creation of a network of supporting schools, the main goal of which is to provide children in rural areas with access to quality education. According to statistics, at the beginning of 2016/2017 the number of schools was decreased by 241 units⁴. It is especially difficult to access to education for children living in rural areas. Not all pupils can realize their right to education because of the large distance from the institution of residence. According to the State Statistics Service, 1/3 of the students who need transportation are not provided with these opportunities and, accordingly, do not attend school in certain circumstances. The School Bus Program created for pupils' transportation organization to the educational institutions in the other settlements, does not compensate this problem in the full scope and due to the low-quality organization of the transportation of pupils to the educational institution, it sometimes causes a threat to life and health safety of children.

1.9. There is no system of analysis and forecast of the functioning and development of the educational institutions network, which leads to unsanctioned/non economically feasible use of state resources of educational institutions funding.

1.10. Obligations that were taken by the state as for providing the safety of the general secondary education are not being used in the full scope.

1.11. The material base of general educational institutions remains unsatisfactory. Material support of the educational institutions does not allow guaranteeing even safe environment for pupils and completing performance of teaching and educational process. Despite the increased funding of educational institutions from the state and local budgets in previous years, in the conditions of the economic crisis and inflation, the current maintenance of the educational institution and the maintenance of the educational process was covered at the expense of the proprietary funds of budget institutions, that is, at the expense of charitable contributions – parental funds⁵. In most cases, such donations are forced rather than voluntary⁶.

1.12. Notwithstanding the obligations of the state, today not every child who learns in school is provided with textbooks and teaching materials. Textbooks for individual classes are printed with a delay for a whole year, and the lack of electronic devices and Internet access makes impossible to use electronic versions of textbooks proposed by the Ministry of Education. Schools in the ATO zone within government-controlled areas in many cases are provided with the Internet with the help of charity funds and NGOs.

1.13. Most teachers and school administrators do not have sufficient knowledge and expertise on human and children's rights. Inadequate attention is paid to the training of specialists who are able to work with disabled children or children with imperfect development or developmental disabilities. Teachers, for today, are limited in the choice of curricula and textbooks. The state standard of general secondary education predetermines the content of textbooks and teaching aids, excluding the existence of alternative textbooks through the approval mechanism and the provision of the stamp recommended.

⁴ <http://www.ukrstat.gov.ua/>

⁵ https://dostup.pravda.com.ua/request/faktichni_vidatki_po_ktkv_070201?nocache=incoming-29178#incoming-29178

⁶ <https://www.youtube.com/watch?v=hpjQGXR5SA>

RECOMMENDATIONS:

1. The content of curricula, textbooks and manuals should be based on the principles and values of democracy and human rights.
2. Introduce systematic monitoring and evaluation procedures for quality assurance as a part of external quality assurance in education. Such monitoring should definitely involve external independent experts and organizations.
3. Reorganization of the management of educational institutions should take into account the principle of real autonomy of school.
4. Ensure openness, transparency and accountability of the school before the community and society. Provide a state-public partnership in the management of state and municipal schools, by means of establishment effective parental and supervisory boards.
5. Introduce transparent mechanisms for the use of state and non-government financial revenues by schools. Create tax and regulatory incentives to support schools by local businesses.
6. Legislate the academic freedom of a teacher, the right to choose programs, methods and ways of teaching with the necessary achievement of the learning outcomes provided for by the relevant educational standards.
7. Provide demonopolization, decentralization and ensuring the principle of transparency in holding competitions for school textbooks. Organize the process of providing textbooks in accordance with the calendar plans.
8. Introduce a system of collection and analysis for disaggregated data (in particular, for disabled children, Roma, refugees and asylum seekers and other children who are particularly vulnerable groups) concerning the educational coverage of schoolchildren who study in general educational institutions.
9. Provide clear and effective system for responding to the situation of children of school age who are not covered by the general system of secondary education.
10. Ensure adequate and appropriate funding and material support for educational institutions and the education system as a whole.
11. To promote the diversity of educational institutions while maintaining the basic requirements and quality standards, the opening of new, modernized educational institutions, simplifying the registration and paperwork procedures for such institutions.

2. ENSURING THE RIGHT TO EDUCATION OF INDIVIDUALS WITH DISABILITIES

2.1. The situation remains challenging for many disabled children, whose number is significant. Despite the introduction of the concept of inclusive education, only 69 schools from 16.395 can provide free access to disabled children all over the school⁷.

2.2. The Ministry of Education and Science developed Model Curricula of Special General Educational Institutions for Children in Need of Correction of Physical and/or Mental Development (Primary School), Regulations on the Individual Form of Education in General Educational Institutions; There was implemented the program for the development of children of preschool age with a spectrum of autistic disorders; a new pedagogical title has been approved – a teacher assistant in a class with inclusive education, but at the same time, the MES allows the incorrect discriminatory terminology that contradicts the Convention on the Rights

⁷ <http://www.ukrstat.gov.ua/>

of Individuals with Disabilities. Thus, in the textbook list recommended by the Ministry of Education and Science for use in general education institutions for the education of children with special educational needs in the 2016/2017 academic year, pointed out the textbooks, which name contains the words for mentally-retarded children. The lack of a systematic approach and insufficient funding continues to restrict disabled children in access to quality education.

2.3. Financing of the education based on inclusion is not provided. Low or completely missing funding and material support for educational processes for children with disabilities threaten the creation of necessary conditions. Very often, the necessary provision completes with construction of ramps, which in overwhelming majority of cases do not meet the established standard.

2.4. There is no in the state any systematic training of the teaching staff at all levels. Most often, disabled children are taught by the teachers who did not undergo any special training.

2.5. According to the information placed on the influential online resources, the educational institutions that voluntarily made a decision on the formation of the inclusive education classes do not provide appropriate sanitary requirements⁸ and are not suitable for children with special needs⁹.

2.6. A separate issue is the organization of an individual form of education in general educational institutions for disabled children. The corresponding Regulation¹⁰ establishes half less number of hours per week for mastering the curriculum than is provided for by the standards of general secondary education¹¹.

2.7. The education of children with disabilities continues to be a problem for the family, which is either forced to allow the child to study at specialized institution with separation from a family, or to be brought up at home with significant limitations or lack of access to education.

2.8. The State bodies continue to apply the terminology that does not correspond to the international standards and national legislation when implementing the information policy. On the official website of the Ministry of Social Policy of Ukraine, the incorrect term handicapped children is constantly used¹².

RECOMMENDATIONS:

1. Ensure equal access and access to education for individuals with disabilities of various nosologies.
2. Based on the developed indicators, certain target groups, to implement information and education explanatory work on the promotion of an inclusive approach to ensure an access to education.
3. Develop special programs and teaching aids for children with various disability nosologies, provide general education and special educational institutions with these teaching aids.
4. Provide a system for the training of pedagogical workers, regarding the forms, methods of working with disabled children, and the skills of providing first aid to children with special health problems.

⁸ <http://zakon3.rada.gov.ua/laws/show/872-2011-%D0%BF>

⁹ <https://www.youtube.com/watch?v=TsXi-A6Zf0g>

¹⁰ <http://zakon2.rada.gov.ua/laws/show/z0184-16>

¹¹ <http://zakon3.rada.gov.ua/laws/show/z0184-16>

¹² <http://www.msp.gov.ua/search/?from=&till=&s=%D0%B4%D1%96%D1%82%D0%B8-%D1%96%D0%BD%D0%B2%D0%B0%D0%BB%D1%96%D0%B4%D0%B8>

3. ACCESS TO EDUCATION FOR ROMA PEOPLE.

3.1. The people of Roma community in Ukraine continues to face with systemic problems and obstacles in access to basic education. The lack of a system for collecting, recording and analysis of the official information, streamlined communications with people of the community leads only to status quo consolidation. In fact, we can state that the lack of adequate and sufficient access to education becomes an important factor in supporting the segregation of the Roma community and their further social stigmatization in Ukraine.

3.2. The results of monitoring of the coverage of Roma educational services and the quality of their provision showed that the educational level of the Roma population is extremely low; a significant part of the population has no any education (24%), while the proportion of those who get or have higher education is incomparably small, 1% only¹³.

3.3. The lack of access to education minimizes the Roma's chances on formal employment in the future, and builds significant barriers in communication with government authorities and providers of basic public and social services. Therefore, almost every fourth person of Roma nationality cannot read and write in Ukrainian (23% and 23% respectively). Every third person does it rather badly (33% reads, 36% writes). 14% of respondents do not know how, or rather speak Ukrainian bad, another 12% do not understand it at all or rather do not understand it.

3.4. National governments developed and adopted the Strategy of Social Protection and Integration into the Ukrainian Society of the Roma Minority for the Period till 2020 and the related Action Plan at the national level and at the level of several regions. Unfortunately, the government did not take into account the numerous comments of NGOs and experts, applications, the position of the Office Commissioner for Human Rights to change the approach to filling the Action Plan of the Strategy¹⁴.

3.5. The basic documents developed to correct complex problems of Roma integration both at the national and regional levels remain in most cases a declaration, accompanied by a missing system of assessment and monitoring, with a residual or zero level of funding. Thus, the Ministry of Culture of Ukraine, which is responsible for the preparation of a Consolidated Annual Report on the Implementation of the Corresponding Action Plan, prepares it in the form of a simple list of various activities and actions that are related neither to a common goal, nor quality assessment system and to the involvement of representatives of the target group¹⁵.

3.6. Strategy and Action Plan does not take into account the cultural specificities of the Roma. In particular, there is no clear anti-discrimination stance in the Strategy and the NAP do not have a, and gender equality is not defined as a complex problem¹⁶. Although the results of the polls showed that it is especially difficult to receive an education by women because of the cultural traditions and the patriarchal structure of the family. Thus, women are more often (45%) than men (33%) are uneducated (have no education at all or have an elementary education)¹⁷.

¹³ http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf

¹⁴ http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf

¹⁵ http://mincult.kmu.gov.ua/control/uk/publish/article?art_id=245101460&cat_id=244949510

¹⁶ http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf

¹⁷ http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf

3.7. Notwithstanding the good practices in individual communities, Roma children encounter serious obstacles, such as discrimination, isolation, admission to specialized classes and they do not get the necessary support in the learning process¹⁸. Some children become victims of violence in school¹⁹.

3.8. The central and local executive authorities and local self-government bodies have not developed an evaluation system and corresponding indicators for the analysis of Roma education services. While developing state and local policies as for Roma, the educational needs of the community are almost not being taken into account.

RECOMMENDATIONS:

1. Develop a system of comprehensive measures aimed at improving the access of Roma to pre-school education, general secondary education, extracurricular education, based on an analysis of their educational needs.
2. Develop and test the system for collecting and updating data on the educational needs of the Roma community and Roma coverage by education together with NGOs and people of the Roma community.
3. End the practice of systematic directing of Roma children to the special schools or special classes in schools and classes exclusively designated for Roma children.
4. Develop and implement comprehensive desegregation programs in communities and schools aimed to increase the level of solidarity and implementing an inclusive approach.
5. Establish a system of exchange existing good practices and effective tools implementing inclusive approach in ensuring access of Roma to education, which were tested at the regional level.
6. Establish and develop a multi-level network that will unite professionals, parents and government representatives in the provision of quality education for Roma children.
7. Together with NGOs, to establish a system of engaging the so-called educational mediators / educational assistants (including educators and educators representing the Roma community) in order to improve the level of Roma education coverage.
8. Establish courses to overcome illiteracy for adults with the help of Roma NGOs, having involved Roma teachers on the basis of the institutions of general secondary education/
9. Consider gender equality and access to education for both genders when developing programs and action plans to ensure the educational needs of Roma.
10. Establish an effective mechanism for consultation with representatives of Roma in the elaboration and implementation of policies that relate directly to provision of their educational needs.
11. Ensure quality training and retraining of teaching staff in the field of multicultural education and an inclusive approach when dealing with ethnically diversified classes.

¹⁸ <http://life.pravda.com.ua/society/2013/08/31/137591/>

¹⁹ <http://www.volynpost.com/articles/266-za-scho-pobyly-hlopchyka-cygana-abo-rasyzm-po-volynsky>

4. THE RIGHT TO EDUCATION IN TERMS HUMANITARIAN CRISIS

4.1. The Ministry of Education and the relevant executive authorities tried to respond adequately to the challenges of the humanitarian crisis and armed conflict in Ukraine. The achievements of the Ministry of Education in the current academic year include the admission to the appropriate school facilities 46.5 thousand schoolchildren from internally displaced families²⁰.

4.2. Concern is about providing access to education for children who, due to the armed conflict in the East and the annexation of the Crimea, found themselves in the ATO zone and temporarily occupied territories. There are 490 general schools of various types, and 363 institutions in Luhansk on the part of the territory of the Donetsk Oblast, temporarily controlled by militiamen. In the non-government controlled area an education is conducted on Russian textbooks, programs, evaluation transferred to the five-point system. Children get secondary school diploma and certificate of Luhansk and Donetsk Republics²¹.

4.3. The state has provided the opportunity to get complete secondary education to children who live in these areas through alternative learning – distance learning and external studies, but there are significant problems with the organization of such training. The congestion of pedagogical staff and the performance of these services free of charge does not allow carrying out such training in full that reduces its quality. Children from the non-government controlled areas do not have the opportunity to study some academic subjects: Ukrainian language and literature, the geography of Ukraine, the history of Ukraine. Lack of the Internet, power outages, insufficient number of computers and textbooks deprive these children of the opportunity to receive full-fledged education.

4.4. As of December 15, 2016, in general educational institutions study 142 people from the Autonomous Republic of Crimea (admission to the external school is carried out up to the end of the current academic year). The low level of the demand for Ukrainian education is justified by the almost lack of access to Ukrainian education, as because of the lack of sufficient level of development of distance education, as through the order of crossing the administrative border with the Crimea.

4.5. A large number of tests and exams (about 49) that applicants from the non-government controlled area need to obtain in order to get a document on secondary education, as well as the form and conditions of their passage, create significant overload for students and contribute to biased assessment, and also reduce the chances of these children to the further realization of their right to education in the territory of Ukraine, as was repeatedly reported by human rights organizations²².

4.6. When submitting documents for admission to the universities, in the Conditions for Admission to Higher Education in Ukraine in 2017, where is defined the procedure for admission to the universities via Ukraine-Crimea Centres, there are discriminatory provisions that require applicants from the occupied Crimea to provide the Residence Certificate, the Residence Permit or military ID, that is impossible because of the residence of Ukrainian citizens in the occupied territory.

4.7. A challenging problem is logistic support of the educational institutions situated in the so-called demarcation zone and affected by armed conflict in Eastern Ukraine. Most of the funds spent on logistic support and renovation of the material and technical base that impaired in the result of military actions, at the expense of international and Ukrainian charitable foundations and organizations and volunteer assistance. As a result of a survey of educational establishments in government-controlled area, there was

²⁰ http://komsport.rada.gov.ua/news/inform_pro_dotrum_zakonod/prav_ta_dopom_datiam/72994.html

²¹ <https://helsinki.org.ua/wp-content/uploads/2017/02/CRC-Interim-Report-Ukr-1.pdf>

²² <http://ru.osvita.ua/blogs/54363/>

found the existence of practice of refusing in official financing of these expenditures on the grounds of futility of investing in educational institutions that may again suffer as a result of military actions.

4.8. The worsening of the situation with political, civil rights and economic situation on the peninsula causes further migration processes from the Crimea. According to the operational information of local educational authorities, as of December 15, 2016, 2.672 children from the ARC were admitted in general and pre-school educational institutions of Ukraine.

4.9. The legislative framework of Ukraine is not brought into compliance to enable organizing distance learning for residents of the occupied territories; at the MES level there were not developed curriculum for online courses at the level the State Standard of the General Secondary Education; there was not created any learning content in all subjects from 1st to 7nd grade; there is no IT platform, where the content will be located and was not determined by whom it will be guided and moderated; there is no possibility of a remote passage of the State Final Examination. Thus, education in external forms that provides independent study of educational material nowadays is the nearly only way to get Ukrainian education.

4.10. MES developed and approved the Procedure for Admission for Higher and Vocational Education²³. However, in a certain list by Crimean-Ukraine Centres there were not included any medical high school and universities of creative direction (conservatories, art academies, etc.). Accordingly, the possibility of implementing the right to choose specialization in higher education for Crimean entrants is artificially limited.

RECOMMENDATIONS:

1. Amend the legislation to exclude discriminatory rules with respect students, prospective university students– IDPs.
2. Legally regulate possibilities to pass the State Final Examination in the remote on-line mode, for 9th (and perhaps 11) class and to get the Certificate of Basic Secondary Education and the Complete General Secondary Education.
3. Create a separate online resource that will become a prerequisite for distance learning of children living in the occupied territories of the Crimea and Donbas, and getting by them state-approved documents on obtaining basic and complete general secondary education.

5. EDUCATION IN THE FIELD OF HUMAN RIGHTS

5.1. As of January 2017, Ukraine had not yet developed the National Action Plan for Human Rights Education, which is one of the main requirements of the Action Plan of the World Program for Human Rights Education in accordance with the provisions of General Assembly Resolution 59/113²⁴; there is no national program on human rights education.

5.2. During the public events on the implementation of the principles and standards of the World Program for Human Rights Education, the Ministry of Education and Science of Ukraine notes that the work was begun to establish a working group for the development of a national program for human rights education, however, there is no regulation or another document, that declares these intentions²⁵.

²³ *Порядок прийому для здобуття вищої та професійно-технічної освіти*

²⁴ www.ohchr.org/Documents/Publications/WPHRE_Phase_2_ru.pdf

²⁵ <http://mon.gov.ua/activity/education/zagalna-serednya/normativno-pravova-baza1.html>

5.3. The state does not fulfil its obligations to include international human rights standards in the curriculum. If in the human rights legal education curriculum for the 9th grade, which is valid for 2016-2017, the separate questions and several lessons are devoted to human rights, then the new legal education curriculum, which will teach students of 9th grade since the academic year 2017, is eliminated issue of the international standards, international documents on human rights, and the issue of human rights is only one of the items of the topic.

5.4. There is no continuous education system of human rights. Education on Human Rights continues is further being substituted with the term legal education. Fragmentarily, the state carries out information and educational work in the educational environment to share knowledge about human rights and fundamental freedoms. Separate educational and methodological seminars are held, the Ministry of Education and Science supports separate projects of NGOs. However, such actions are episodic, are not systemic in nature and, in fact, do not influence the change of the situation. Such materials quite often contain factual errors and extremely specific interpretation of human rights.

5.5. Despite the fact that the new educational standard of the New Ukrainian School notes that education helps to form a democratic culture in the school due to the development of appropriate procedures for the protection of human rights and the introduction of democratic values, the declarative nature of this document does not imply a systematic approach to human rights education and the formation of training competencies in the field of human rights.

5.6. The state does not fulfil its obligations under the Action Plan for the Implementation of the National Human Rights Strategy for the Period up to 2020 as for publication and distribution of human rights textbooks and manuals for general education, vocational and higher education institutions, legislative acts and supply such legal literature to library funds. Available manuals and textbooks on human rights in Ukraine are published mainly by NGOs, they available in a limited number in paper versions and in electronic format and are not widely popularized and are not shared by the official bodies of the education system.

5.7. The analysis of public measures of the Ministry of Education and Science and regulations provides grounds to argue that there is no action to develop a modern methodological framework for the introduction of a human rights training course.

5.8. Actions aimed at informing and popularizing of human rights and freedoms in the educational environment are minimal and formal, mainly being limited to weeks (decades) of legal education, meetings with law enforcement officers for the criminal and administrative responsibility of children, etc.

5.9. The training of teachers for the teaching of human rights is not systematically implemented either in the system of professional development of pedagogical workers or in higher pedagogical educational institutions. There are individual examples that continue to be the initiative of individual teachers and have an unsystematic nature. Thus, today there is not enough specialists, who are able to teach human rights.

5.10. There is no system for monitoring and evaluating the teaching of human rights in educational institutions, the official education authorities do not involve NGOs to this process and in addition, they make obstacles to alternative monitoring studies, introducing procedural and financial difficulties. This makes it impossible for NGOs to have an access to these procedures and affects the objectivity of the results obtained.

RECOMMENDATIONS:

1. Develop and approve the National Program on Human Rights Education, which should become the basis for the development of state standards, and, of course, include interested NGOs in the above-mentioned process;
2. On the basis of the Program, develop principles, methods of activity and knowledge, and standards reflecting a systemic approach to the implementation of Human Rights Education in Ukraine.
3. Develop textbooks and training aids on Human Rights Education, create an electronic resource base on human rights on the website of the Ministry of Education and Science;
4. To conduct a real systematic informational and educational work among representatives of the educational process (pupils, teachers, parents) in relation to Human Rights Education with the involvement of representatives of NGOs and the use of modern and diverse forms of interaction and learning other than lecture and seminar forms (trainings, watching and discussing of films, festivals, competitions, projects, essays and other creative activities).

UKRAINE

REPORT, PRESENTED IN THE FRAMEWORK

**OF THE SESSION OF THE UN HUMAN RIGHTS COUNCIL
ON THE UNIVERSAL PERIODIC REVIEW**

(THIRD CYCLE)

**This Report has been prepared
by the Coalition for Combating Discrimination in Ukraine¹**
www.antidi.org.ua

The abovementioned coalition of non-governmental organizations was established in 2011 for joint promotion of the ideas of equality and non-discrimination in Ukraine. All the participants have considerable previous experience in working at discrimination issues in Ukraine. The main purpose of this report is to draw the attention of the UN Human Rights Council to the discrimination problems in Ukraine. Regardless of the recommendations of the international agreement participants, including the recommendations, received and accepted within the framework of the second cycle of the Universal periodic review, not all the changes have been introduced to the Ukrainian legislation with the purpose of eliminating discrimination and ensuring proper protection of victims of discriminative actions and practices. Instead, the Ukrainian authorities do not acknowledge the scope of the problem, and sometimes even engage into discriminative activities themselves. In the light of absence of systemic work in this sphere, the Coalition for Combating Discrimination in Ukraine submits its conclusions and opinions to draw the attention of the UN Human Rights Council to the discrimination problems in Ukraine and to provide consultative recommendations which, once accepted by the state, will allow changing the situation for the better.

LEGISLATION – POSITIVE IMPROVEMENTS AND EXISTING DRAWBACKS

1. Half of anti-discriminative system has been established in Ukraine. Some laws have been adopted, but they lack sanctions to punish for discrimination efficiently². The Law of Ukraine “On Principles of Preventing and Combating Discrimination”, adopted in 2012³ along with other legislative acts is the foundation of the system of preventing and combating discrimination, but both the anti-discrimination law and other legislative acts require finalization. The legislators have not attended to the inclusiveness of the Law (a comprehensive list of grounds, which would explicitly name the most discriminated groups in Ukraine), the active mechanism of appealing the discrimination and relevant changes to other legislative acts, which have been adopted in Ukraine as of that moment, in order to ensure the coordinated work of the legislative system and avoid any legal collisions.

2. The legislation contains the definition of discrimination in its direct, indirect and other forms, a list of grounds, for which discrimination is prohibited, but due to no attempts of harmonizing the legislation, different current legislative acts contain different lists of grounds (the Constitution, the anti-discrimination law, the law about equality of the rights of women and men and the Criminal Code have not been coordinated), different laws contain different definitions of discrimination, which leads to the lack of legal clarity.

3. In May 2014, the Verkhovna Rada of Ukraine approved the changes to the anti-discrimination law, which corrected some drawbacks (for instance, the definition of discrimination forms was improved and expanded, positive actions, the mechanism of their introduction and the control over the implementation were determined, the list of authorities of the Ombudsman in the Verkhovna Rada was extended and the principle of transferring the burden of proof was added to the Civil Procedural Code).

4. In November 2015, the list of grounds in the Code of Laws on labor was added sexual orientation. However, the corresponding change was not introduced to the basic anti-discrimination law. Regardless of the comprehensive list of grounds and the relevant practice of adding some grounds, not defined explicitly by the law, which was introduced by the European Court of Human Rights and numerous explanations regarding it, it is the authors’ opinion that such negligence of the interests of LGBT people both leads to their refusal to have this law applied and does not promote overcoming of homophobia in the society. Ukraine should urgently extend the list of grounds in the basic anti-discrimination law and bring the constitutional list in line with the current anti-discrimination law (the list of grounds in the Constitution is much shorter than the one in the anti-discrimination law).

5. Another legislative initiative – draft law No. 3501, suggesting some changes to the Administrative Code of Ukraine (the creation of the system of imposing fines for discrimination and partial removal of discrimination from the Criminal Code of Ukraine) – has not been implemented yet, the draft law was not adopted in the second reading due to political fears of deputies, who declared openly that they would not vote for the project, which would prohibit discrimination and impact traditional values of the Ukrainians.

6. Other issues are yet to be addressed as well. For instance, not all the problematic procedural moments have been solved (the authorities which are to consider and impose fines, subjection to the jurisdiction at the very place of trespassing, the term of considering the claim, the absence of any mention of sexual orientation, gender identity, health condition); there is no comprehensive definition of reasonable application (except for the Law of Ukraine “On Fundamentals of Social Protection of Persons with Disabilities in Ukraine”); the definitions of different forms of discrimination in different laws have not been brought in line, etc.

7. Another unsolved issue, leading to the lack of legal clarity and “threatening” potential plaintiffs considerably, is the lack of regulation in the procedure of appealing discrimination. For instance, Article 16 of the anti-discrimination law stipulates that “persons, guilty of violating legal requirements on preventing and combating discrimination, shall be civilly, administratively, and criminally liable”, whereas the Criminal Code defines clear sanctions for discrimination.

8. If a person would like to directly file his/her claim about discrimination in court, it can be done within the framework of civil or administrative procedure, however, neither the Civil Code nor the Administrative Code contain the corresponding articles and sanctions against the trespasser. Within the framework of a civil suit, a person may demand the reimbursement of material and/or moral damage and restoration of the violated right, which does not envisage any separate punishment for the persons, guilty of discrimination.

9. Another way of appealing discrimination is a claim, submitted to the law enforcement bodies and the actual commencement of proceedings pursuant to Article 161 of the Criminal Code of Ukraine⁴. This is the least effective way, though Article 161 is the only article, envisaging the responsibility of the trespasser for his/her discriminative actions. The authors of the report draw attention to the fact that in itself, criminal responsibility for discrimination, not related to violence, is the violation of the principle of the proportionality of offenses and penalties. In addition, the procedure of investigating a case and bringing forth charges within the framework of the Criminal Code envisages the proof of the trespasser’s “motive” which is often quite impossible and, moreover, absolutely pointless to prove in cases on discrimination⁵. Therefore, forcing the victims to the use of the Criminal Code for suits related to discrimination, we just create the system, in which it is impossible to prove such claims.

10. The only successful attempt of recent introducing changes to Article 161 of the Criminal Code was the introduction of the “disability” into the list of grounds in July 2014. The authors of this legislative initiative focused their attention only on the attempt of formal extension of the list of grounds, regardless of the estimates of the efficiency of prior practical application of Article 161 and the issue of “equality of offenses and penalties”. The main issue, which was highlighted by experts many times during the analysis of Article 161 and the police practice regarding the work on claims about some forms of discrimination, including violent crimes, was actually related to the inefficiency of Article 161 in bringing forth charges of discrimination due to the necessity of proving the trespasser’s motive, as in the world practice and generally in the very core of the anti-discrimination legislation the issue of the discrimination “motive” is not relevant, a person may not have an intent to discriminate somebody or even not know about such a phenomenon, using his/her own stereotypes about “inability of people with disabilities to work” or economic reasons like “I don’t have money to build an entrance ramp”, but it should not exempt them from responsibility for the committed offense.

11. For instance, the civil monitoring, conducted in 2013, demonstrated a large scope of the problem of inaccessibility of Ukrainian courts for people with disabilities. In 2014, a client of the CCD Foundation of Strategic Activities, a man in a wheelchair, was trying to file a claim in court about the inaccessibility of a food outlet, but didn't manage to enter the court registry due to the inaccessibility of the building. In this case the algorithm, suggested by Article 161 of the Criminal Code of Ukraine, is absolutely inefficient, because if a client files a claim in the police about "direct limitation of his right to fair hearing due to his disability", it will be very difficult, if indeed possible, for an investigator to prove both the motive of not building an entrance ramp and the intentional nature of a failure to do so.

12. Other problematic moments of the Criminal Code are yet to be defined as articles 115, 121, 122, 126 and others, related to so called hate crimes, define these offenses as the ones, committed exclusively due to the motive of "racial, national or religious intolerance", without the comprehensive list "and others", which makes it impossible to have efficient investigation and to qualify these offenses, done due to other motives, for instance, crimes due to hatred to LGBT people. The victims of such crimes include "evident minorities" (often the victims are foreign students), representatives of religious groups and LGBT community (there was a noted tendency towards the increase in the number of homophobic attacks in 2012–2016). The data on the number and nature of such offenses may be found in the reports of non-governmental and international organizations.

13. In 2011–2014, the official statistics of hate crimes was not published by law enforcement bodies. According to the data, provided by ODIHR, the number of crimes, reported by the state, was much lower than the corresponding data, submitted by non-governmental organizations. For instance, according to EAJC, in 2012, the attacks on 19 persons were registered along with 29 cases of violence against LGBT-community, registered within this period, whereas the official state data contained the information about 3 cases. The first governmental data on the number of hate crimes were published in 2016 – after the creation of the National contact center for hate crime issues in 2015.

14. LBT-women are the most sensitive group, when it comes to hate crimes, as they belong both to the LGBT-group and women at the same time. Usually trans-persons do not report to the police about hate crimes due to the problem of registering their cases based on the fact that their legal documents do not correspond to their appearance. In addition, policemen are often quite homophobic and transphobic, however, the situation is gradually improving after the reform of the national police, which started in 2015⁶.

15. In 2016, the National Police of Ukraine first published the statistics of hate crimes, segregated by qualities of the victims⁷, the information about which was introduced to the Unified register of pretrial investigations in 2015. There is no segregation in terms of age, gender, and ethnic origin of the victims. Only 3 out of 79 filed cases were heard in court. There is no data as to how many cases were sent to court in 2016, only available official data shows that 76 hate crimes were reported to police. 44% on religious bias, 16% SOGI and 10% ethnic or racial hatred.

16. At the end of 2015, the agreement was reached by the Office of General Prosecutor of Ukraine, the National Police of Ukraine, and non-governmental organizations about amending the crime registration form by adding a separate field, if a victim of the crime stressed the fact that it was a hate crime. On May 30, 2015, the Ministry of Internal Affairs issued the order to introduce the changes to the Instruction on the procedure of maintaining the unified register of claims and notifications about committed criminal offenses and other events in the police institutions. The clause "Indicates the circumstances of a criminal offense which may testify to the intolerance motives" was added to the protocol of filing the claim on a criminal offense, which has been or is going to be committed. The order entered into force on the day of its official publishing. There is still an issue of the way these changes will be reflected in the Unified register of pretrial investigations and, which is important, in the activity of the police.

17. Currently there is a task of ensuring efficient investigation of crimes and providing an effective system of a dialogue with the community and NGOs to report about the conducted work.

18. The problems of investigating hate crimes also lie in the fact that most frequently such crimes are qualified as hooliganism, which may be manifested through a variety of forms, for instance, vandalism, beating, infliction of slight bodily injuries, etc. The cases of vandalism are qualified as hooliganism or damage of property, regardless of the relevant articles in the Criminal Code (for instance, Articles 178, 179, 297, 298). The motive of religious intolerance is not considered even when the crimes are aimed at such constructions as monuments to Holocaust victims, synagogues, mosques, and other religious constructions and monuments. The monitoring of court rulings demonstrated that within 2012–2016 there were 7 rulings with the indicated Article 161 (one of them was overturned).

19. The drawbacks of investigation also include the inefficiency of investigators' actions, refusals to file claims of a crime, delay in procedural actions, etc. As a result, crimes are not investigated properly, which leads to lawlessness/reduction in punishment and decrease in the motivation to report a crime. Individual claims about threats, stirring up hatred in the Internet, including social networks, are usually not registered by the police or not investigated properly. The main argument in such cases is lack of time and technical possibilities to investigate cases, insignificant in the police's view. There is no understanding of the relevance of preventing the spreading of ultraright and extremist ideas in the society, especially among young people.

20. In addition to problems, related to the investigation of hate crimes, it should be noted there are continuous practices of xenophobic moods both in the rhetoric and actions of law enforcement bodies and public authorities. For instance, the programs of preventing crimes often include "events aimed at detecting criminal groups, formed on the basis of ethnic identity" which becomes a prerequisite for sweeps with the purpose of detecting so called "ethnic criminal groups". Some programs clearly state specific ethnicity, which the law enforcement agencies deem it necessary to fight: "To conduct a complex of measures, aimed at detecting criminal groups, formed on the basis of ethnicity, first and foremost including persons of Roma ethnicity". In one of notifications, the police department asks citizens to be careful with persons of "non-Slavonic appearance". Such statements and actions are both effective and leading to the decrease in the level of confidence in law enforcement agencies and the improbability of the victims of hate crimes filing any claims about a crime in future. The notifications and sweeps aimed at detecting persons with non-regulated status traditionally use hatred language – the expressions "illegal immigrants" or even "imposters" (while the notifications do not contain any information about the specific status of detained persons) are frequently used by PR services of the police, the patrol police, the State Migration Service.

21. Systemic training of policemen in terms of preventing and combating discrimination in all of its forms, including racial and ethnic profiling and registration and investigation of hate crimes started only in 2015 along with the reform of the police and the creation of the National Police of Ukraine. In 2015, the program of training patrol policemen was added the mandatory course of "Tolerance and Non-Discrimination", elaborated and introduced by experts and coaches of non-governmental organizations. In 2016, the pilot training for investigators on the issues of preventing and combating discrimination and investigation of hate crimes was launched in 6 pilot regions of Ukraine⁸. There was also a training for the employees of the State migration service in 10 regions⁹.

22. The drawbacks of investigation also include inefficiency of investigators' actions, refusals to file claims of a crime, delay in procedural actions, etc. As a result, crimes are not investigated properly, which leads to lawlessness/reduction in punishment and decrease in the motivation to report a crime. Therefore, regardless of considerable legislative improvements, at the systemic level the Ukrainian legislation still does not meet international standards regarding the protection from all the forms of discrimination and cannot ensure proper protection and compensation for all the victims.

23. In December 2016, Ukraine finally decided to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence, based on the understanding that violence against women is one of the forms of gender-conditioned violence which is committed against women only because they are women. The liability of the state is to fully react to such violence in all of its forms and to take measures to prevent violence against women, to protect its victims and to punish the guilty parties. The failure to comply with this rule entails the responsibility of the state. The Convention makes it very clear: there is no actual equality between women and men, if women suffer from gender-conditioned violence in a large scope, while state authorities and institutions put a blind eye to it.

24. After the consideration of the text of the Convention, the Ukrainian Parliament took a decision to remove the terms “gender” and “sexual orientation” from the text, deeming them to be the propaganda of homosexuality in Ukraine. Unfortunately, this action was supported by most members and committees in the Parliament. This deprives both the Convention and the law of any efficiency as a mechanism of protection from gender-conditioned violence. It also makes it impossible for LBT-women to protect themselves from violence, based on sexual orientation and/or gender identity.

25. Women, suffering from violence of men, are victims of a crime and have a sound legal right for protection and support, which is the responsibility of local authorities. The access to financing of women’s shelters is different for many local authorities, some of them are not able to provide any shelter. There were serious drawbacks revealed in terms of protecting women with disabilities, and women, who identify themselves as LBTI. Current women’s shelters in Ukraine do not include LBTI-women as their target group and there is no organization which would constantly provide a shelter to this group. In addition, there is lack of care and knowledge about violence against women, who are lesbians, bisexual women, trans- and intersex people, especially among social services, medical workers, and the police. Women, belonging to LBTI minorities, often face prejudiced attitude and statements while addressing state authorities and law enforcement agencies.

26. There is a direct prohibition in the legislation of Ukraine on the access of transgender people to adoption, based on the diagnosis of “transsexualism”. It limits the equal right of all the citizens to have a family and to exercise their parental rights. There is also a provision in the Ukrainian legislation, prohibiting transgender people to use reproductive technologies, such as freezing their biological material (ovules, sperm) for further usage.

27. Lesbians and bisexual women, who have families with children, are often subjected to discrimination and abusive behavior, especially when it comes to the protection of their family and private life from the State. Ukraine does not acknowledge any forms of unions for LBTI-families and adoption by the second partner. In cases when the biological mother died or has been deprived of her maternal rights, her partner does not have any legal rights for adoption.

THE ACTIVITY OF INSTITUTIONS, WHICH SHOULD PREVENT AND COMBAT ALL THE FORMS OF DISCRIMINATION

28. In 2011-2016 reporting years, the Committee’s recommendations were not followed regarding the creation of a new separate central body in preventing and combating racial or any other discrimination. In 2012, the Interdepartmental working group on combating xenophobia, interethnic and racial intolerance stopped its work. There was no publication of the statistics of notifications and individual claims about the facts of discrimination for any grounds, except for the statistics of individual claims, which the Ombudsman in the Verkhovna Rada of Ukraine started published in 2013, and the information of the non-governmental organizations.

29. Currently the only state institution, doing systemic work in terms of preventing discrimination by all the grounds, including racial, ethnic, and religious discrimination, is the office of the Ombudsman of the Verkhovna Rada of Ukraine, the only institution, collecting and publishing the statistics of applications with individual claims about discrimination, which allows tracing tendencies of spreading discrimination. In addition, this Office is the only agent, doing continuous educational work in the sphere of preventing discrimination. For instance, in 2014, the Ombudsman was involved in elaborating the textbook for the employees of state and public authorities on preventing and combating discrimination in Ukraine and conducted training in 10 pilot regions, including the city of Kyiv. In 2015, the Office employees conducted training for employees of Ukrainian courts. In 2016, the Ombudsman cooperated with non-governmental organizations in conducting trainings for the police and the employees of local public authorities on preventing discrimination and hate crimes (6 pilot regions of Ukraine). The capability of this Office was enhanced due to the increase in financing and training of the personnel with the support of the Council of Europe in cooperation with international and national experts in the sphere of non-discrimination. The Ombudsman is also a partner of the awareness campaign “Discrimination Limits – Act Against!”¹⁰, which is being implemented by the Coalition for Combating Discrimination in Ukraine with the international donor support¹¹. Unfortunately, other governmental institutions do not express any willingness and readiness to support the campaign or at least use its informational resources to implement the clause of the Action Plan to the National Human Rights Strategy on informing the community about the discrimination problem in Ukraine.

30. All the other state authorities, including the central executive body, the Ministry of Culture, whose formal liability is to monitor the activity, aimed at preventing racism and xenophobia, do not do any systemic actions. In 2014-2015, the State made an attempt to establish a separate office of the Commissioner for Ethnonational Policy¹², however, for one year of his work this Commissioner did not succeed in anything, demonstrating the inability to have any dialogue with different ethnic groups or stimulate the Parliament to solving matters of relevance for national minorities in Ukraine.

31. Some tasks, which may promote the implementation of the recommendations, received during the second cycle of UPR, are contained in the Action Plan on the implementation of the National Human Rights Strategy¹³ (2016–2020). However, it should be noted that most agents, implementing this plan, take their time in appointing the persons, responsible for some events, ignore information inquiries, and the Ministry of Culture, responsible for a considerable number of events related to national and religious groups, sent a letter to the working group with the demand to exempt the Ministry from this responsibility due to the lack of understanding of the ways to implement this work, the lack of specialists and financing.

32. Some divisions, which are to attend to the issues of equality and non-discrimination, have been established only in the Ministry of Social Policy, for instance, the division on gender equality, all the other central authorities along with their regional divisions do not do any systemic work in overcoming and preventing discrimination. In the opinion of the authors of the report, first of all it is conditioned by the absence of a clear and unified anti-discrimination policy in the State.

ON THE STATUS OF IMPLEMENTING RECOMMENDATIONS, RECEIVED DURING THE SECOND CYCLE

1. Recommendations 97.18 and other recommendations on refraining from any laws which limit the freedom of speech for LGBT were not accepted by the State, but they were followed in 2014 and 2015, when draft laws Nos. 8711, 10290 and 1155 were removed from the agenda of the Verkhovna Rada.

2. Recommendations 97.25 and others, related to adopting legislation, which would explicitly protect LGBT from discrimination, were not followed, such grounds as “sexual orientation”, “gender identity” were never included into the drafts of the anti-discrimination law¹⁴. In November 2015, the grounds “sexual orientation” and “gender equality” were introduced to the list of grounds in the Code of Laws on Labor in Ukraine. However, these grounds are absent again in the new draft Labor Code.
3. Recommendation 97.26 and others on the adoption of anti-discrimination law have been followed. There is still an issue of harmonizing the system of national law for efficient work and respective practical implementation of the law. It is not sufficient to consider the existence of the law on paper to be an achievement; *inter alia*, the law defines the responsibilities of state and local authorities in preventing and combating discrimination and creates some space for elaboration and implementation of positive actions, which was missing in 2012–2017.
4. Recommendation 97.38 and others on establishing an institutional mechanism to counter racial discrimination and its work have not been followed even at the level of any initiatives or discussions.
5. Recommendation 97.57 and others on including explicit reference to sexual orientation to the anti-discrimination law have not been followed.
6. Recommendation 97.58 and others on the programs, aimed at preventing and combating racism and other forms of discrimination, have not been followed.
7. Recommendation 94.105 and others on more active investigations of hate crimes have not been followed.
8. Regardless of the fact that in 2013 Ukraine finally signed the Cooperation Memorandum with ODIHR/OSCE which envisages training of law enforcement bodies on preventing and combating hate crimes, this training has not been launched. The only improvement may be found in the introduction of the course in “tolerance and non-discrimination” into the curriculum for new patrol police, which also includes the section of preventing hate crimes.

RECOMMENDATIONS:

1. To introduce changes into civil and administrative codes, envisaging punishment for discrimination as well as clear and simple mechanism of compensations for discrimination victims.
2. To add the grounds “sexual orientation” and “gender identity” to the explicitly cited list of grounds in Article 1 of the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”.
3. To develop the algorithm of collecting data on hate crimes, to ensure the compliance between the Protocol of accepting the claim of criminal offense and introduction of the data to the Unified Register of Pretrial Investigations, and to establish the mechanism of disclosing the data on the results of investigating such cases.
4. To develop and approve the provisions on the cooperation between the police and the prosecutor’s office in cases of hate crimes.
5. To introduce changes to the Criminal Code of Ukraine with the purpose of ensuring punishment for crimes, committed on the grounds of homophobia, namely, to Article 67, c. 2 Art. 115, c. 14 Art. 121, c. 2 Art. 122, c. 2 Art. 126, c. 2 Art. 127, c. 2 Art. 129, Art. 293.
6. To review the internal regulations of punitive institutions with the purpose of ensuring reasonable conditions for representatives of religious communities, which need the mentioned conditions.
7. To ensure the implementation of measures within the framework of the National Human Rights Strategy and the Action Plan hereto, including the allocation of budget finances in the framework of Block 18 of the Action Plan.

8. To improve the Procedure of analyzing normative and regulatory acts in terms of anti-discrimination by executive authorities (approved by the Resolution of the Cabinet of Ministers of Ukraine No. 61).
9. To remove all the discriminative norms, refraining the access to reproductive rights and/or rights of adoption for LGBTI women from the legislation of Ukraine.
10. To adopt the legislation which ensures partnership on general grounds for all the citizens regardless of any characteristics, including sexual orientation and/or gender identity, with equal parental rights.
11. To include the terms “gender” and “sexual orientation” into the Ukrainian law on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence.
12. To establish LGBTI-inclusive shelters for women, who have suffered from violence.

¹ The Coalition for Combating Discrimination in Ukraine was established on April 5, 2011 as the all-Ukrainian non-governmental human rights initiative when Ukrainian non-governmental organizations signed a special Memorandum. On July 15, 2012, the decision was taken to transform CCD into the union, consolidating non-governmental organizations and individual experts, brought together for the values of human rights and involved in combating discrimination in Ukraine.

The activity of the Coalition is aimed at:

- actual adherence to the principle of equality for all the citizens, regardless of some social or individual grounds, recognized in international, European, and national legislation as prerequisites for protection from discrimination;
- development, expansion and improvement of the system of protecting human rights and freedoms in Ukraine;
- countering the attempts of unreasonable and unjust limiting the rights of some categories of citizens;
- eradication of the phenomenon of discrimination from social life;
- further development of law enforcement movement and civil society;
- representation, realization and protection of interests of its member organizations.

The Coalition has four main tasks:

- 1) promoting the adoption of the complex anti-discrimination law, aimed at specifying and developing normative-procedural foundations for combating discrimination in Ukraine;
- 2) unifying the basic terminology in the sphere of combating discrimination within the legal framework of Ukraine and bringing it in line with the legislation of the European Union;
- 3) promoting the introduction of a comprehensive list of explicitly defined anti-discrimination grounds, corresponding to current requirements, into the national legislation;
- 4) enhancing the knowledge and practical skills of the representatives of different social and professional groups in the sphere of promoting anti-discrimination initiatives.

More information about CCD is available at <http://antidi.org.ua/ua/>

² As of now, the discrimination is prohibited by the Constitution (guarantee of equality of citizens with the specific list of grounds, which does not coincide with the anti-discrimination law); the Law of Ukraine “On Ensuring Equal Rights and Possibilities of Women and Men” and the Law of Ukraine “On Fundamentals of Social Protection of Persons with Disabilities”; and in some spheres – the Law of Ukraine “On Advertisement”; the Law of Ukraine “On Employment of the Population”; the Code of laws on labor, etc. Differences in treatment are also prohibited by the Criminal Code of Ukraine.

³ <http://zakon4.rada.gov.ua/laws/show/5207-17>

⁴ Complete text of Article 161 of the Criminal Code of Ukraine:

Violation of the equality of citizens regardless of their racial, national identity, religious beliefs, disability and other grounds

1. Intentional actions, aimed at stirring up national, racial or religious hostility and hatred, at humiliating national honor and dignity, or offending the feelings of citizens related to their religious beliefs, as well as direct or indirect limitation of rights or establishing direct or indirect privileges of citizens according to the qualities of race, skin color, political, religious and other beliefs, sex, disability, ethnic and social origin, wealth status, place of residence, language or other qualities – shall be punished with a fine in the amount from two hundred to five hundred basic income amounts of citizens or imprisonment for the term of up to five years, with the prohibition to hold some positions or to be engaged in some activities for the period of up to three years or without such prohibition.
2. The same actions, connected to violence, deceit or threats, as well as such actions, done by an official, shall be punished with a fine in the amount from five hundred to one thousand basic income amounts of citizens or imprisonment for the term from two to five years, with the prohibition to hold some positions or to be engaged in some activities for the period of up to three years or without such prohibition.
3. The actions, stipulated in parts one or two of this article, which have been done by an organized group of individuals or resulted in severe consequences, shall be punished with the imprisonment for the period from five to eight years.

{Article 161 in the version of the Law No 1707-VI dated 05.11.2009; with amendments, introduced according to the Law No 1519-VII dated 18.06.2014}

⁵ The corresponding substantiation of the ECtHR in case of *Danilenkov and Others v Russia*, the analysis in Ukrainian can be found at <http://noborders.org.ua/docs/analytika/danilenkov-and-others-v-russia-daniljenkov-ta-inshi-proty-rosiji-6733601-rishennya-vid-30-lypnja-2009r/>

⁶ More information at http://insight-ukraine.org/wp-content/uploads/2017/01/guide_discrimination.pdf

⁷ More information at <http://noborders.org.ua/politsiya-rozglydila-79-zlochiv-na-grunti-nenavisti-2/>

⁸ The curriculum was elaborated and implemented by the coaches of No Borders Project, NGO Social Action Center.

⁹ The course was elaborated by the experts of the Ukrainian Helsinki Human Rights Union.

¹⁰ More information about the campaign at <http://www.discrimi.net>

¹¹ More about the work of the Coalition at <http://www.antidi.org.ua/ua/>

¹² The only reaction to the aggravation in the issue of violating the rights of national minorities was the creation of the office of the State Commissioner for Ethnonational policy in 2014. According to his own estimates, in May 2015 the State Commissioner had neither mandate nor proper apparatus for systemic work. According to the estimates of civil society, even having the limited resources the Commissioner did have, it was possible to do much more in this Office for the whole year. However, instead of consolidating the efforts of experts in, for instance, finalizing the work at the state ethnonational policy, or working along with deputies and civil society at promoting draft laws on indigenous peoples or changes to the law on national minorities, or attempts of achieving effective interaction between the central authorities, etc., the State Commissioner spent his time with the mobile hospital in the ATO zone, which had no direct relation to his position and mandate, as well as on loud and often ambiguous statements about the “true nature” of international problems in Ukraine. In May 2015, this Office was abolished.

¹³ On Approval of the Action Plan on implementing the National Human Rights Strategy and the Action Plan itself <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>

¹⁴ See CCD claim regarding it at <http://antidi.org.ua/ua/activity/application/280-zvernennya-kpd-shchodo-zakonoproektu-4581> and another statement on general development of the anti-discrimination legislation in 2014 and its drawbacks <http://antidi.org.ua/ua/activity/application/292-na-shlyakhu-dozmin-povilnyy-ale-vazhlyvyy-rozvytok-antydyskryminatsiyoho-zakonodavstva-v-ukrayini>

UKRAINE

THE REPORT PRESENTED IN THE FRAMEWORK OF THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW

CHILD'S RIGHTS IN UKRAINE

The coalition of non-governmental organizations submitting the report: NGO COALITION "CHILD'S RIGHTS IN UKRAINE"*

All-Ukrainian Foundation for Children's Rights;
Association of the Young Professionals «Class»;
Danish Refugee Council in Ukraine;
Environmental Children's Organization «Flora»;
Women's Consortium of Ukraine;
International Charity Partnership for Every Child;
Non-government organization «Human rights centre «Postup»»;
Kharkiv Regional Foundation «Public Alternative»;
NGO «MART»;
Charitable organization "Charitable Fund "The Right to Protection" ;
Public Movement «Faith, Hope and Love»;
NGO «Kharkiv Institute for Social Researches»;
Sumy NGO «Kalynove Grono»;
Charitable Foundation «Rokada»;
Center of Public Initiatives «Intelligence of Sumy Region»;
Save the Children Ukraine;
International Charitable Foundation «AIDS Foundation East-West» (AFEW-Ukraine);
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WITH THE TECHNICAL SUPPORT OF UKRAINIAN HELSINKI HUMAN RIGHTS UNION

** The coalition was created in 2012 to promote respect for rights of the child and monitor effective implementation of the Concluding Observations and Recommendations made by the UN Committee on the Rights of the Child.*

Objectives of the Coalition:

- To promote respect for the rights of child in Ukraine.
- To track and promote compliance with recommendations of the UN Committee on the Rights of the Child on implementation of the UN Convention on the Rights of the Child.
- To share best practices in the field of promoting respect for children's rights.

THE STATUS OF IMPLEMENTATION OF RECOMMENDATIONS UNDER THE UPR PROCEDURE IN THE FIELD OF CHILDREN'S RIGHTS

1. Some of the at least in part implemented recommendations include: introduction of a clear definition of child pornography; exploring opportunities to expand measures to counter discrimination against children; intensifying efforts to prevent violence against children; considering promotion of types of punishment other than imprisonment; providing for opportunities for receiving birth certificates and citizenship.
2. The other recommendations have not been implemented.

LEGISLATION

3. Significant changes in the national legislation on child protection started in 2014 and were primarily due to:
 - the need to gradually bring the legislation in compliance with provisions of the European Union legislation;
 - occupation of part of Ukraine's territory and conducting the anti-terrorist operation in the territory of Donetsk and Luhansk Oblasts.
4. No comprehensive review of the legislation has been held, and there is no comprehensive law that would take into account provisions of the Convention and its Optional Protocols in their entirety. The only comprehensive law is the Law of Ukraine On Protection of Childhood, but it cannot be regarded as fully reflecting the standards of children's rights.

THE NATIONAL ACTION PLAN AND INDEPENDENT MONITORING

5. The National Action Plan to implement the UN Convention on the Rights of the Child in Ukraine adopted in 2009 immediately faced the problem of its implementation – allocation of the necessary funding and inconsistencies in activities of ministries responsible for its implementation. The plan of activities to implement the National Action Plan is approved by the Cabinet of Ministers of Ukraine with a half a year or more delay.
6. When developing the plan of activities, all the objectives and targets contained in the document are not taken into account, in particular in 2013 not a single activity was included for implementation of the objective of protecting rights of children with disabilities. In the last year of the plan's implementation, decentralization was added to the circumstances that complicate its implementation.

SURVIVAL AND DEVELOPMENT

7. Currently, the state has not developed a mechanism for civilians' evacuation from the combat zone. In connection with the threat to their life and health, some of the children (approximately 150,000 children) with their parents had to independently move to other Oblasts of Ukraine, while the rest – more than 500 thousand children – continue residing in the territory that is not controlled by the Ukrainian government. Facts of deaths and injuries of the children who tried to leave the dangerous territory; of obstructing evacuation of children in public care have been registered.

8. In settlement along the contact line in Donetsk Oblast, there are about 22 thousand children, while in Luhansk Oblast – about 25,500 children under the age of 17 years, of which 7.5 thousand are preschool age children. There remains the pressing problem of preventing deaths and injuries of children due to detection of explosive devices and unauthorized treatment of them. Other relevant issues include obtaining documents, access to health care, education, and the problem of violence against children in dysfunctional families. Shelling of the areas causes significant destruction of education and health facilities. There is still no information about the fate of the 21 minors who were kept in institutions of the State Penitentiary Service of Ukraine in Donetsk and Luhansk regions. There have been cases of illegal transfer of children under care of Ukraine to Russia.¹

9. Provisions of the Criminal Code of Ukraine do not separate the category of crimes against children, the more so they do not cover specific offenses against children in armed conflicts. Statistical data from current reporting on criminal offenses do not make it possible to determine how many children are victims of these crimes.²

NON-DISCRIMINATION

10. On 06.09.2012, a comprehensive anti-discrimination law was adopted³. Children are only considered in the overall context of potential victims of discrimination.

THE BEST INTERESTS OF THE CHILD

11. Amendments have been made in the Family Code of Ukraine⁴, the Law of Ukraine On Protection of Childhood⁵ on foster families, the concept of mentoring has been established legislatively⁶, and the basic terms and conditions of the agreement based on which mentoring will be provided have been stipulated. The concepts of “the best interests of the child”, “a child in difficult circumstances”, “a child who suffered from military actions and armed conflicts” have been introduced. The opportunities to obtain legal protection by the state, particularly when legal representatives do not do that, have been enhanced⁷. The legislative framework for bodies and services for children has been improved⁸, although no mechanism for implementing the changes has been introduced.

12. The most vulnerable category of children is children without parental care. Upon parents’ applications, more than 97 thousand of these children are staying at the institutions, and they are in a worse situation compared to orphans.

BIRTH REGISTRATION

13. Most of the children who are not registered according to the legal procedures are those staying in socially distressed and disadvantaged families. In particular this applies to Roma families and families whose

¹ *Childhood At a Gun's Point: children's rights in the situation of the armed conflict in eastern Ukraine: research publications* / O.A.Bida, A.B.Blaha, O.A.Martynenko, P.I.Parhomenko, M.H.Statkevych, S.V.Tarabanova; edited by A.P.Buschenko / Ukrainian Helsinki Human Rights Union. – K., KIT, 2016. – 82 p.

² *Ibid*

³ <http://zakon4.rada.gov.ua/laws/show/5207-17>

⁴ <http://zakon2.rada.gov.ua/laws/show/2947-14>

⁵ <http://zakon2.rada.gov.ua/laws/show/2402-14>

⁶ <http://zakon2.rada.gov.ua/laws/show/2342-15>

⁷ <http://zakon4.rada.gov.ua/laws/show/2402-14>

⁸ <http://zakon3.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80>

members are stateless. The state creates a number of bureaucratic obstacles, which in turn develop into litigations, which prevents effective and rapid protection of the right of the child to birth registration. A penalty for failing to register a child is not an effective mechanism. Roma, having no identifying documents, on reaching the age of sixteen cannot obtain their birth certificates, because they have no passport, while they cannot obtain a passport for the reason of not having the birth certificate.⁹

14. A significant obstacle for civil registration, including registration of birth, since 2014 has resulted from holding the ATO in eastern Ukraine and the annexation of the Crimea. Since the beginning of 2016, registration of birth and death of a person in the temporarily occupied territory is considered immediately after receipt of the application to court and executed immediately¹⁰. This has improved the situation of birth registration, but given the amount of court fees it does not solve the problem.

VIOLENCE AGAINST CHILDREN

15. A new Procedure for consideration of complaints and reports of violence against children or a threat of such¹¹ has been adopted, which improves the mechanism for receiving complaints by the coordinating body. However, the key problem is still response to cases of violence and prevention work. For example, in cases of child ill-treatment at school liability applies to the staff of the facility, without considering preventive activities conducted by the school. As a result, there is no motivation to register cases of ill-treatment or forward this information to the coordinating body. There is low awareness of the problem of bullying because not all cases of ill-treatment are recorded. More attention has been paid to the problem of violence against children in schools on the part of the media, community groups are created by the parents, one of their objectives being to counter violence in schools (the largest group, "Parents SOS", unites more than 21.5 thousand parents).

16. Monitoring of respect for children's rights in institutions, including for children with disabilities, has detected the problem of forced abortions among female students. Children with disabilities in some institutions are kept tied to their wheelchairs. There is reported use of sedatives and psychoactive drugs as chemical means to restrict movement, to punish, control, and manage their behavior.¹²

17. There are reported cases of violence and abuse in juvenile detentions¹³. Physical violence is common during investigation to obtain testimonies. Often it is about torture, beating, and limitations of oxygen access. Psychological pressure on detainees, humiliation and threats are common; such methods of obtaining testimonies are a regular practice.

18. In juvenile correctional facilities, administration and staff refrain from fulfillment of their duties to ensure security of the inmates' coexistence, delegating their functions to some of the convicted persons.¹⁴ In 2015, a 14-year-old boy was raped by two inmates with a mop in Zhytomyr Detention Facility No.8.¹⁵

⁹ According to data of Charitable Foundation "Rozvytok" (Mukacheve)

¹⁰ <http://zakon3.rada.gov.ua/laws/show/990-19/paran2#n2>

¹¹ <http://zakon4.rada.gov.ua/laws/show/z1105-14>

¹² Disability Rights International: *There is no way home. Exploitation and abuse of children in orphanages in Ukraine*. – Ukraine, 2015. <http://www.driadvocacy.org/media-gallery/our-reports-publications/>

¹³ Based on materials the research "Torture and ill-treatment of children in Ukraine". / Edited by Zakharov E. Yu. – Kharkiv: Human Rights, 2013. – 244 p.

¹⁴ *Respect for rights of minors kept in correctional facilities of the State Penitentiary Service of Ukraine: a special report on implementation of the national preventive mechanism / Parliamentary Commissioner for Human Rights of Ukraine: official publication*. – K., 2014. – 120 p. – <http://khisr.kharkov.ua/files/docs/1419178922.pdf>

¹⁵ Suspicion was announced to cellmates of the 14-year old boy who was raped in Zhytomyr Detention Facility. Zhitomir.INFO: – http://www.zhitomir.info/news_150115.html

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

19. There is increased attention of social security and child services to families where there is suspicion of improper respect for children's rights. The terms and procedures for notification of the respective authorities in case of detection of such a family have been established. Children displaced from the ATO area unaccompanied by their legal guardians are subject to enhanced care and the respective authorities register their status of orphans or children deprived of parental care.¹⁶

20. For children in difficult life circumstances and those temporarily deprived of parental care emergency foster care services were established. These comprehensive professional services provide temporary care, education, and rehabilitation for a child in a family of emergency fosterer as well as support services for biological family aiming to mobilize resources of biological parents or persons that replace them, in order to help overcome temporary crisis and strengthen parental capacity.

The term of placement of a child in a family of emergency fosterer may not exceed 3 months, but may be prolonged to 6 months, in case needed. At the end of the placement the child is reunited with the biological family or (in cases when this is impossible) provided with another family care solution. Decisions on placements are taken by the guardianship authorities.

Thanks to the Law No. 1794 from Jan 20, 2016 a state subvention is introduced (starting from 2017) for local executive authorities nation-wide to develop emergency foster care services along with several other forms of family type alternative care.^{17 18}

21. The concept of "mentoring" introduced in legislation, aims to provide a child living in an institution for orphans and children deprived of parental care with assistance in access to available information about their rights and duties, assistance in definition and development of capabilities, implementation of his/her interest in professional self-determination, development of a child's practical skills aimed at his/her adaptation to independent life, etc. Entering into a mentoring agreement provides for a consent of the child, if he/she has reached the age and level of development that he/she can express it, and a written consent of parents or other legal representatives.¹⁹

22. In 2016 the public debate to accelerate de-institutionalization intensified. With his Degree, the President of Ukraine²⁰ set up a working group on this issue including representatives of relevant ministries and the public. At the same time, there is the trend towards reorganization of boarding schools for orphans and children deprived of parental care as special boarding schools for children with impaired mental development, sports boarding schools, boarding schools for gifted children, which hinders the process of de-institutionalization.²¹

HEALTH AND MEDICAL CARE

23. Indicators of vaccination coverage decrease with time, at the third vaccine dose the rates go down to almost a third of children of the respective age.

¹⁶ <http://zakon4.rada.gov.ua/laws/show/866-2008-%D0%BF>

¹⁷ <http://zakon2.rada.gov.ua/laws/show/2947-14>

¹⁸ Amendments to the Budget Code of Ukraine <http://zakon2.rada.gov.ua/laws/show/1794-viii>

¹⁹ <http://zakon2.rada.gov.ua/laws/show/2342-15>

²⁰ <http://www.president.gov.ua/documents/8182015-rp-19687>

²¹ Alla Kotlyar, *Boarding and social work specialists: a war of ideologies?* – http://gazeta.dt.ua/socium/internati-i-specialisti-socialnoyi-roboti-viyna-svitoglyadiv_.html

24. According to information from civil society, the level of breastfeeding does not meet the recommended standards – 19.7% of children under 6 months are exclusively breastfed, 51.6% of children of this age are predominantly breastfed.²²

25. 68% of schools do not have a physician, 33% – of a nurse; among rural schools 85% have no physician, 59% – no nurse²³.

26. A problem that persists is lack of budgetary funding of the health care sector. This applies particularly to treatment of orphan childhood diseases. There is insufficient provision of medicines and irregularity of their supplies, lack of transplantation therapies, sustainable rehabilitation stage of treatment of children with cancer, conditions for provision of special palliative care.²⁴

27. In Ukraine, there are successful pilot projects of introduction of case history and early intervention services. However, these projects have found no support in their implementation at the national level. There remains the problem of palliative care for children and support centers for families who care of seriously ill children on their own.

CHILDREN WITH DISABILITIES

28. There remains the problem of timely detection of disability and timely provision of medical and social services for the children.

29. Lack of an integrated system of introduction and provision of the early intervention service. Despite the current positive aspects: the pilot practice to introduce early intervention services implemented in ten Oblasts, the memorandum of understanding among the relevant ministries (Ministry of Education, Ministry of Social Policy, Ministry of Health) and national and international institutions signed in late March 2017, regulations^{25 26}, there are a number of obstacles that prevent development of an early intervention system in Ukraine. Specifically, the deficient legal and regulatory framework; divergence of visions, definitions, and lack of a coherent early intervention strategy at the national level; insufficient training of experts and civil servants in the field of early intervention; an integrated system of inter-sectoral coordination and interaction; lack of multidisciplinary teams, lack of awareness of parents and their involvement into formation of early intervention; lack of funding, and so on. Early intervention services are provided primarily under the current projects financed by foreign donors.

29. The level of state assistance to those who care for people with disabilities has been legislatively increased, and work is being done to develop programs for children with disabilities. But the provisions on mandatory ensuring of barrier-free space at all levels of school and out-of-school education for children with disabilities have not yet been implemented in legislation. Liability for a failure to ensure barrier-free space is not stipulated.

30. It is stipulated that children with special educational needs enrolled in special and inclusive classes of general education facilities shall be provided with free-of-charge hot meals. The position of an assistant of a

²² Ukraine. Multi-indicator cluster household survey, 2012 / State Statistics Service of Ukraine [et al.] .– K.: K.I.S., 2013.

²³ The health status and factors for Ukrainian adolescents: monograph / O.M. Balakireva, T.V. Bondar, O.P. Artyukh, et al. ; acad. ed. O.M. Balakireva. – K. : UNICEF, Ukr. inst. of soc. research named after O. Yaremenko; K.I.S., 2011. – 172 p.

²⁴ According to the study by NGO "Spilna Meta" <http://commongoal.org.ua/?p=145>

²⁵ <http://zakon0.rada.gov.ua/laws/show/501/2015>

²⁶ <http://zakon0.rada.gov.ua/laws/show/1065-17>

teacher of inclusive classes within general education facilities is introduced.²⁷ The possibility of creating inclusive groups for education of children with disabilities within the preschool education system is stipulated.²⁸ However, this requirement is not mandatory.

31. For children with disabilities, approximately 2,000 compensatory (sanatorium, special) and combined preschool facilities are operating, where in parallel with preschool education children get correction and rehabilitation assistance. In rural areas, coverage of children with disabilities with preschool education is insufficient due to almost complete absence of special preschool groups²⁹. Only 11% of schools in Ukraine are partially adapted for education of students with disabilities. Even fewer classrooms meet safety and free movement requirements.³⁰

32. Teacher training at universities and systemic consultative and awareness-raising work among teachers, parents, and the public about the right to education for children with disabilities have been initiated.³¹

33. The activities to protect the rights of children with disabilities in the National Action Plan to implement the UN Convention on the Rights of the Child are implemented sporadically, in 2014 no such activities were planned.

USE OF DRUGS, ALCOHOL, TOBACCO, AND OTHER PSYCHOTROPIC SUBSTANCES

34. The total number of adolescents in high-risk groups is estimated at 129,000 individuals aged 10 to 19. The cumulative number of adolescents from IDU, CSW, and MSM groups is 991 per 100 thousand adolescent population. Findings of estimation of the number of children and youth at risk demonstrates an increasing trend in the number of adolescent IDUs, in particular boys involved into injection drug use.³²

35. According to findings of the 2015 survey conducted in Ukraine in 449 educational facilities among 7,333 pupils/students aged 15-17: more than half of the children reported that they had experience of smoking – 52.3%; smoking during the past 30 days was reported by 19.1% of respondents; daily smokers are 12.2% of respondents. Every one out of five respondents believes that he/she has unimpeded access to cigarettes.³³

36. On average, 83.4% of respondents have used any alcoholic beverages at least once in their lifetime: among those aged 15 – 78.5%, 16 – 85%, 17 – 84.6%. More than a third of students reported that they could “easily” or “very easily” buy alcoholic beverages. Access is the easiest for low-alcohol beverages (as reported by on average 59.5% of students) and beer (51.5%).³⁴

37. 11.3% of students aged 15 to 17 have had the experience of using any narcotic substances (15.4% of boys and 7.9% of girls). 10.6% of respondents have at least once in their lives tried marijuana or hashish (among boys – 14.5%, among girls – 7%). Prevalence of injecting drug use is 0.6% (boys – 0.9%, girls – 0.3%). 1.8% of students have ever used tranquilizers or sedatives without prescription. 1.4% of respondents have tried hallucinogenic mushrooms. The proportion of students aged 15-17 who reported use of anabolic steroids is

²⁷ <http://zakon4.rada.gov.ua/laws/show/651-14>

²⁸ <http://zakon4.rada.gov.ua/laws/show/2628-14>

²⁹ <http://mlsp.kmu.gov.ua/document/156474/st.doc>

³⁰ *Research on inclusive education in Ukraine* <http://timo.com.ua/node/10040>

³¹ <http://zakon2.rada.gov.ua/laws/show/v1034729-13>

³² *ADOLESCENTS AT RISK: assessments and dynamics (2016)* – https://www.unicef.org/ukraine/ukr/pidlitki_grup_riziku.pdf

³³ *Smoking, alcohol and drug use among studying adolescents: prevalence and trends in Ukraine: According to the 2015 study held in the framework of the international European School Survey Project on Alcohol and Other Drugs – ESPAD / O. M. Balakireva (leader of the author team), T. V. Bondar, Yu. Yu. Pryimak, D. M. Pavlova, O. V. Vasylenko, O. T. Sakovych, S. Z. Salnikov, S. V. Sydyak, Yu. B. Yudin, N. S. Nahabych. – K.: Printing Center “Foliant”, 2015. – 200 c.* <http://www.uisr.org.ua/img/upload/files/ESPAD-ForWEB.pdf>

³⁴ *Ibid*

1.2% (among boys – 1.6% and among girls – 0.6%). Attempts at use of opium extract on average take place in the youngest age – 12.1 y.o. Use of marijuana is associated with the highest prevalence rate, but first attempts occur at older age – on average, at 14.6 y.o. 12.1% of all respondents said that it was easy for them to obtain marijuana or hashish (cannabis).³⁵

HIV/AIDS

38. The number of children under medical supervision as of 01.01.2015: 3,036 individuals, of which – 809 AIDS patients. 6,702 individuals are children with HIV at the confirmation stage.³⁶ As of 01.12.2016, ARV therapy was being provided for 2,874 children.³⁷ There is still the problematic issue of achieving the HIV transmission from mother to child rate of 2%³⁸.

39. According to the 2015 survey, among adolescent IDUs aged 15 to 19, HIV prevalence is 2.7%, among adolescent MSM aged 14 to 19 – 3.1%. Among street adolescents (data of 2014), prevalence of HIV significantly varies for cities and increases with age. For example, in Odessa HIV prevalence among 14-19-year-olds in the streets was 11%. The estimated prevalence of HIV among all target groups is at least 1.9%.³⁹

40. In 2013, the National Target Social Program for Combating HIV/AIDS for the period of 2014-2018 was adopted. However, HIV prevention projects among street children have since 2015 not been supported from either the national, or local budgets. The state allocates no funds for awareness-raising campaigns.

EDUCATION, LEISURE, CULTURAL ACTIVITIES

41. National targeted support for children whose parents died in the ATO area, during mass civil protest events, and for IDP children till they complete their education in the process of obtaining vocational training at national and municipal educational facilities is introduced.⁴⁰

42. As of the end of November 2014, three higher educational institutions of the 3rd and 4th accreditation levels and two 1st and 2nd accreditation level institutions have been evacuated from the ATO area. 187 educational facilities have been partially or completely destroyed. Only in the western part of Donetsk Oblast, more than 150 schools have been destroyed. Access to education is complicated due the imperfect procedures of crossing the contact line with the uncontrolled ATO area. In the temporarily uncontrolled territory of Donetsk Oblast, there are 490 general education schools of different types, in Luhansk Oblast – 363 facilities. In the uncontrolled territory, teaching is conducted based on Russian textbooks, programs, they moved to the “five-grade” assessment system. Children receive certificates under the forms of Luhansk and Donetsk Republics.⁴¹

³⁵ *Ibid*

³⁶ According to data of the MoH Public Health Center: Table 20. Registration of children born by HIV-positive women at health care facilities providing comprehensive medical care for HIV-positive individuals in 2014 – <https://goo.gl/HYJQA1>

³⁷ According to data of the MoH Public Health Center: Report on provision of antiretroviral therapy for HIV-positive people in Ukraine (MoH, NAMS, and SPTS) – http://ucdc.gov.ua/pages/diseases/hiv_aids/statistics/art

³⁸ According to the AntiAIDS foundation <http://www.antiids.org/ru/hiv-aids/ukraine/1421/11411>

³⁹ Adolescents at risk: assessments and dynamics (2016) – https://www.unicef.org/ukraine/ukr/pidlitki_grup_riziku.pdf

⁴⁰ <http://zakon4.rada.gov.ua/laws/show/2402-14>

⁴¹ Based on the annual report “2014 Human Rights in Ukraine”, UHHRU http://helsinki.org.ua/index.php?id=1398061007#_ftn2

43. Parents have to pay extra fees to cover operating costs of the schools. Over the past three years, charitable contributions for operating costs, which are mostly made up by money paid by parents, amounted to approximately 1 billion UAH (more than 50 million USD). However, this amount does not include levies from parents for repairs of schools and other needs.⁴²

REFUGEE CHILDREN AND CHILDREN SEEKING PROTECTION IN UKRAINE

44. Provision of children of officially recognized refugees with the corresponding derivative refugee status is not guaranteed by law⁴³. This provision is contained in a secondary regulatory act⁴⁴, which weakens the guarantees of enforcement of the provision.

45. Resolution of the Cabinet of Ministers of Ukraine of November 16, 2016 No.832 amended the Procedures for Activities of Guardianship Authorities Associated with Protection of Children's Rights. Adoption of the Procedures does not solve the problem of unaccompanied children who have no refugee status or the status of a person in need of complementary protection: asylum seekers cannot obtain the status of children deprived of parental care. An outstanding issue that has not been decided yet is whether those children whose parents stay in the country of origin and the domicile/residence of the parents/legal representatives of the children is known should be seen as children deprived of parental care.

46. No adequate conditions of living, education, social integration, or social assistance for refugee children, children recognized as individuals in need of complementary protection, or children separated from their families are provided.

47. The State Migration Service often neglects its duty to provide an interpreter for a child separated from his/her family.

48. The Order "On examination for determining the age of a child left without parental care and is in need of social protection" has been adopted. However, there are recorded facts of non-compliance with the procedures stipulated in the Order, in particular all children seeking asylum in Ukraine without exception were referred for age assessment, there were also recorded instances where psychological age assessment of children was held without respect for culturally sensitive specifics of the child and without accounting for information about his/her country of origin; cases where there was only physiological age assessment held, despite the fact that physiological age assessment is the last of the three stages of age assessment and is not mandatory. There have been cases where children separated from their families stayed in detention facilities; there is the issue of birth registration and issuance of birth certificates to children of asylum seekers born in the territory of Ukraine. The issue of registration of newborn children of asylum seekers has not been resolved. The problem is that the Migration Service certificate (often it is the only official document of parents being asylum seekers) is not a passport-substituting document.

⁴² https://dostup.pravda.com.ua/request/faktichni_vidatki_po_ktkv_070201?nocache=incoming-29178#incoming-29178

⁴³ <http://zakon4.rada.gov.ua/laws/show/3671-17>

⁴⁴ <http://zakon4.rada.gov.ua/laws/show/z1146-11>

SEXUAL EXPLOITATION AND ABUSE. TRAFFICKING IN CHILDREN

49. The problem of sexual exploitation of children exists in Ukraine.⁴⁵ Each one out of 6 or 7 sex worker in Ukraine are minors.⁵⁰ There is no information on the number of child victims of sexual violence. The national legislation is not harmonized with the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which was ratified on 20.06.2012⁵¹. There is no support for a child who suffered sexual violence in the course of criminal proceedings, responsible authorities have no interaction mechanism, which results in a large number of interrogations and questionings of the child in the process of criminal proceedings. There is still the problem of lack of specially trained professionals: juvenile investigators, psychologists, and so on. The lack of mechanisms to protect the child in the process of criminal proceedings leads to the fact that the children and their legal representatives do not report the crimes.^{52 53}

50. Control over those children who are adopted and taken outside of Ukraine and over the potential adopter has been enhanced.⁵⁴ Taking out of Ukraine orphans and children deprived of parental care under 16 years of age must be previously agreed with the service for children. As for orphans' leaving abroad for rest and recreation, there approval of group lists and consent to their travel abroad for rest and recreation are issued by the Ministry of Social Policy.⁵⁵

51. Establishment and functioning of the Unified State Registry of Trafficking Crimes have been developed and approved⁵⁶. The Law of Ukraine On Combating Human Trafficking⁵⁷ has been complemented with the Trafficking in Children Section. Allocation of funds for activities and tasks within the State Social Anti-Trafficking Program for the period until 2020 is planned.

52. Duties of the authorized departments of the law-enforcement agencies have been extended with the duty to identify persons who are engaged in manufacturing and distribution of pornographic materials, publications that promote violence, cruelty, and sexual debauchery.⁵⁸

CHILDREN AMONG INTERNALLY DISPLACES PERSONS

53. The law defines the procedure for children's leaving uncontrolled territories and the list of documents required for travel.⁵⁹ There is no provision that would set restrictions on the right of the child to leave temporarily occupied territories or the ATO area without their parents or other legal representatives. In practice, however,

⁴⁵ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51366

⁴⁶ "Rivne 1" TV channel / <http://rivne1.tv/Info/?id=17965>

⁴⁷ Komsomolskaya Pravda in Ukraine / <http://kp.ua/daily/071211/314508/>

⁴⁸ Magnolia – TV / <http://magnolia-tv.com/text-news/2013-04-12/23282-na-donechchin-ml-ts-ya-v-dvol-kla-v-droboti-13-r-chnu-prostitutku>

⁴⁹ http://la-strada.org.ua/ucp_mod_library_view_306.html

⁵⁰ UNIAN News Agency / <http://www.unian.ua/news/497616-v-ukrajini-kojna-shosta-poviya-nepovno-litnya.html>

⁵¹ http://zakon2.rada.gov.ua/laws/show/994_927

⁵² Study on preconditions for introduction of new practices of questioning and examination of child victims of sexual abuse. Women's Consortium of Ukraine: 2016. – https://wcu-network.org.ua/ua/Zaxist_prav_dtei/publications/Dosldzhennja_peredumov_zaprovdzhennja_novoi_praktiki_dopitu_opituvann

⁵³ M. Kuleba, President's Commissioner for Children's Rights. Transcript of the roundtable "Protecting children from sexual abuse and sexual exploitation" (14.12.2016). – http://komsport.rada.gov.ua/documents/round_tab/73544.html

⁵⁴ <http://zakon4.rada.gov.ua/laws/show/905-2008-%D0%BF>

⁵⁵ <http://zakon4.rada.gov.ua/laws/show/57-95-%D0%BF>

⁵⁶ <http://zakon4.rada.gov.ua/laws/show/303-2012-%D0%BF>

⁵⁷ <http://zakon4.rada.gov.ua/laws/show/3739-17>

⁵⁸ <http://zakon4.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80>

⁵⁹ http://www.sbu.gov.ua/sbu/control/uk/publish/article?art_id=136476&cat_id=135945

if a child leaves accompanied by relatives, it is necessary for them to have to a complete set of documents confirming kinship of the adults with the child. If no such documents are presented, the accompanied child may not be allowed to leave temporarily occupied territories of Ukraine. If the child is an orphan or deprived of parental care and the person who is his/her legal guardian or the institution where the child stays do not intend to leave the ATO area, the legislation offers no procedure for this child to be able to leave the ATO area.

54. IDP children who left the ATO area without their official guardians but who do not have the status of an orphan or a child deprived of parental care are subject to the general procedures as children deprived of parental care, if necessary they are provided with the respective status⁶⁰, but without account for the fact that the relatives with whom the child has close relationships and who are willing to take such a child into care in 90% of cases do not meet the legal requirements to families that can take a child into care or adopt a child.

55. The fact that internal displacement is confirmed with the IDP registration certificate. During the procedure of registration of IDP children, there are often difficulties associated with the differing practiced of the regulations' application in different regions of Ukraine.

56. Social benefits for individuals, including children, registered in territories uncontrolled by Ukraine become available only after their registration as IDPs.⁶¹ This provision in practice implies that residents of the occupied territories receive no welfare payments until they are registered as displaced persons.

57. There are difficulties regarding obtaining the electronic passport for unaccompanied children, particularly because the finger scanning process requires presence of a legal guardian.

IMPLEMENTATION OF JUVENILE JUSTICE AND DETENTION FACILITIES FOR CHILDREN

58. Juvenile Justice (JJ) has still not been set up as a system in Ukraine. Since 2012, development of the criminal justice system has been declared that significantly narrows down the principles, functions, and objectives of juvenile justice. However, even this concept is not being implemented. There is no proper awareness-raising campaign to explain both the JJ conceptual framework and its tasks and functions. The authority responsible for JJ administering has still not been set up.

59. The number of correctional facilities for children in conflict with the law has been reduced. There are even no plans to establish rehabilitation, correctional centers, including day care and probation ones. Children who have not reached the age of criminal responsibility are actually skipped in the applicable laws. Of the 11 social rehabilitation schools, only 2 have been preserved till now. There are no alternative facilities for rehabilitation of such children.

60. On November 20, 2012 the new CCP of Ukraine⁶² was enacted, which humanizes criminal proceedings against children: limitation of pre-trial detention terms; introducing alternative penalties; introduction of the specialization for judges, prosecutors, and investigators. However, it contains a number of significant collisions and formalities.

61. On 02.05.2015 the Law of Ukraine On Probation was adopted⁶³. However, there are no trained specialists or training programs, no probation and socio-educational work programs.

⁶⁰ <http://zakon4.rada.gov.ua/laws/show/866-2008-%D0%BF>

⁶¹ <http://zakon5.rada.gov.ua/laws/show/637-2014-%D0%BF>

⁶² <http://zakon4.rada.gov.ua/laws/show/4651-17>

⁶³ <http://zakon4.rada.gov.ua/laws/show/160-19>

62. There are no clear algorithms for transfer of students to adult colonies when they reach the age of majority (18 y.o.), organization of education at penitentiary institutions is inadequate.

63. There is no proper interaction of services for children at the place of primary registration of students in penitentiary facilities and the facilities' administrations.

64. It is possible to mention as a positive aspect establishment of the National Preventive Mechanism under the Commissioner of the Verkhovna Rada of Ukraine on Human Rights, which covers institutions for children.

CHILDREN OF NATIONAL MINORITIES OR INDIGENOUS POPULATIONS

65. The Strategy for protection and integration into the Ukrainian society of the Roma minority has been developed for the period until 2020. However, there is actually no set of measures to prevent discrimination and / or ensure socialization of children of national minorities.

66. Direct refusal to enroll Roma children to general education schools and (or) elite schools is a known and common practice in Ukraine. The result is that Roma children study sporadically periodically or permanently at special schools. Only in the Carpathian region, there are 20 fully segregated Roma schools. About 50% of Roma children do not regularly attend school. Roma children lack opportunities to attend kindergartens.

RECOMMENDATIONS:

- To harmonize the law with the Convention on the Rights of the Child and recommendations of the UN Committee on the Rights of the Child. In particular, the legislation must prevent militarization of children and their involvement into armed conflicts, and if this happens – treat children as victims disregarding the type of their involvement in a conflict.
- To ratify the Rome Statute.
- To ratify the Istanbul Convention.
- To bring the national legislation and practice in line with the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
- To improve the mechanism for preventing cruel and humiliating and degrading treatment against children in all areas of the child's life
- To go back to the issue of introduction of an independent institute of the Commissioner of the Verkhovna Rada for Children's Rights.
- To adopt a specific law on children's rights, which would have a universal nature and provide for the opportunity to protect all categories of children in the territory of Ukraine and / or under its jurisdiction. This includes children of IDPs and those who are outside the controlled territories. The issue of respect for children's rights should be based on the principle of non-discrimination, the best interests of the child, taking into account his/her views and providing opportunities for survival and development.
- To implement a juvenile justice system, to ensure its operation at the legislative level. In particular, to set up a system for working with children in conflict with law within the National Police.
- To activate the procedure of de-institutionalization of children and ensure the right to being raised in a family environment.
- To support development of inclusive education, applying it not only to children with disabilities.
- To create a case history system and introduce early intervention programs in all regions of Ukraine.
- To analyze the impact of legislation on children when implementing reforms and adopting legislation, especially the budget. For this end, to set up a separate analytical body involving experts from NGOs.

UKRAINE

REPORT PRESENTED TO THE UNITED NATIONS ORGANIZATION UNIVERSAL PERIODIC REVIEW

GENDER EQUALITY, WOMEN RIGHTS, GENDER-BASED VIOLENCE COUNTERACTION

COALITION OF NON-GOVERNMENTAL ORGANIZATIONS:

Civil Organization “La Strada-Ukraine”
Women’s Information Consultative Center
Public Organization International School of Equal Opportunities
Ukrainian National NGO Democracy Development Centre
Center for Social and Gender Research “New Life”
NGO Insight
National Council of Women of Ukraine
World Federation of Ukrainian Women’s Organizations

This report was prepared by a coalition of non-governmental organizations with many years of experience at national and international levels in the field of human rights, gender equality advocacy, women’s and children’s rights protection, gender-based violence counteraction, including domestic violence, as well as experience in monitoring state policies on the issues listed in this report. The organizations that prepared this report are working together as well as in cooperation with other civic organizations which are members of international and national networks such as the Gender Strategic Platform, Women Against Violence in Europe, Women’s Peace Dialogue Platform and others.

1. GENERAL CONTEXT

In addition to the patriarchal and systemic gender inequality which persists in society--characterized by ingrained gender stereotypes, inadequate understanding of the importance of gender equality and rejection of the concept of women's rights, Ukraine is facing significant new stressors as of 2014 with the annexation of the Crimea and the military occupation of Donetsk and Luhansk Oblasts by the Russian Federation.

The ramifications of the political situation are many and dire: The destruction of infrastructure and weapons-induced pollution, the blatant violation of human rights in occupied zones, the human suffering due to displacement, GBV and domestic violence (DV) exacerbated by post traumatic stress – all have widespread gender based consequences for overall wellbeing and for achievement of Ukraine's country SDG targets as well.

Our grasp of the situation is unfortunately hindered by the lack of sex-disaggregated data. In fact, Ukraine has not conducted a census since 2001 (next census should be in 2020) and the statistics that do exist are spotty and not gender sensitive.

2. INSTITUTIONAL MECHANISMS

97.31 Step up efforts to strengthen the national mechanism for the advancement of women and to provide such mechanism with adequate resources (Malaysia);

Ukraine's government has recently designated the Prime Minister for European and Euro-Atlantic Integration of Ukraine as having authority over the coordination of gender policy in Ukraine.¹ It is proposed that an institute of gender policy will be created under the PM's office, in order to orchestrate the actions of various government agencies in gender policies implementation.

In February 2016, Ukraine adopted a National Action Plan (NAP) for the implementation of UNSCR 1325, a significant achievement in light of the ongoing aggression on Ukraine's territory.

In 2015 the National Human Rights Strategy (NHRS) and Action Plan (AP) were adopted.

These developments may help move the country forward on gender equality, In general we observe, that since 2010 Ukraine's institutional mechanism for the implementation of gender equality was consistently compromised and this resulted in downsizing of bodies in charge of gender equality implementation at all governmental levels:

Procedures and regulations for improvement of implementation of the Law of Ukraine on Providing Equal Rights for Women and Men² were not developed and approved.

In 2016 the draft for the Concept of the State Programme for Ensuring Equal Rights and Equal Opportunities for Women and Men for the period of 2017-2020 was developed; but as of March 2017 the Concept had not yet been approved.

¹ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249793627>

² <http://zakon3.rada.gov.ua/laws/show/2866-15>

The competencies related to providing equal rights and equal opportunities are not required as compulsory training for governmental officials. The lack of knowledge of the laws regarding gender equality results in the non-implementation of these laws.

97.47 Further strengthen a gender-sensitive approach in all poverty alleviation programmes (Azerbaijan).

97.48 Use a gender-sensitive approach in all poverty alleviation programmes (Bangladesh).

The Cabinet of Ministers approved (e Ordinance №161-p (16.03.2016)) the Strategy for Overcoming Poverty³

The Strategy addresses income inequality and recommends adherence to principles of social justice in income distribution.

Ukraine is undergoing reforms in 17 major areas. None of these stipulates that gender equality experts be required to participate or provide for evaluation by gender experts. The process of decentralization has begun in the absence of gender analysis and evaluation. Social welfare reform, medical reform, downsizing of the network of social institutions and services, pension reform, reform of public utilities services and administrative reform have created new challenges for gender equality in terms of the access of women and girls to quality services⁴. Neither the policies of the reforms office within the Cabinet of Ministers nor the Governmental Programme (to 2020) are guided by the basic principle of the equal rights of women and men.

97.54 Devote more efforts to harmonizing gender equality for guaranteeing their equal rights and opportunities in both the legislative and executive branches (Kazakhstan);

There is a subcommittee for gender equality in the Verkhovna Rada affiliated with the Committee for the Human Rights, National Minorities and Inter-Ethnic Relations.

In the Verkhovna Rada, a Parliamentary Caucus "Equal Opportunities" was created in 2012 and is very active. By the Ordinance №113-p (24.02.2016) of the Cabinet of Ministers' NAP for the implementation of UNSCR 1325 was adopted for the period until 2020⁵.

Challenges experienced in Ukraine include:

- Weak national mechanism for gender equality.
- Low levels of financing for the gender equality programme.
- Low levels of judiciary officials' awareness of the GBV. Lack of mechanisms for response, fixing and provision of assistance to the victims of violence.
- Lack of coordinated policy for exercising human rights by women, including electoral participation.
- Lack of coordination to ensure women's participation in peace-making.

³ <http://zakon2.rada.gov.ua/laws/show/161-2016-%D1%80>

⁴ *The Alternative Report on the Implementation of Ukraine Convention on the Elimination of All Forms of Discrimination against Women: IIIV periodic report / Edited by M.M. Skoryk – Kyiv: CA CP „Kyiv institute of gender studies”, 2017 (in print)*

⁵ <http://zakon0.rada.gov.ua/laws/show/113-2016-%D1%80>

NHRS and the AP for its implementation contain paragraphs on counteracting GBV, DV and the provision of equal rights to women and men. These include 99.2 – analysis of national legislation on implementation of positive actions; 99.4 -analysis of performance of obligations as per international treaties on gender equality; 99. 99.5 – implementation of measures to achieve the CoE Strategy objectives in the sphere of gender equality; 100.1 – enabling the activities of advisors on the equal rights and opportunities for women and men.

According to the report on the AP implementation⁶, the execution of each of these tasks is ongoing. But there is no state coordination in this field. According to the estimates by NGOs and Ombudsperson, the progress of AP execution is slow. No more than 25% of measures were implemented.

3. STRENGTHENING OF ANTI-DISCRIMINATION LEGISLATION AND PRACTICES

97.27 Adopt a comprehensive anti-discrimination legislation that would include also a definition of direct and indirect discrimination and a comprehensive list of grounds for discrimination (Czech Republic);

97.28 Accelerate the adoption of a bill on preventing and combating discrimination (Thailand);

97.30 Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, racial and ethnic discrimination (Portugal);

97.56 Remove from the legislation discriminatory provisions based on race, sex or sexual orientation and adopt comprehensive anti-discrimination legislation (Canada);

97.57 Step up the efforts to fight against discrimination by refraining from contradictory legislation and by amending the anti-discriminatory legislation to include explicit references to sexual orientation and gender identity as possible grounds of discrimination (Finland);

97.59 Continue its effort to combat discrimination and promote equality in accordance with international treaties establishing guarantees of fundamental human rights and freedoms, and equality in the employment of such rights, without privileges or restrictions based on race, colour, political, religious or other belief, gender, sexual orientation, ethnic or social origin, property status, place of residence, language or other grounds (Brazil);

97.71 Implement the recommendation issued in 2010 by the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity (Switzerland);

97.44 Apply the Yogyakarta principles (sexual orientation and gender identity) in policy development (Slovenia);

Anti-discrimination legislation. In 2013 amendments to the laws “On advertising”⁷ and “On employment of the population”⁸ prohibited discrimination in job advertising. However, there is no mechanism for controlling such advertisements and no procedure for administrative punishment.

⁶ <http://old.minjust.gov.ua/section/548>

⁷ <http://zakon5.rada.gov.ua/laws/show/270/96-%D0%B2%D1%80>

⁸ <http://zakon3.rada.gov.ua/laws/show/5067-17>

In 2014 the Parliament voted amendments to anti-discrimination law⁹, which provided changes in definitions, added new forms of discrimination and intensified the role of the national equality body, as well as established the shift of the burden of proof. The law doesn't provide protection from discrimination for LGBT people. The list of protected grounds doesn't have sexual orientation or gender identity explicitly mentioned (can be included in definition of "and other grounds"). The Coalition for Combating Discrimination in Ukraine (CCDU)¹⁰ supported the changes but also noted that explicit prohibition of discrimination on the grounds of sexual orientation and gender identity are still missing.

In 2015, the Parliament voted for the inclusion of sexual orientation and gender identity to the list of protected grounds into the Labour Code (LC)¹¹. The vote was accompanied by homophobic discussion in the Parliament and in society¹². Amendments were introduced into the old version of the LC. Currently the Parliament is working on a new LC¹³ which does not contain sexual orientation and gender identity among the list of protected grounds.

As there are no clear mechanisms for filing complaints about discrimination in employment and this remains one of the most discriminative spheres. The most recent 2016 study¹⁴ shows that among trans(exual) people, 73% had problems in gaining employment and 37% experienced blackmail, physical violence, threats, and/or bullying in the workplace. There are documented cases of discrimination in education (not using preferred name and pronoun), banking (problems with getting and using personalized credit cards), travelling (being refused access to trains, rude inspection when crossing the border or at the airport), housing (recurring rejections upon applying to rent a flat) etc¹⁵.

Hate crimes. There are no specific laws on hate crimes in Ukrainian legislation. Article 161 of the Criminal Code (CC), "Violation of citizens' equality based on their race, nationality or religion"¹⁶ limits the grounds for complaint to this list. There is no legal possibility to use this article for hate crimes based on sexual orientation or/and gender identity.

LBT women are a doubly vulnerable group (LGBT identity plus gender) when it comes to hate crimes. Trans people usually don't report hate crimes to the police due to problems with registration of their cases, based on the mismatch of their legal documents and physical appearance. Police officers are often highly homophobic and transphobic themselves. This situation, is, however, improving, with the reform of the National Police (NP) which started in 2015¹⁷.

Gender expertise. There are gaps between the laws and regulations governing assessment of conformity to principle of equal rights and opportunities for women and men. Existing response mechanisms to gender-based discrimination are inefficient and do not cover all spheres. Respective registration of facts of gender-based discrimination is not maintained.

Lack of comprehensive sex-disaggregated statistics. Data from the State Statistics Service (SSS) predominantly provide description of demographic characteristics, "population" status, as well as its "education", "health"¹⁸,

⁹ <http://zakon3.rada.gov.ua/laws/show/5207-17>

¹⁰ <http://www.antidi.org.ua/en/>

¹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57008

¹² <http://www.unian.ua/politics/1179471-nardepi-provalili-golosuvannya-schodo-zaboroni-diskriminatsiji-na-roboti.html>

¹³ <http://zakon5.rada.gov.ua/laws/show/322-08/page>

¹⁴ <http://adaman-t.org.ua/en/2016/11/current-socioeconomic-situation-of-transgender-and-queer-individuals-in-post-soviet-union-region/>

¹⁵ http://insight-ukraine.org/wp-content/uploads/2016/03/broshura_transgender_eng_OK_FULLL.pdf

¹⁶ http://kodeksy.com.ua/kriminal_nij_kodeks_ukraini/statja-161.htm

¹⁷ http://insight-ukraine.org/wp-content/uploads/2017/01/guide_discrimination.pdf

¹⁸ *The Alternative Report on the Implementation of Ukraine Convention on the Elimination of All Forms of Discrimination against Women: IIIV periodic report / Edited by M.M. Skoryk – Kyiv: CA CP „Kyiv institute of gender studies”, 2017 (in print)*

etc. The government bodies haven't understood the need for sex-disaggregated statistics and thus have not requested that kind of information from the SSS. For example, data is lacking for the status of rural women regarding their participation in the labour market, levels of decision-making, access to the social services, protection from violence; comprehensive statistics on representation of women in business and number of "women's" enterprises.

4. TEMPORARY SPECIAL MEASURES

97.52 Take appropriate measures aimed at increasing the number of women in decision-making positions as well as address the issue of a persisting wage gap between men and women (Algeria);

97.53 Implement temporary special measures, including quotas, to achieve gender equality in areas where women are underrepresented or disadvantaged and for women suffering from multiple discrimination, such as Roma women (Bangladesh);

Calls for temporary special measures (including gender quotas) for women's political representation started to be heard in Ukraine back in 2007-2008, but failed to be approved in the Verkhovna Rada.

From 2015 on Art.8 of the Law On Political Parties and Art.4 of the Law On Local Elections contain norms related to the minimum levels of representation of the persons of one sex being no less than 30% of the total number of candidates on the list. In practice, these norms are simply declaratory. Non-adherence to these norms is not considered by the Central Election Commission as grounds for refusing to register a party's list of candidates. Several legislative drafts were meant to remedy this situation and one of them was approved and recommended by the relevant committee¹⁹, but the measure failed to be approved by the Verkhovna Rada.

Quotas for state service positions were introduced in the draft of Law №3411-2 but it was rejected on February 5, 2014. There were no further attempts to bolster the percentage of women's representation in state service but the Art.16 Law "On ensuring equal rights of women and men" foresees that "Ministerial appointment and local self-government bodies realize in compliance with representation of candidates of each sex"²⁰.

Currently the number of women in state service is not regulated and is quite low. In the Cabinet of Ministers out of 23 Ministers, only three are female. 25% of Minister Deputies are women; 18% of the top management in the 17 Ministries is women. In 2015, 5 of 17 Ministries (Ministry of Youth and Sports, of Defense, of Energy, of Regional Construction, of Culture) didn't have any women in top management positions.

Only one of 25 State Region Administrations is headed by a woman. In 14 State Region Administrations there is not a single woman appointed to a position equivalent to Deputy Head of Administration. Overall, only 16% of these deputy positions are held by women.

Involvement of women in political parties' activities is predominantly technical. According to the Gender Monitoring of parliamentary elections in 2014²¹, women worked mostly at political parties' offices and headquarters. For 123 parties participating in elections in 2015, in 23 cases central party bodies were headed by a woman or a woman was one of the party leaders. This is 17,4% of the total.

¹⁹ draft №3411 dated 10.10.2013

²⁰ *The Alternative Report on the Implementation of Ukraine Convention on the Elimination of All Forms of Discrimination against Women: IIIV periodic report / Edited by M.M. Skoryk – Kyiv: CA CP „Kyiv institute of gender studies”, 2017 (in print)*

²¹ http://www.wcu-network.org.ua/public/upload/files/1421248450_%D2%90enderniy_monitoring_A5_dlya_druku.pdf

Only 12% of the Constitutional Commission members are women.

The issue of wage inequality for women and men is still actual; women with high educational and professional levels are forced to fulfill their professional activities in lowly jobs requiring lower qualifications and with lower pay.

5. COUNTERACTING GENDER-BASED VIOLENCE (GBV)

97.11 Ratify the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence (Portugal).

Ukraine signed the CoE Convention on Prevention and Combating Violence against Women and Domestic Violence in 2011. By March 2017 the Convention had not been ratified.

Proposed draft of law on the Convention ratification²² was sent to repeated reading and two auxiliary laws – №5294 *On Prevention and Combating Domestic Violence*²³ and №4952 *On Entering Changes to some Laws of Ukraine in relation to the Ratification of the Convention*²⁴ were approved in the first reading. The Council of Churches works in close cooperation with Parliament, blocking the ratification of Convention.

97.76 Continue to strengthen provisions to address domestic violence, and programmes to reinforce mechanisms for the protection of women and children (Chile);

97.78 Continue to work towards the comprehensive approach to preventing and addressing all forms of violence against women (Republic of Moldova);

GBV and in particular sexual violence is associated with basically all military conflicts. Collecting data on this phenomenon is difficult, especially in the territories temporary uncontrolled by Ukraine. No practical measures are taken to eliminate this problem.

There is a need to set up specialized establishments to provide assistance to the persons who suffered from GBV, including domestic violence (DV), taking into account accessibility of such establishments for the women from remote and rural areas. Provisions the NHRS²⁵, stipulating for setting up such establishments, are not acted on. Assistance to the victims is mostly provided by NGOs thanks to the support by international donors.

The national hotline operated by CO “La Strada-Ukraine” for the prevention of domestic violence, human trafficking and gender discrimination, was called by more than 38000 persons in 2016 – a fourfold increase over 2015.

²² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60492

²³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60306

²⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

²⁵ <http://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80>

97.77 Respect the principles and standards provided by the CofE Convention on preventing and combating violence against women and domestic violence, even prior to its ratification and entry into force (Italy);

Law-in-draft On Prevention and Combating Domestic Violence²⁶ contains inconsistencies with the Istanbul Convention.

Art.7 of the draft stipulates for foundation of Unified State Register of incidents of DV with victims personal data which can increase corruption risks and lead to stigmatization of victims.

Art.24 of the Convention emphasized introduction of round-the-clock national toll-free hotlines to provide consultation and counseling to users on a confidential basis or with safeguards for their anonymity. The text of the law currently being drafted uses the term “call-center” which misrepresents the mission of the help hotlines and does not correspond to the hotline practices in Ukraine and other countries.

6. DISCRIMINATION OF WOMEN IN THE LABOUR MARKET

97.56 Remove from the legislation discriminatory provisions based on race, sex or sexual orientation and adopt comprehensive anti-discrimination legislation (Canada);

97.57 Step up the efforts to fight against discrimination by refraining from contradictory legislation and by amending the anti-discriminatory legislation to include explicit references to sexual orientation and gender identity as possible grounds of discrimination (Finland);

The order of the Ministry of Health “On Approval of the List of Physical Labor and Work in Hazardous and Dangerous Conditions where Women’s Labour is Prohibited”²⁷ and “On Approval of the Maximum Permissible Norms for Lifting and Handling of Heavy Objects by Women”²⁸ have not been withdrawn. The ban on lifting of heavy objects can be used as formal grounds for denying a woman a job.

Women of Ukraine are banned from working in important industries: they are not to work underground, or drive certain types of passenger and transport vehicles, work in an engine-room of a ship, or in a number of construction professions (over 450 types of jobs in total) in contradiction to Art.17 of the law “On Ensuring Equal Rights and Opportunities of Men and Women”. The LC was however updated with Art.2-1 prohibiting labour discrimination on the grounds of gender, sexual orientation and gender identity.

7. WOMEN ACCESS TO JUSTICE

97.93 Take concrete steps to improve the objectivity and independence of the criminal justice system by incorporating the recommendations of the Venice Commission, implementing the judgments of the European Court of Human Rights, and addressing concerns about selective justice (Great Britain)

Limitation of the women’s access to justice was observed, as well as their discrimination on the part of legal enforcement agents and judges, improper legal assistance and unpreparedness of the legal system to re-

²⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60306

²⁷ <http://zakon3.rada.gov.ua/laws/show/z0051-94>

²⁸ <http://zakon3.rada.gov.ua/laws/show/z0194-93>

spond to the cases of GBV and sexual violence in particular, resulting in non-punishment of the criminals.. National School of Judges, National Prosecution Academy, NP started incorporating gender issues into the training programmes.

In the situations where a woman is committing a crime under the influence of violence committed against her, the following problems in judicial system are detected:

- Courts don't take into consideration as the reason for committing the crime the facts of GBV or threats to use violence by the complainant, who was attempting to commit it.
- Use of stereotyped expressions when describing the situation. Failure to use terminology existing in legislation – domestic violence, physical violence, sexual violence and replacing those with the term 'animosity'.
- Gender stereotyping towards woman, present in court rulings ("it is her own fault").

Obtaining information on the gender composition of the judiciary poses a problem, since the national system of gender statistics parameters does not include parameters allowing for evaluation of status of women and men in the judiciary system.

Situation in Ukraine is characterized by the application of selective justice towards women sentenced for life, manifesting itself as dual judicial practice of consideration of the cases in relation to recalculation of the time under arrest.

Outside the scope of legislative regulation remain issues related to the change in punishment for the persons sentenced for life independently of their gender²⁹. Suggestions on humanization in this field were put out in the law-in-draft №2292 On Entering Changes to some Legislative Acts regarding substitution of life imprisonment with reduced sentence³⁰, voted for by Verkhovna Rada, but vetoed by the President.

8. WOMEN IN SECURITY SECTOR

More than 15000 woman serve in the Military Forces of Ukraine (MF) (7.4 % of the total number), over 1000 of them were awarded status of combatant. For the period of Anti-Terrorist Operation (ATO) and as of December 2015, 611 women members of the military were awarded with decorations from the Ministry of Defense of Ukraine (MoD), 32 women received state awards.

For the implementation of the NAP on UNSCR 1325 in 2016 a working Groups was set up at the MoD to develop the procedures for keeping gender equality principle in the work of the MoD.

There is not women General in the MF, there are only 14 women bearing the title of Colonel (10 of them are Colonels of Medical Service), 129 half-colonels (78 of those are in the medical Services), 372 majors. The MoD approved the two orders that broaden more than 160 professions and positions for women in MF.

Involvement of women in structures, making decisions regarding military spendings, other global issues, preventive diplomacy etc. remains at a low level. Some key Departments of the MoD involved in military spendings issues are headed by women. This is not enough to ensure the parity-based involvement of women in activities aimed at conflict prevention.

²⁹ <http://zakon5.rada.gov.ua/laws/show/en/v005p710-05>

³⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54261

9. WOMEN'S RIGHTS IN THE TEMPORARILY OCCUPIED TERRITORIES

Human rights groups register unsatisfactory conditions of illegal incarceration of civil citizens in occupied territories – use of excessive force at detention; no separation of men and women in illegal places of detention; no access to sanitary conditions, food and water; no personal sanitary protection items for women during menstruation, tortures applied to the persons; trafficking in humans³¹.

The following forms of violence were pointed out as the most frequent by the women polled: humiliation and insult, forcing to hand over their money/documents to other persons, ban to work or study, bullying and threats, beatings, forced labour without pay or for minimum wages. One third of the persons polled informed that they suffered violence from unknown people. Some of the polled indicated that there were rough episodes committed by military, neighbors/members of the local community, employers, law enforcement officers, social services officers and medical staff.

Due to the high stigmatization in society, people are often not prepared to talk about violation of human rights in temporarily occupied territories in general and in particular, about violations of the human rights of women.³²

10. GENDER EQUALITY IN EDUCATION

Education is not sufficiently responsive to the issues of gender inequality. Considerable feminization of the industry is observed: 78.3% of teachers and governesses are women.. Almost 40% of the school headmasters are men and in the higher educational establishments 90% rectors are men.

There are some “hidden” (subject content, its presentation in the training and methodology books, teaching style, bias in evaluation of the study results) and “open” (separate programmes/blocks for girls and boys – housekeeping, military defense, handicraft etc, verbal sexism) elements of gender discrimination.

In 2014 MoE turned its attention to stereotypes towards women in the school textbooks. In 2016 work on their gender expertise started.

Discrimination of girls continues when entering higher educational establishments of the MIA and MoD. Scientific, technical, and high-potential academic projects at higher educational establishments don't have an obligatory gender component.

Imperfect gender statistics prevents the monitoring of equality in relation to the access to education.

There was no systematic education on the issues of gender equality, reproductive and sexual health. Starting 2011 campaigns on gender issues in education were forced out by anti-gender information campaigns peaking in 2012. Initiatives of scientists on systematic schooling in gender research were not supported, specialists in this field are not trained and the topic is not included in the Classifier of Jobs and Professions.

³¹ Report from the UHG and Coalition of Justice for Peace in Donbass, 120 persons polled

³²— UHG together with WICC documented in June-July 2015 facts of violation of human rights, specifically women's rights, and GBV violence in temporarily occupied territories

11. ACCESS TO THE HEALTHCARE

Development of the private medical and rehabilitation establishments, introduction of family medicine is a positive sign, but there is a need to increase incentivized responsibility of a medical doctor for the health of a respective group of population.

Downsizing access to the primary medical assistance in villages and small towns resulting from the closure of medical and obstetrical centers and local hospitals. The first aid doctors staffing levels in rural areas are close to 50%.

Health care accessibility decreased by 25% due to the impoverishment of population. Medication became less accessible (especially imported ones). System of reformation of the medical industry is totally lacking reformation of the nursing institute – the profession where 95% are women.

Reorientation of closing medical establishments into medico-social and social institutions (shelters, hospices, rehabilitation centers, physical culture health center, physical culture groups, etc.) does not happen or happens very slowly.

Health care access for inter/transsexual women.

Intersex people are not protected by Ukrainian legislation and there is no specific regulation of prohibition of discrimination in terms of intersex status, legal gender recognition and health issues, there are no doctors who know how to help and to treat intersex people. There are no specific education courses or trainings on intersex issues.

The general practice when a baby presents with “underdeveloped genitalia” is to perform a “normalizing” genital surgery to assign either male or female sex identity. For those who wish to adjust their sexual status at puberty or later in life, there is no procedure of legal gender recognition if legal sex assigned at birth doesn’t match their felt gender identity. Until the end of 2016, intersex persons did not have access to the legal gender recognition procedure provided for transgender people. Only after recent trans health care reform was this contraindication removed³³.

2016 was a year when the long-awaited reform of the health care system for trans people became a reality. The unified clinical protocol by Ministry of Health³⁴ which substituted the infamous Order No. 60³⁵ has some improvements. Among these are the termination of the centralized Commission on “sex change” which for years had been the arbiter of permission for gender reassignment surgery and legal gender recognition, the cancellation of the requirement of compulsory psychiatric hospitalization for 30 to 45 days, and the cancellation of the requirement to be unmarried and not having children under 18 to be legally recognized. The law is however still far from full compliance with non-discrimination and human rights principles.

In the new clinical protocol, gender recognition is still linked to a psychiatric assessment for such diagnoses as “gender dysphoria” and “transsexualism”. According to the text of the protocol an assessment should be done on an outpatient basis, but there is still a possibility of hospitalization for 2 weeks or more without clearly defined criteria for it. Another problem is that the assessment is required to be as long as 2 years at least.

³³ <http://zakon0.rada.gov.ua/laws/show/z1589-16>

³⁴ http://www.dec.gov.ua/mtd/dodatki/2016_972%20GenDysfor/2016_972_YKPMG_GenDysfor.doc

³⁵ <http://zakon0.rada.gov.ua/laws/show/z0239-11>

Irreversible medical intervention, namely surgery (actually sterilization) remains prerequisite for legal gender recognition. At the same time, there is a requirement of “12 months of continuous HRT (hormonotreatment) if necessary ... and at least 12 continuous months of living in gender role, which coincides with gender identity” before surgery.

There is also a provision for surgeons “to make sure that the chosen procedure is appropriate for the patient”, meaning the surgeons become the gatekeepers.

In general, the text of the new clinical protocol is full of outdated and pathologizing terminology which could not be considered appropriate from the human rights point of view. Also Ukrainian legal gender recognition procedure doesn't meet needs of non-binary people who may identify other than man or woman.

12. CHALLENGES FOR WOMEN IN THE RURAL AREAS

There is very little statistical or research information on life of women in rural areas. They are not taken into account in state policies and programmes.

Women in rural areas have access to predominantly unskilled labour; only 0.6% of all women working in this industry advanced their skill level. According to the data provided by the SSS (2016), the average monthly wage of women in agriculture was UAH 2,767 equaling 83,7% of the wages of the men employed in the same industry. A lot of women work in small towns and settlements. To get there from their villages they spend considerable sums of money and time for travel. The major issues for women looking for work are; lack of employment opportunities close to home, territorial remoteness, insufficient local transport, poor roads, lack of social infrastructure.

RECCOMENDATION:

1. To make provisions for the operation of renewed in 2017 National mechanism for consolidation of gender equality and ensure monitoring of its efficiency on regular basis
2. Introduce gender component to all reforms taking place in Ukraine
3. Ensure alignment of laws and regulations governing the procedures for gender legislative review.
4. Develop the response procedure for the facts of gender-based discrimination with the respective mechanism of discrimination termination and compensation for the losses borne.
5. Introduce system for collecting and publishing information on facts of gender-based discrimination.
6. Develop methodology for evaluation of government employees' gender competency. Introduce system of training and advanced training of the government employees on the analysis of the state policy for the compliancy to the principle of equal rights and opportunities for women and men.
7. Cancel the order the Ministry of Health “On approval of the list of heavy work and work in hazardous and dangerous conditions, which prohibits the employment of women” and “On approval limits lifting and moving heavy objects by women”.
8. Approve and implement a strategy “Education: The Gender Dimension 2020”
9. Ensure implementation of legislative requirements and recommendations of international convention authorities on providing equal access for women and men to justice and ensure non-discriminatory case hearing.

10. Enter legislative changes enabling revision of the cases of those sentenced for life in line with the recommendations of international organizations. Study international practices and review the issue on non-application of life sentence as punishment for women.
11. Implement gender-disaggregated statistics in the criminal justice system.
12. Facilitate setting up of shelters, centers and other services for victims of domestic violence in all regions. When setting up the centers, take into account their accessibility for the women from remote and rural areas independently of their age and health conditions. Provide assistance to NGOs providing services to the victims of gender-based violence, including setting up of social centers and maintaining help hotlines.
13. Ratify the Istanbul Convention.
14. When providing assistance to the victims ensure respect of their dignity, non-discriminatory approach, confidentiality and restrain from actions contributing to their further victimization and stigmatization. Forgo establishing Unified Electronic Register of the domestic violence victims as it was stipulated for in the law-in-draft On Prevention and Counteraction of Domestic Violence.
15. Develop a system of response measures to GBV and in particular, sexual violence in conflict.
16. Remove legislative, executive, administrative and other obstacles limiting participation of women in activities aimed at prevention of the conflicts, regulation and peacemaking. Facilitate involvement of women in international peacekeeping operations, negotiation groups, multilateral activities on counteracting global and regional challenges and threats taking into account interests of Ukraine. Support peoples' diplomacy projects with participation of women. Approve respective laws and regulations with the objective of involving women and NGOs as participants in negotiations and moderation processes, including those on highest levels.
17. Develop and approve gender-driven criteria for evaluation of early prevention of conflict, escalation of gender-based violence and other violations of women's rights.
18. Introduce regular training of law enforcement officials, judges and safety sector on behavior, data collection protocol and assistance to the victims of gender-based violence in military conflict.
19. Develop mechanisms for providing assistance to the victims of gender-based violence including sexual violence in ATO territories, legal assistance on FOC basis
20. Develop and approve branch Regulations on job descriptions and staffing requirements for the employees of the whole vertical power structure responsible for implementation of the gender component in various areas of the State policy.
21. Introduce in all the industrial and regional educational centers for professional advancement of the government employees regular training on gender equality issues for government employees at all levels. Make it part of qualification programme.
22. Make provisions for collection of statistical data with the gender breakdown in all fields of social life (according to the international standards), taking into account responsibility of all the industry central governmental bodies.
23. Carry out gender research on the impact of reforms and decentralization on women and girls.
24. Develop state programme for the inhabitants of rural areas taking into account needs of women and girls.
25. Coordinate on legislative level possibility of change in the legal penalty to the females sentenced to the life incarceration.

26. Amend the existing anti-discrimination law by adding sexual orientation and gender identity as protected grounds from discrimination in all spheres of life. Establish administrative fines for acts of discrimination. Amend legislation on hate crimes by including sexual orientation and gender identity in the list of protected grounds.
27. Provide clear mechanisms for proper investigation of hate crimes by establishing special unit in national police on investigation and prevention of hate crimes.
28. Prohibit normalizing surgeries on intersex babies. Establish simple and transparent procedure of legal gender recognition for intersex people and special educational programs for doctors on intersex issues.
29. Base health care model on informed consent when trans people could decide what medical interventions and to what extent to undergo without any requirements.
30. Directly prohibit hospitalization in psychiatric institutions in relation to trans status. Remove from clinical protocols compulsory terms and waiting times for any procedures.
31. Consider implementation of gender marker options in IDs other than male and female to be suitable for non-binary trans people.

UKRAINE

REPORT, SUBMITTED FOR THE UNIVERSAL PERIODIC REVIEW
OF THE UNITED NATIONS ORGANIZATION

COMBATING TRAFFICKING IN HUMAN BEINGS

The 28th session of the UPR Working Group of the Human Rights Council
(THE THIRD CYCLE)

COALITION OF NON-GOVERNMENTAL ORGANIZATIONS:

La Strada International (the Netherlands)

CSO "La Strada-Ukraine"*

NGO "Democracy Development Center"

**THIS REPORT IS PREPARED WITH THE TECHNICAL SUPPORT BY UGSPL
AND PROJECT «OPEN FOR YOUNG WOMEN»**

** Until February 2016 – The International Women's Rights Center "La Strada-Ukraine". Renamed in compliance with the requirements of the Law of Ukraine "On Non-Governmental Organizations"*

The report has been prepared by the coalition of La Strada International (LSI), La Strada Ukraine (LSU), Ukrainian Democracy Development Centre, NGOs with over two decades of experience in the sphere of combating trafficking in human beings (THB) and providing assistance to victims of this crime. The organisation further build extensive experience in monitoring human rights violation and related state policies. The organizations which have prepared the report cooperate with one another and with other civil society organizations. They are members of networks, such as The Global Alliance against Traffic in Women, the Platform for International Cooperation on Undocumented Migrants (PICUM), the Association for Women's Rights in Development (AWID), ECPAT International and the All-Ukrainian Network against Commercial Sexual Exploitation of Children and others.

The information in the report has been presented pursuant to the recommendations, provided by the states, which are members of the UN Human Rights Council, grouped into two parts – “Combating trafficking in persons” (recommendations after the second cycle Nos. 97.49, 97.80, 97.81, 97.82, 97.83, 97.84, 97.85) and “Combating trafficking in children and sexual exploitation of children” (recommendations after the second cycle Nos. 97.81, 97.83, 97.12, 97.22, 97.29, 97.41, 97.86). The report is concluded with the recommendations, relevant for the Government of Ukraine.

COMBATING TRAFFICKING IN HUMAN BEINGS

The problem of trafficking in human beings is relevant for Ukraine – a country of origin, transit, and destination for victims of different forms of human trafficking. Along with trafficking for sexual exploitation, labour exploitation is extended over the last years (related with exploitation in agricultural work and construction and involuntary beggary). Victims of trafficking for labour exploitation are usually men of active working age or persons with visible disabilities without permanent residence.

A new way of recruiting has become a suggestion of registering the status of a refugee. In 2016 cases of human trafficking were registered with the purpose of involvement in criminal activity, in particular, in the Russian Federation, the major countries, where Ukrainian citizens are exploited. Other countries include Turkey, Poland, Germany, Israel, Greece, People's Republic of China, UAE, Ukraine. For the most part, the current national legislation ensures the protection of rights of victims of THB, but there are some problems with the enforcement of the law.

After the annexation of Crimea and occupation of some territories of Donetsk and Luhansk regions, internally displaced persons (IDPs) became more vulnerable for exploitation and abuse and a risk group for THB.¹ A survey, conducted by LSU in 2014, demonstrated that 19% of IDPs are aware of cases when IDPs were in a situation of human trafficking, 10.8% of IDPs intended to seek employment abroad, 7.8% of IDPs are willing to work under any conditions.²

There were reported calls to the National Toll Free Hotline on Prevention of Human Trafficking, Domestic Violence, and Gender Discrimination (NHL) about the facts of human trafficking in the temporary occupied and annexed territories (TOT) of Ukraine, including. There is a problem with registering and investigating these crimes in the TOT. There is a need for closer attention of the OSCE Special Monitoring Mission to Ukraine for the occurrence of human trafficking in TOT and well as a need for training of mission monitors on the identification of such cases and their primary registration.

¹ <http://www.msp.gov.ua/news/12682.html>

² http://www.la-strada.org.ua/ucp_mod_library_view_307.html

97.49. Adopt plans and programs related to trafficking in persons (Iraq)

In 2012, the Ministry of Social Policy (MSP) was made the national coordinating body in the sphere of combating THB. Efficient state policy on this issue was one of the prerequisites for the EU liberalization of the visa regime for Ukraine. In 2012, the first State social program of combating TIHB covering the period up to 2015 was adopted (Resolution of the Cabinet of Ministers, 21.03. 2012 No. 350).

The National Human Rights Strategy (NHRS) (Presidential Decree, 25.08.2015 No.501/2015³) and the Action plan for its implementation covering the period up to 2020 (Resolution of the CoM, 23.11.2015 No.1393-p.)⁴, contain various tasks, dedicated to the issues of combating THB and slavery. However, according to findings of NGOs and the office of the Ombudsman, the level of implementing the Action plan for the implementation of the NHRS remains low – only up to 25% of the planned actions have been implemented so far.

In 2016, the Government adopted the next Anti-Trafficking State Program till 2020 (the Resolution of the CoM, 24.02. 2016 No. 111).

In particular, the current Action plan envisages amending the Law of Ukraine “On Combating TIHB”, “On Free Legal Assistance”, “On Legal Status of Foreigners and Persons without Citizenship” and other acts in the sphere of TIHB in 2016-2018 with the purpose of enhancing the protection of victims; elaborating and adopting indicators of detecting victims of THB in 2017; conducting continuous studies, upgrading training courses, etc. No amendments were made in the abovementioned normative and regulatory acts in 2016.

97.80. Allocate adequate resources to ensure the effective implementation of the Combating Trafficking in Persons Act of 2011. (Philippines)

THE STATUS OF THE IMPLEMENTATION FOR THIS CLAUSE IS PARTIAL.

There is inadequate allocation of resources for the effective implementation of the Combating Trafficking in Persons Act, adopted in 2011. In 2013, UAH 60 thousand (about EUR 3,715) were allocated from the State Budget of Ukraine for the implementation of the measures of the State program of combating THB; UAH 44.9 thousand were paid as one-off financial aid to victims of TIHB (EUR 2,780, paid persons with the status of victims of THB, 34 persons).

In 2013, UAH 214,89 thousand (EUR 13,300) were used from the local budgets and in 2014, UAH 607,050 were allocated (EUR 37,570).

In 2014, UAH 82.1 thousand (EUR 5,080) were allocated from the State Budget for the implementation of the measures of the State program, and UAH 240,9 thousand (EUR 15 thousand) were allocated to be paid as one-off financial aid to persons with the registered status of human trafficking victims.

As stated in the Anti-Trafficking Program till 2020, the approximate amount of state budget financing was UAH 98,8 thousand in 2016, UAH 98,8 thousand in 2017, from the local budgets in 2016 – UAH 219,22 thousand, in 2017 – UAH 219,22 thousand, from other sources in 2016 – UAH 7,126 million, in 2017 – UAH 6,966 million. The information about the actual amount of allocated state budget finances is not freely available.

³ <http://zakon.rada.gov.ua/laws/show/501/2015>

⁴ <http://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80>

⁵ <http://zakon.rada.gov.ua/laws/show/111-2016-%D0%BF>

Previous programs, aimed at combating TIHB, are financed with international technical assistance of international and non-governmental organizations as well as charitable foundations.

At the same time, there are no methods of estimating the whole scope of finances spent for anti-trafficking activity. The budget for staff salaries, technical support, training, etc. of anti-trafficking departments/sections is not included in the whole calculations of funds spent for anti-trafficking activity.

97.81. To step up the national efforts in the field of trafficking in persons through a victim-oriented approach that attaches special focus on the protection of children from abuse and sexual exploitation (Egypt)

97.82. Continue efforts in combating human trafficking and provide the necessary assistance to victims of trafficking (Lithuania)

97.83. Redouble the efforts in regard to combating trafficking in persons, particularly in combating the trafficking of children for sexual and labor exploitation, including through addressing the root causes of trafficking, establishing additional shelters for rehabilitation and social integration of victims and ensuring systematic investigation, prosecution and punishment of traffickers (Indonesia)

In 2013, the MSP created a working group (WG) to improve the legal framework for counter trafficking. The work yielded the elaboration of the State program of combating THB for 2016–2020 and the draft changes to current legislation on combating THB.

In 2017, a draft Law of Ukraine “On Introducing Changes to Some Legislative Acts of Ukraine on Enhanced Combating of Human Trafficking and Protection of Victims of Human Trafficking”, elaborated by the WG, was submitted to the Verkhovna Rada (No 6125, 23.02.2017). The draft law envisages: adjusting the definition of “trafficking in human beings” to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children; expanding the circle of the parties to the National Referral Mechanism (NRM), which take measures in the sphere of combating THB; measures, taken by the central executive authorities in order to protect women, girls, men, and boys with disabilities from sexual violence and exploitation; improving the procedure of establishing the status of a person, who has suffered from THB; expanding the network of institutions to provide assistance to victims of THB etc.

Every year there are more consultations on the issues of combating THB, provided on the National hotline. Compared to 2015, in 2016 there was a 1.5-fold increase.

Victims of THB are deprived of their right for free legal assistance, as the category “victims of THB” is not envisaged in Article 14 of the Law of Ukraine “On Free Legal Assistance”.

The majority of HIV-infections in Ukraine are related to the provision of sex-services. Victims of THB have fewer chances of obtaining medical and psychological services, care and support if they have the status of an HIV-positive person.

The representatives of law enforcement bodies do not always inform victims of THB about their right for compensation of damage. There is a need of providing victims of THB with qualified free legal assistance at all the stages of criminal investigation of criminals, which has not been stated in the legal framework of Ukraine yet.

The mass media are not consistent in highlighting current problems of THB and modern ways of recruiting.

Shelters for victims of THB.

After the adoption of the Regulations on the rehabilitation centers for victims of THB in 2003⁶, there has been no actions taken to organize respective centers at the governmental level; as of now there are no specialized state-financed shelters for this category of persons in Ukraine. No shelters for victims of THB have been established in 2013–2016.

As of March 20, 2017, there are centers of social and psychological assistance which also accept victims of THB in 19 regions of Ukraine only. Center from Donetsk was transferred to the safe territory. After the annexation of Crimea and occupation of some territories of Donetsk and Luhansk regions by the Russian Federation, these centers mostly provide assistance to IDPs.

The problematic issues to be solved are as follows: the absence of such centers in *Vinnitsia, Kyiv, Luhansk, Poltava, Kharkiv, Kherson regions*; the location of such institutions (*mostly they function in the regional centers*); victims of THB are just one category of people, provided assistance in these centers⁷; the shortage of vacant places in these institutions⁸; limitations regarding health condition and age of clients of such institutions (*persons with considerable health problems and people over 35 cannot live in such centers*); ensuring the safety of women in these centers, etc.

LSU sent letters to the heads of regions, which do not have any institutions to support victims, stating the necessity of establishing them⁹.

It is utterly necessary to introduce changes to a number of normative and regulatory acts on providing assistance to victims of THB, in particular, the regulations, establishing typical provisions on the centers of social and psychological assistance and centers of social and psychological rehabilitation of children.

Assistance to victims of THB is supported by international organizations (IO) – OSCE Project Co-ordinator and International Organization for Migration (IOM) with active involvement of NGOs. The NRM in all the regions is not efficient enough due to the unavailability of local institutional and financial capability to provide services to the victims. With the support of the IOM the rehabilitation center for victims of THB was established in Kyiv. The shelters, organized by NGOs, are not financed by the state.

The relevant problems are as follows:

- lack of detection and identification of victims of THB;
- a great number of refusals in obtaining the status of a victim of THB;
- difficulty of obtaining the status of a victim of THB for foreigners;
- unavailability of relevant statistics on the number of victims of THB, and the difference in statistical information, collected by different state structures and IOs.

In 2013–2014, the Mission of IOM in Ukraine along with partner NGOs provided assistance to 1,832 victims of THB (929 persons in 2013, 903 – in 2014). During the same two years, the MSP granted the status of a victim of THB to 68 persons (41 – 2013, 27 – 2014). 106 applications were received (58 – 2013, 48 – 2014). In 2016, the MSP granted the status of a victim of THB to 110 citizens.

⁶ <http://zakon3.rada.gov.ua/laws/show/987-2003-%D0%BF>

⁷ Clause 1 of the Typical provisions on the center of social and psychological assistance, approved by the Resolution of the CoM, 12.05.2004, No. 608.

⁸ Resolution of the CoM, 12.05.2004, No. 608. The maximal period of a person's staying in the center is 90 days.

⁹ http://www.la-strada.org.ua/ucp_mod_news_list_show_554.html

- unavailability of an actual mechanism of the state social demand for services from NGOs, working in the sphere of combating THB at the national level and in most regions;
- problems with protecting victims of THB, participating in criminal proceedings.
- *In 2016, criminal investigators used safety measures in the form of changing the personal information of only 2 people in their criminal proceedings on human trafficking.*
- inefficient coordination of national activity in combating human trafficking;
- unavailability of periodic independent estimations and report on state policy and compliance in the sphere of human trafficking as an instrument of evaluating the impact of measures and planning future policy and measures;
- limited human resources and turnover of specialists, working in the sphere of combating human trafficking at all the levels of authority;
- impossibility of registering crimes in temporarily uncontrolled territories;
- complexity of overcoming the consequences of the military conflict in the East of Ukraine.

Ensuring systematic investigation, criminal prosecution and punishment of THB

115 crimes, related to THB, were detected in 2016. There is inefficient work of the departments for combating crimes, related to THB, as on average two specialists detect one crime per year, which is conditioned, *inter alia*, by involving the specialists of these departments in investigating crimes, not related to their specific profile of activity.

There are insufficient efforts in investigating crimes, committed by officials of the institutions for children, where the latter are under the state care, in which such officials are co-conspirators in a crime or guilty of gross negligence regarding the children.

There is a worrying status of criminal proceedings of cases, related to THB. Due to inefficient work of investigators, out of 222 offenses under investigation in 2016 only in 65 cases the charges were served, which is almost twice as less compared to 2015. In 2016, less than 40% (45) of crimes were solved. Reasonable terms of investigating criminal offenses are not ensured, the cases are investigated for more than half a year. There are alleged unlawful decisions on terminating criminal proceedings. The prosecutors abolished 6 such decisions and renewed pretrial investigation regarding 5 criminal proceedings.

There is a great need in specialization of investigators and heads of proceedings, methodological provisions for their activity, basic and further training, including the involvement of NGOs.

There is a need for upgrading the level of coordination between the actions of law enforcement bodies with the purpose of detecting, preventing, suppressing, and solving the mentioned criminal offenses, as well as cooperation with competent bodies of other countries and NGOs¹⁰.

According to the data of the National Police (NP), in 2016 there were 6 facts of requalification of criminal proceedings from Article 149 of the CC to other crimes. This data are not summarized by the statistical reports of the NP at the permanent basis, as only police investigators, investigators of the prosecutor's office and judges can requalify the proceedings.

¹⁰ Resolution of the interdepartmental meeting of law enforcement bodies and other parties of combating crime, organized by the Prosecutor General's Office of Ukraine on February 24, 2017.

Low efficiency in solving the crimes, related to THB, prosecution of criminals and restoration of victims' rights, is also related to poor cooperation of law enforcement bodies and the Offices of Children's Services, centers of social services for families, children and youth, offices of social protection for population, state and local authorities, etc. to enhance the preventative work with population regarding THB, consideration of the connection between the crime of THB and vulnerable status of some groups of people.

It is problematic to hold human traffickers liable. The gap between the registered cases and sentences is increasing. In 2013 – 64 sentences, in 2014 – only 19.

The state of supporting public prosecution also requires changes. Sometimes prosecutors take a procedural position, which does not correspond to the severity of the crime, thus the punishment of over 81% of persons, convicted for TB, was not related to imprisonment, and mostly this was due to the prosecutors' initiative or according to the rulings of judges at the prosecutors' consent.

From 2012 till 2016 (6 months) the courts of Ukraine convicted 252 persons for THB, but only 119 of them were imprisoned for some time. In addition, during the mentioned period 123 persons were released on probation (Article 75 of the CC) and the punishment according to Article 69 of the CC (less strict punishment compared to the Law) was imposed on 80 persons.

In 2016, LSU investigated the court proceedings of 2015 related to Article 149 of the CC "Human trafficking or other unlawful agreement regarding human beings"¹¹. In 6 out of 11 cases the court released the accused persons on probation, using the provisions of Article 75 of the CC. In 5 cases the court came to the conclusion that the correction of a person was impossible without isolating from the society and convicted them to actual imprisonment. The term of imprisonment is from 5 to 7 years with or without the confiscation of property. One of the ways of solving the mentioned issue will be the summary of court practice regarding court rulings on cases of THB and training of judges.

97.84. Give adequate training on the Law on combating trafficking in human beings to all those involved in the fight against human trafficking, especially border guards (Portugal)

The topics of combating THB are partially included into the system of training and upgrading the qualification of specialists. The training is conducted at the Institute of Advanced Training for specialists of state authorities, working in the centers of social services for family, children, and youth, the National Academy of the Prosecutor's Office of Ukraine, the National Academy of Internal Affairs, the Kharkiv National University of Internal Affairs, the Institute of Postgraduate Study of NAIA, some higher educational institutions and institutes of postgraduate pedagogic education, training teachers and social service workers.

New challenges due to the war in Ukraine, administrative reform, considerable flow of human resources and implementation of the provisions of the Combating Trafficking in Persons Act increased the need of training specialists, which is not met in the full scope.

There is utmost relevance of including the topic of combating THB as a mandatory one for the whole system of training and advanced training of all the specialists, working in this sphere.

Enhancing the professional level of policemen, prosecutors, attorneys, judges in the issues of combating THB, training of specialists of the departments for human trafficking-related crime control are among the measures, included in the Action plan for implementation of the NHRS. The topics of combating THB are

¹¹<http://www.reyestr.court.gov.ua>. The number of sentences in the Unified State Register of Court Rulings is 18, in 3 of them the disclosure of information is prohibited according to the Law of Ukraine "On Access to Court Rulings" (c. 4 Art. 7).

included as a mandatory component of the training of new patrol police officers of the NP. These trainings are conducted mostly by specialists of NGOs and IOs.

In 2013, LSU together with the MSP conducted 10 trainings for about 600 specialists on the issues of implementing standards of providing services to victims of THB.

In 2013-2016, the National Training Network of LSU conducted 4,490 events on the issues of combating THB for representatives of state authorities, risk groups, schoolchildren and students.

The MSP in cooperation with the OSCE Project Co-ordinator in Ukraine and the Mission of IOM in Ukraine conduct trainings in the framework of expanding the NRM.

97.85. Continue the efforts aimed at fighting trafficking in persons, particularly children and women, and at ensuring compensation and rehabilitation for trafficking victims (Algeria);

LSU analyzed the court rulings in criminal cases related to Article 149 of the CrC “Human trafficking or any other unlawful agreement regarding human beings” in 2015.

After the analysis of the mentioned rulings, the following conclusions may be drawn.

1. In most cases the crime is of transnational nature, i.e. it is prepared in the territory of Ukraine, while committed in another country¹², also the persons, committing this crime, are citizens of different countries and it is extremely hard to identify them.
2. In addition, there are cases of internal THB¹³. In one case a woman was actually trafficked to a man, as she had not paid back the borrowed money.
3. One of the analyzed rulings was related to THB related to a child, sold by her mother. The reasons of her decision were as follows: low welfare of the woman, the presence of another child, inadequate living conditions.

The reasons for women to become victims of THB, are as follows: coincidence of complicated family and financial circumstances, unavailability of a job and place of residence, presence of children and the need for a mother to provide for them, presence of sick parents, personal sickness and the need of treatment, physical disabilities, aggravating the possibility of finding a normal job. It should be noted that some women, forced to agree to unacceptable offers, are displaced persons in complicated life situations (with no work and accommodation) due to the ongoing antiterrorist operation in their native places. This was found to be true for 4 out of 29 identified victims.

In most cases, trafficking in women was aimed at using them in the sphere of sexual services (9 cases out of 11)¹⁴. One case was related to a woman being used for beggary. In 9 cases, related to trafficking in women for sexual exploitation, 29 victims were identified, and 16 of them were aware that they would provide sexual services, to which they consented, as they had a great need for finances due to different life circumstances. Violence was used against all women who were victims of THB, namely: limitation of movement, inflicting physical pain (beating), control of finances, psychological pressure, threats, forced provision of services to many men, working for 24 hours, unavailability of medical aid.

In 6 out of 11 analyzed cases the court released the accused persons from punishment on probation, using the provisions of Article 75 of the CC. In the remaining 5 cases the court came to the conclusion that the

¹² The following countries were mentioned in the analyzed rulings: Italy, Israel, Germany, Russian Federation, UAE, Sri Lanka, China, Switzerland.

¹³ Beggary (case No. 759/16836/14-k), providing services of sexual nature (case No. 314/4308/15-k).

¹⁴ As for a male, his exploitation was in the form of unlawful extraction of internal organs and beggary.

correction of a person was impossible without isolating from the society and convicted them to actual imprisonment. The term of imprisonment is from 5 to 7 years with or without the confiscation of property. It is noteworthy to mention the measure of precaution, taken in these cases regarding the persons, accused of THB or any other unlawful agreement related to human beings, during pretrial and trial investigation. In 2 out of 11 analyzed rulings it was indicated that a measure of precaution, not related to holding in custody, was applied to a person, namely, house arrest; in one case the bail was used for the accused; in one case a written undertaking not to leave the place was used for the accused; in 3 cases, personal commitment was chosen as the measure of precaution; in 5 cases the measure of precaution was holding the accused in custody.

COMBATING TRAFFICKING IN CHILDREN AND COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

97.12. Take further measures and accede to The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption (Ireland);

As of March 2017, The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption was not ratified.

Since 2001, the Verkhovna Rada considered the issue of Ukraine's acceding to The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, but every time the draft laws were not adopted, were revoked or sent for finalization.

97.22. Consider bringing national legislation relating to trafficking in and sale of children in line with the Optional Protocol to CRC on the sale of children, child prostitution and child pornography (Slovenia);

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography was ratified by the Law of Ukraine No. 716 03.04. 2003.

In 2009, with the support of the UNICEF, LSU conducted the survey regarding the compliance of the national legislation with the provisions of the Optional Protocol to the CRC on the rights of a child on the sale of children, child prostitution and child pornography¹⁵. The recommendations were elaborated according to the results of the survey, in particular: to set punishment for involving children into prostitution and to introduce punishment for purchasing services from a child; to set punishment for involving children in the production and distribution of pornography commodities; to elaborate methodological recommendations for law enforcement employees, children safeguarding offices, health care and educational bodies regarding psychological and social aspects of working with children, who suffered from trafficking in children or prostitution of children. The suggested changes have not been introduced into the legislation.

Pursuant to the closing statements of the UN CRC¹⁶, the draft law "On introducing changes to some laws of Ukraine regarding the protection of children from sexual abuse and sexual exploitation" in the part of rehabilitation of children, involved in prostitution, was elaborated. As of March 20, 2017, this draft has not been submitted for the consideration of the CoM and the Verkhovna Rada.

¹⁵ http://www.la-strada.org.ua/ucp_mod_library_view_18.html

¹⁶ https://www.unicef.org/ukraine/UN_CRC_ConcludingObservations_Ukr.pdf

97.29. Enact legislation which clearly prohibits child prostitution and other forms of sexual exploitation, consistently with the international obligations undertaken by the country, bearing in mind that the Lanzarote Convention will enter into force as regards Ukraine on December 1, 2012 (Italy)

97.41. Efficiently implement recently ratified international conventions, especially in the field of child rights (Kazakhstan)

In 2012, Ukraine ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CET201), which correlates with the Optional Protocol to the UN CRC on the rights of a child on the sale of children, child prostitution and child pornography. As of March 2017, the national legislation has not been brought in line with this Convention.

Ukrainian legislation should be brought in line with the provisions of above mentioned international documents, in particular, in terms of setting the minimal legal age of consent. The inefficiency of legislation does not provide for efficient and complex protection of children from being involved in prostitution and other forms of sexual abuse. Numerous reports in mass media regarding the involvement of children in prostitution, sexual exploitation, the statistics of the police, the reports of NGOs allow for the statement that there is a problem of sexual exploitation of children in Ukraine, thus it requires solving. For instance, according to the data of the NP in 2014–2015, 16 children suffered from criminal offenses (involving children in prostitution, rape, sodomy, etc.).

On February 03, 2015, the draft law No. 2016 was registered in the Verkhovna Rada entitled “On introducing changes to the CC on the protection of children from sexual abuse and sexual exploitation”, which suggests setting clear minimum legal age of consent, finalizing the responsibility of persons, encroaching sexual freedom and untouchability, honor and dignity of children. The draft law was adopted in the first reading on November 15, 2016.

On February 09, 2017, the draft law No. 6070 was registered in the Verkhovna Rada entitled “On introducing changes to Article 242 of the CC”, which envisaged the introduction of the requirement of conducting forensic examination for the determination of sexual maturity of the affected minor. As of March 20, 2017, the draft laws have not been adopted.

97.86. Introduce a clear definition of child pornography into national legislation (Portugal)

Ukrainian legislation does not contain the definition of “child pornography”. Article 301 of the CC specifies the following crime: forcing minors to participate in the production of works, images, or films and video products, software of pornographic nature.

According to the Procedure of considering applications and reports on abusive treatment of children or the threat thereof¹⁷, one of the ways of abusive treatment is forcing him or her to prostitution using deceit, blackmail or vulnerable state of a child or using or threatening to use violence; forcing children to participate in the production of works, images, film and video products, software or other objects of pornographic nature.

¹⁷ <http://zakon3.rada.gov.ua/laws/show/z1105-14>

RECOMMENDATIONS:

1. To elaborate and implement the methods of estimating the finances, allocated for financial support of the activity in combating THB within the budgets of central and local authorities, working at combating THB.
2. To ensure sufficient finances for the implementation of the State Anti-Trafficking Programme and counter trafficking in general.
3. To introduce practices of specialization for investigators and prosecutors while conducting pretrial investigations and procedure guidance in criminal proceedings on crimes, related to THB.
4. To support cooperation of law enforcement authorities and NGOs, working in the sphere of combating THB, in particular, with the purpose of providing timely and efficient assistance to victims.
5. To continue the practice of conducting regional educational and training seminars on the issues of combating THB (particularly in children and young people), as well as the application of state-of-the-art forms of study, based on interactive distance educational courses, with the participation of specialists of operational subdivisions and specialized investigators of the NP, specialized prosecutors, specialists of the State border control of Ukraine, trial court judges and appeal court judges (at their consent), with the involvement of representatives of state administrations, responsible for establishing the status of a victim, and NGOs.
6. With the involvement of NGOs, to launch the course in combating THB in the basic training of the specialists of the NP, along with continuous upgrading the qualification of specialists, taking measures in the sphere of fighting the crimes of the mentioned category.
7. To prepare methodological recommendations regarding the specificities of detecting, registering and investigating the crimes, related to THB, with the consideration of best practices of investigating, criminal proceedings and their trial in courts.
8. To summarize judicial practice of court hearing of cases, related to THB.
9. For the National School of Judges of Ukraine – to introduce the system of distance studies and upgrading the qualification of judges in the matters of court hearing of criminal proceedings according to Article 149 of the CC.
10. To involve monitors of international missions in revealing the facts of THB in the territories, uncontrolled by Ukraine.
11. To regularly raise the awareness of Ukrainian citizens, in particular, internally displaced persons, about the risks of getting into situations of human trafficking, and providing them with the possibility of receiving qualified consultations.
12. To regulate the work of local executive authorities within the legal framework for their fulfilling the functions of establishing the status of a victim, which are vested upon them by the Combating Trafficking in Persons Act.
13. To elaborate normative and regulatory acts with the purpose of estimating danger (actual risks) for foreigners or persons without citizenship while they are returning from Ukraine to their country of origin. To involve state officials and teachers in the programs of upgrading qualifications in the issues of combating trafficking and to conduct this work in all the regions of Ukraine.
14. To ensure intersectoral cooperation in improving the mechanisms of interaction between the parties, involved in combating human trafficking, in the regions.

15. To pay attention to the identification of victims of THB among internally displaced persons; to protect children, who have suffered from trafficking in children; to develop indicators, facilitating the detection of victims of THB.
16. To bring Ukrainian legislation in line with the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography to the UN Convention on the rights of a child, the Council of Europe Convention of the Protection of Children against Sexual Exploitation and Sexual Abuse, European Social Charter (as amended).

UKRAINE

**JOINT SUBMISSION OF R2P
TO THE HUMAN RIGHTS COUNCIL**

at the 28th Session of the Universal Periodic Review
(THIRD CYCLE, 6-17 NOVEMBER 2017)

DESYATE KVITNYA

R2P

Institute on Statelessness and Inclusion

European Network on Statelessness

European Roma Rights Centre

INTRODUCTION

1) R2P, DESYATE KVITNYA, the Institute on Statelessness and Inclusion (The Institute), the European Network on Statelessness (ENS) and the European Roma Rights Centre (ERRC) make this joint submission to the Universal Periodic Review in relation to statelessness, access to nationality and human rights in Ukraine.

2) R2P¹ is one of the leading legal experts on statelessness in Ukraine and has extensive experience in providing legal aid to marginalised groups including stateless persons, undocumented persons, refugees, asylum seekers, Internally Displaced Persons (IDPs) and the conflict-affected population. Statelessness is one of R2P's core programming themes and is ingrained into the organisation's mission. Legally chartered in 2013, R2P is the successor organisation to HIAS Kyiv, which has been working on statelessness issues in Ukraine since 2007.

3) DESYATE KVITNYA (THE TENTH OF APRIL)² is an independent, humanitarian, non-governmental and non-profit organisation based in Odessa, Ukraine. It aims to contribute to the development of civil society and strengthening the rule of law in Ukraine. The Organisation was founded in 2012 by like-minded human rights activists with professional experience of over 10 years and a particular expertise in refugee rights protection. The Organisation provides free legal aid and assistance to vulnerable groups including asylum seekers, refugees, IDPs, stateless persons and Roma people. The Organisation's activities also include monitoring of human rights protection in Ukraine, cooperation with other stakeholders, and capacity-building actions.

4) The Institute on Statelessness and Inclusion³ is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global Centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 10 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 27th UPR Sessions.⁴

5) The European Network on Statelessness (ENS)⁵ is a civil society alliance of NGOs, lawyers, academics and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 100 members in 39 European countries. ENS organises its work around three pillars – law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.

6) The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation which monitors the human rights of Roma in Europe and provides legal defence in cases of human rights violations.⁶

7) This joint submission focuses on children's right to a nationality, identification of stateless persons, detention of stateless persons and those at risk of statelessness, and Roma statelessness in Ukraine. It draws on the combined experience of the submitting organisations both in Ukraine and internationally, including the collaborative research and advocacy of ENS, the Institute and R2P on the detention of stateless persons in

¹ For more information about R2P, please see the website <http://r2p.org.ua/en/>.

² For more information about DESYATE KVITNYA, please see the website <http://desyatekvitnya.com/>.

³ For more information about the Institute on Statelessness and Inclusion, please see the website <http://www.institutesi.org/>.

⁴ For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>

⁵ For more information about ENS, please see the website <http://www.statelessness.eu/>.

⁶ For more information about the ERRC, please see the website www.errc.org.

Ukraine,⁷ and ongoing collaboration between ERRC, the Institute, Tenth of April, and ENS on statelessness among the Roma in Ukraine.

THE UNIVERSAL PERIODIC REVIEW OF UKRAINE UNDER THE FIRST AND SECOND CYCLE (2008, 2012)

8) Ukraine was subject to the UPR under the first cycle in 2008 and under the second cycle in 2012. Ukraine received recommendations to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness – from Mexico in the 1st Cycle and from Portugal in the 2nd Cycle. Both recommendations were noted by Ukraine,⁸ and it acceded to the Statelessness Conventions in March 2013. Ukraine also received and noted recommendations to ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families. Finally, Mexico recommended that Ukraine ‘review its legislation to ensure the right of all boys and girls to have a nationality and ensure birth registration, regardless of their ethnic origin or their parents’ status’.

For more information on Ukraine’s performance related to relevant recommendations under the previous cycle, please, refer to the Matrix in Attachment 1.

THE INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF UKRAINE

9) Ukraine acceded to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention) in March 2013. It is also party to core human rights treaties in which provisions relating to nationality and statelessness are enshrined. These include the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1969 Convention on the Elimination of all Forms of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and the 1989 Convention on the rights of the Child (CRC). Ukraine also ratified the European Convention on Nationality in 2006.

10) Ukraine has not yet ratified the Convention on the Rights of All Migrant Workers and Members of Their Families.

11) Ukraine has additional international and regional obligations to protect the liberty and security of all persons and to protect against arbitrary and unlawful detention. These obligations derive from the ICCPR (Article 9) and the European Convention on Human Rights (ECHR, Article 5), which protect the right to liberty and security of the person and freedom from arbitrary detention. Importantly, Article 26 of the 1954 Convention additionally requires States to permit stateless persons “lawfully in” their territory to choose their place of residence and move freely within the State.⁹

⁷ See European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention in Ukraine*, 2016, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Ukraine-EN.pdf

⁸ See comments to recommendations XX and XX in the matrix of previous recommendations made to Ukraine in the Matrix of recommendations made in the 2nd cycle.

⁹ In line with UNHCR observations the drafting history of the 1954 Convention affirms that persons who have applied to remain in a country based on their statelessness are ‘lawfully in’ that country. UNHCR, *Handbook on Protection of Stateless Persons* (30 June 2014, ‘UNHCR Statelessness Handbook’), para 135. Available at <http://www.refworld.org/docid/53b676aa4.html>.

STATELESSNESS IN UKRAINE

12) There is no reliable data on the exact size of Ukraine's stateless population as the scope of the problem has never been thoroughly mapped. According to Ukraine's 2001 census, 82,600 persons claimed to be stateless and another 40,400 persons did not specify their citizenship.¹⁰ According to the State Migration Service of Ukraine, as of 2015, 5,159 stateless persons had permanent residence permits and 574 had temporary residence permits in Ukraine. The Ukrainian Government does not keep a record of irregular stateless persons residing in Ukraine and does not have an official statelessness determination procedure in place. In 2015, UNHCR estimates of the stateless population in Ukraine ranged from 35,228¹¹ to 45,877¹². Either figure makes this one of the largest stateless populations in Europe.

13) Despite the lack of accurate statistical data, it is possible to categorise the stateless population in Ukraine into four main groups as follows:

1. Those who became stateless or were at risk of statelessness due to state succession in the aftermath of the dissolution of the USSR in 1991. Notwithstanding certain legal safeguards in the Law of Ukraine "On Citizenship of Ukraine" for persons with USSR passports, there remain a significant number of undocumented persons among them. Furthermore, the excessive burden of proof to establish permanent residence when the nationality law entered into force and gaps in the new citizenship laws of successor states contribute to (the risk of) statelessness. Of significant concern, is the requirement for the parents to have formal documentation as a prerequisite to register a child's birth. While not all persons who lack birth registration are stateless, the registration of births is a key step in acquiring Ukrainian nationality.
2. Persons whose only documentation is from the Pridnestrovian Moldavian Republic are at risk of statelessness. This entity is not recognised as a state by the international community, as the territory is perceived as an integral part of Moldova. As a result, documents issued by the Pridnestrovian Moldavian Republic are void in Ukraine.
3. As a result of the temporary occupation of Ukrainian territory, children born in occupied territories and internally displaced persons from them are at risk of statelessness. Birth registration for children born in the temporarily occupied territories of Ukraine is possible only through the lengthy and costly procedure of establishing the fact of a child's birth in a Ukrainian court of law. In principle, IDPs are eligible for documentation by a certificate of registration as an IDP subject to presenting an identity document, a passport of Ukraine or another valid document. Thus, an undocumented IDP will not be able to receive protection as an IDP or establish their nationality, limiting their access to fundamental rights.
4. Finally, Roma people often find themselves at risk of statelessness for various reasons, which are addressed in more detail later in this submission.

THE RIGHT OF EVERY CHILD TO ACQUIRE A NATIONALITY

14) The 1961 Statelessness Convention requires States to grant nationality to persons born in their territory 'who would otherwise be stateless.'¹³ Furthermore, both the ECN and 1961 Convention obligate that found-

¹⁰ *First All-National Population Census: historical, methodological, social, economic, ethnic aspects.* – The Institute for Demography and Social Studies of the NAS of Ukraine, the State Statistic Committee of Ukraine. – 2004. – P. 109 – http://2001.ukrcensus.gov.ua/d/mono_eng.pdf.

¹¹ UNHCR Population Statistics. – http://popstats.unhcr.org/en/persons_of_concern.

¹² UNHCR Populations. – <http://globalfocus-interim.unhcr.org/population>.

¹³ 1961 Convention, Article 1.

lings automatically acquire nationality.¹⁴ The most important human rights provision related to the child's right to acquire a nationality is Article 7 of the CRC, which requires that:

- "1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
- 2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

15) International law also sets out rules and timeframes for the acquisition of nationality by children who would otherwise be stateless. Both the ECN and the 1961 Convention set out various criteria according to which, nationality should be acquired by such children, either at birth or later in life.¹⁵ The current practice of Ukraine is assessed against these criteria later in this submission. Importantly, guiding principles of the CRC including the right to non-discrimination and the best interests of the child, further dictate the manner in which these provisions are to be implemented.¹⁶ According to UNHCR's guidance, these general principles in the context of children's right to a nationality entail that a child should acquire a nationality at birth or as soon as possible after birth and no child should be left stateless for an extended period of time.¹⁷

16) Despite these international obligations, Ukrainian Law only allows registration of children born to at least one documented parent. While the principle of *jus soli* applies in Ukraine – meaning that children born on the territory should be recognised as citizens, regardless of whether the parents are citizens or not – it requires legal residence and documentation as a pre-requisite to granting nationality. Furthermore, Art. 144 of the Family Code of Ukraine also imposes an obligation to register a birth of the child within a month of the birth. Late registrations are penalised with a fine under Art. 212-1 of the Code of Ukraine on Administrative Offenses.

17) In addition to increasing the risk of childhood statelessness, the penalisation of late birth registration also undermines the right to private life protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the European Court of Human Rights, laws which aim to penalise parents, also "affect the children themselves, whose right to respect for private life [...] is substantially affected. Accordingly, a serious question arises as to the compatibility of that situation with the child's best interests, respect for which must guide any decision in their regard."¹⁸

18) The primary legislation on the procedure of birth registration is the Law of Ukraine "On State Registration of Civil Status Acts" № 2398-VI of July 01, 2010, and the Ordinance of the Ministry of Justice of Ukraine "On adopting the Rules for the state registration of acts of civil status in Ukraine" № 52/5 of October 18, 2000. The latter act lists the prerequisites for birth registration in Ukraine, including the requirement of documentation of at least one parent of a child, without which the birth registration is impossible. This provision means that the children of undocumented parents cannot get documentation themselves – in contravention of CRC Article 7. The lack of documentation may later result in the child's statelessness. The only way around this under the present legal framework, is for the undocumented parent to first apply to establish his/her citizenship and get documentation. However, it is often impossible to do so, and the obstacles to documentation will be addressed later in this submission.

¹⁴ 1997 European Convention on Nationality, Article 6 (1) (b); 1961 Convention on the Reduction of Statelessness, Article 2.

¹⁵ 1997 European Convention on Nationality, Article 2 (6) (b); 1961 Convention on the Reduction of Statelessness, Article 1 (2) (a) and (b).

¹⁶ 1989 Convention on the Rights of the Child, Articles 2 and 3

¹⁷ UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/21/04.

¹⁸ European Court of Human Rights, *Mennesson v. France*, Application No. 65192/11, 26 June 2014, para 99.

19) Another prerequisite for birth registration is a medical certificate confirming the fact of a child's birth, or in the case of a birth outside of a medical institution, a document issued by specially established medical and consultative commission (Art. 13 of the Law of Ukraine "On State Registration of Civil Status Acts"). In the absence of any medical proof of the child's birth, a court decision is required to register the birth of the child. The costs, access to lawyers and supporting evidence required to make such court applications make this process inaccessible to many.

20) Cumulatively, these provisions make birth registration inaccessible to some of the most vulnerable persons in Ukraine, including the Roma and asylum seekers. They also undermine the right of every child to acquire Ukrainian nationality, in contradiction to Ukraine's international obligations under the 1961 Convention, the ECN and the CRC.

21) Identifying the challenges related to universal birth registration in Ukraine, and the impact this has on the child's right to a nationality as well as access to other human rights, the Committee on the Rights of the Child, in its most recent concluding observations on Ukraine in 2011, made the following recommendation:

'The Committee urges the State party to adopt positive incentives so as to ensure that free and compulsory birth registration is effectively made available to all children, regardless of ethnicity and social background. In this endeavour, the Committee recommends that the State party abolish any punitive fines for the failure of parents to register their children. The Committee further calls upon the State party to intensify its awareness-raising campaigns to encourage and ensure the registration of all Roma children.'¹⁹

THE IDENTIFICATION OF STATELESS PERSONS

22) Despite Ukraine having ratified the two UN Statelessness Conventions in 2013, the country's legal framework does not include a statelessness determination procedure. This undermines the enjoyment of fundamental rights and freedoms of stateless persons and persons at risk of statelessness in Ukraine.

23) The obligation of the state to identify stateless persons within its territory or subject to its jurisdiction is implicit in international human rights law. According to the UNHCR Statelessness Handbook: "although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention."²⁰

24) Without accurate identification of stateless persons, there is currently no mechanism in Ukraine to ensure adequate protection of the rights of stateless persons as set out in international law. The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons"; defines a "stateless person" as someone "who is not considered to be a citizen of any country in accordance with its laws." This definition is narrower than the international law definition found in Article 1(1) of the 1954 Convention, which defines a stateless person as someone "who is not considered as a national by any State under the operation of its law". This narrowing of the definition can result in a sizeable protection gap by excluding those who should be considered a national of a state under the letter of the law, but who are not in practice.

25) In December 2015, the State Migration Service of Ukraine developed a draft law that aims to introduce a statelessness determination procedure. Despite positive developments (such as the right of any person, regardless of the legality of stay, to access the procedure; the right to access statelessness determination

¹⁹ CRC Concluding Observations on the consolidated third and fourth periodic report of Ukraine (21 April 2011), CRC/C/UKR/CO/3-4, para 36.

²⁰ UNHCR Statelessness Handbook, para 144.

procedure for children; the six-month timeframe for a final decision on the application, etc.), the draft needs further improvements on the following issues:

- developing the definition of a 'stateless person' in accordance with the international law definition of Article 1 of the 1954 Convention;
- eliminating the requirement that persons recognised as stateless under the statelessness determination procedure will need to present a valid passport for receiving a residence permit;
- reducing the burden of proof on the applicant;
- providing temporary documentation and status until a final decision on application is made; and
- clearly defining the form in which the application should be filed (written, oral, etc.).

26) In January 2017, this draft law was sent back from the Parliament to the Government for review due to these deficiencies. The timeframe for the adoption of the bill and its final text is unclear.

27) Statelessness will not be identified among persons in Ukraine until an effective statelessness determination procedure is in place. As a result, stateless persons in Ukraine are deprived of access to any documentation and, consequently, to fundamental rights and freedoms. For instance, a travel document should by law be granted to all stateless persons, in line with the 1954 Convention. However, undocumented persons who may be stateless but haven't been identified as such, will find it impossible to receive a travel document, as the possession of a permanent residence permit is a condition to apply for a travel document. Also, staying in Ukraine without proper documentation is penalised by law. Under the Code of Ukraine on Administrative Offenses, Art. 203, living in Ukraine without valid documents, with invalid or outdated documents, constitutes an administrative offense, for which a fine is imposed in the sum of between thirty and fifty tax-exempt minimum wages. Penalising the stay of stateless persons in Ukraine without proper documentation in the absence of any mechanism for their identification and subsequent documentation only deteriorates the situation of stateless people and prevents them from applying to state authorities for any services in Ukraine.

28) Without a Statelessness Determination Procedure, stateless persons have access neither to a facilitated naturalisation procedure, nor to any other fundamental human rights, such as rights to education, employment, social security, health care, and the protection from non-discrimination. The absence of a Statelessness Determination Procedure in Ukraine therefore conflicts with both the 1954 Convention and other generally applicable international human rights standards implemented by Ukraine.

THE DETENTION OF STATELESS PERSONS

29) In Ukraine, statelessness is not taken into consideration at any stage of immigration detention and removal procedures. Many stateless persons are incorrectly categorised as citizens of other countries. Photographs of undocumented persons subject to deportation are presented to foreign diplomatic missions or consulates for identification purposes. In the absence of an accredited diplomatic or consular office of the supposed country of origin, requests to the competent authorities of the country are sent via the Department of Consular Services of the Ministry of Foreign Affairs. If no response is received from the authorities of the supposed country of origin, the requests are sent repeatedly. In practice this means that if the identity of the person has not been confirmed soon after detention, the detainee will likely be in custody until the maximum period is exhausted.

30) In this context, it is important to note that some positive legislative changes such as the introduction of alternatives to detention and judicial review of immigration detention have been adopted since Ukraine's previous UPR examination. However, there is significant scope for improvement, and a number of problems remain.

31) After legislative amendments, since 18 June 2016, immigration detention is possible only after a court decision has been made. However, while detention consequently requires a court order "to detain at a Migrant Detention Centre (MDC)", research shows that since the regulations have come into force, numerous people were detained following court decisions to 'expel'. As detention should only be used as a last resort, when it is necessary having exhausted all less restrictive alternatives, the practice of routinely detaining those who the court has ordered to be expelled, is disproportionate, arbitrary and not compliant with Ukraine's international human rights obligations. This same law reform increased the maximum time limit for detention to 18 months. Previously, it was one year, and before May 2011 it was six months.

32) At present, there are two operating MDCs: in the Regions of Volyn (western region) designed to house 165 persons and Chernihiv (northern region) with a capacity of 208 detainees. A new MDC has been constructed in the Region of Mykolaiv (southern region), but is not yet operational.

33) When a person applies for asylum during their detention, they continue to be detained until the final asylum decision. A person granted asylum (refugee status or complementary protection), should be released following the appropriate notification of the migration service.

34) There are various concerns and inconsistencies with procedural guarantees and their implementation in relation to immigration detention. For example, the Constitution of Ukraine establishes that no one shall be arrested or held in custody except in accordance with a court decision and in accordance with the procedure established by law. However, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" establishes that illegally staying foreigners may be detained on the basis of a decision of the detaining authority. Moreover, Article 19.15-1 of the Law of Ukraine "On State Border Guard Service" stipulates SBGS officials' competence to decide to detain foreigners and stateless persons.²¹ Thus this law has not been harmonised with the legislative amendments on detention applicable from 18 June 2016, which require a court order for such detention.²²

35) Two positive provisions introduced concerning the immigration detention of foreigners and stateless persons are the mandatory participation of the person in a court hearing, and the exemption of plaintiffs from paying court fees for the appeal against their deportation in all instances. However, the right to be personally present at the court hearing is not always respected in practice. A less positive provision is that any appeal against the decision of the first instance court must be lodged within five days. Given the vulnerable position of persons subject to immigration detention, appeal within this timeframe is often impossible.

36) All detainees are entitled to primary legal aid in the form of advice given by the MDC administration as to rights and obligations of foreigners and stateless persons within the territory of Ukraine. From 1 July 2015, the right to secondary legal aid was granted to asylum seekers to challenge the rejection of their claims. Recently (since 18 June 2016) this right was also granted to foreigners and stateless persons detained for identification and removal, from the moment of arrest. Implementation of the right to free legal assistance in practice is not always smooth, for example, state legal aid centres did not have a budget for this work until July 2016.

²¹ *The Law of Ukraine N 661-IV on State Border Guard Service dated 3.04.2003* <http://zakon2.rada.gov.ua/laws/show/661-15/print1443083747350167>

²² *Law of Ukraine "On Amending Certain Legislative Acts of Ukraine as to Improvement of the Provisions on Judicial Protection of Foreigners and Stateless Persons, and Regulation of Certain Issues related to Counteraction to Illegal Migration" available at www.rada.gov.ua*

37) In accordance with Law of Ukraine “On Amending Certain Legislative Acts of Ukraine as to Improvement of the Provisions on Judicial Protection of Foreigners and Stateless Persons, and Regulation of Certain Issues related to Counteraction to Illegal Migration” which came into force on 18 June 2016, two alternatives to immigration detention were introduced:

1. Posting of bail for the person by an enterprise, institution or organisation;
2. Imposition of the obligation to post surety bail on the foreigner or the stateless person.

38) The available alternatives to detention are inadequate and not fit for purpose as a viable model to protect stateless persons from arbitrary detention. The financial sanctions imposed on guarantors and high cost of bail further limit the use of these alternatives. Available alternative measures should thus be expanded and their application simplified. At the very least, a person who may be subjected to immigration detention should not have a narrower range of alternatives than those available in criminal proceedings (there are four alternatives to imprisonment²³).

39) Ukrainian law provides no alternatives or more lenient sanctions or shorter detention terms for families with children. The law only sets out that families with children who are being removed, shall be detained together. The practice of detaining children and the failure to implement alternatives to detention for children is of significant concern. It is never in the child’s best interests to be detained.

40) Furthermore, in practice, the principle of separate accommodation of the persons detained on a gender basis prevails – even with respect to families. The MDC administration accommodates children with one parent only, and the other is entitled to visit them during specific times. This practice violates the right to private and family life. According to MDC monitoring data, forty-one children were detained for immigration reasons in 2015.

41) Released detainees are entitled to apply for a temporary residence permit. However, it is not easy to exercise this right, as one of the conditions for the residence permit is compulsory registration of the place of residence/stay, which is difficult for released detainees. Even those with a temporary residence permit are not allowed to work or study legally. Detainees released before the termination of the maximum period (for example, if their removal is impossible) cannot receive a residence permit at all. This undermines the purpose of the law – to regularise the status of those who cannot be removed – leaves individuals vulnerable to re-detention and is discriminatory.

ROMA STATELESSNESS IN UKRAINE

42) The last and only All-Ukrainian Population Census of 2001 reported 47,600 persons who defined their affiliation to the Roma nationality.²⁴ According to different sources, the current size of the Roma population in Ukraine ranges between 120,000 and 400,000 persons.²⁵ The Roma constitute one of the main national minorities with the highest proportion of stateless persons. According to the Report on the Implementation of State Policy on Roma 2015, by the Ukrainian Ombudsman’s Office, the International Renaissance Founda-

²³ *The Criminal Procedural Code of Ukraine dated April 13, 2012, available at www.rada.gov.ua*

²⁴ *The statistics is available at – <http://2001.ukrcensus.gov.ua/>.*

²⁵ *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis. – OSCE ODIHR, 2014. – Available at: <https://www.osce.org/odihr/124494?download=true>. “ECRI Report on Ukraine (fourth monitoring cycle)” (ECRI Report on Ukraine), adopted on 8 December 2011. – Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>; *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis. – OSCE ODIHR, 2014. – p. 11. – Available at: <https://www.osce.org/odihr/124494?download=true>. / ‘However, unofficial sources estimate the number of Roma to be up to 400,000 persons in country.’ – (9) Roma Children in Ukraine: Photo Essay. – 2006. – Available at: https://www.unicef.org/ukraine/media_11430.html.**

tions, and the ERRC, 83% of Roma have a passport or another identity document, while the remaining 17% are undocumented.²⁶

43) While most Roma have the right to the Ukrainian nationality under the Law, their risk of statelessness relates to their lack of documentation and the documentation requirements for birth registration. The lack of documentation among Roma is a widespread and long lasting, sometimes inter-generational issue that needs a particular attention by local and national authorities.

44) The risk of statelessness of Roma is caused by the factors affecting other groups, which have been outlined in the above sections. Yet, there are certain legal provisions that particularly affect Roma and create specific barriers to acquiring nationality.

45) Additional risks of statelessness among Roma in Ukraine and obstacles to solving their statelessness are linked to historical reasons of segregation and social exclusion by the majority community. In Ukraine, many Roma live in compact settlements, also known as 'tabors', which are excluded from the rest of the population. Birth at home also results in the lack of birth certificates because of the abovementioned requirement to present medical documents irrespectively of the child's birth in or out of the hospital. The issue particularly impacts Roma living in remote rural areas. They are more likely to remain stateless as they do not have access to legal assistance to solve this problem. This also causes additional financial burdens for Roma, as travel costs are likely to be an obstacle to acquiring documentation. The situation of the Roma lacking identity documents is further aggravated by state sanctions against those who lack documentation. Furthermore, expenses, including paying a fine (for instance, for illegal stay in Ukraine, or late application for a birth certificate after the expiry of a month since the birth date); a court fee (if a person can establish his/her affiliation to the Ukrainian nationality only through a court procedure); or a fee for certain administrative services (for example, issuance of a registration certificate as a citizen of Ukraine by the State Migration Service of Ukraine) make documentation inaccessible to many Roma.

46) As a result and a consequence of marginalisation, social exclusion and poverty, the level of literacy and formal education remains very low among Roma in comparison to the rest of the Ukrainian population. This leads to barriers to completing applications and providing the required documentation, making Roma more likely to have their applications rejected.

47) Furthermore, discrimination is both a cause and a consequence of statelessness among Roma in Ukraine. Roma, along with other groups, are systematically discriminated against in Ukraine, at different levels, and on various grounds, as reported by the Office of the Ukrainian Ombudsman, as well as by UN agencies.²⁷ In October 2016, concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the twenty-second and twenty-third periodic reports of Ukraine were published, which welcomed the positive steps undertaken by Ukraine in addressing discrimination, but underlined a range of further concerns and recommendations thereto. The Committee looked specifically at the situation of Roma in Ukraine, raising concern as to the persistence of discrimination, stereotypes, and prejudices against Roma, and on the particularly insecure situation of Roma IDPs. One of the concluding recommendations of the Committee addressed the issue of statelessness among Roma in Ukraine:

²⁶ *The Conditions of the Implementation on the Roma State Policy. – 2015. – 80 p. – p. 10. – Available at: http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf. (In Ukrainian.)*

²⁷ *For more details, see: The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine. – 2015. – 552 p. – Available at: www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2015_10b.pdf. (In Ukrainian.); The Annual Report of the Ombudsman of Ukraine on Human Rights in Ukraine. – 2016. – 537 p. – Available at: www.ombudsman.gov.ua/files/Dopovidi/Dopovid_2016_final.pdf. – p. 156. (In Ukrainian.); The Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine. – CERD/C/UKR/CO/22-23. – 4 October 2016. – Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en; Ukraine combined twenty-second to twenty-third periodic report CERD/C/UKR/22-23. – 2016. – Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20318&LangID=E#sthash.By19x2Q2.dpuf>.*

'Recalling its general recommendations No. 27 (2000) on discrimination against Roma and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party: [...] (e) Strengthen its efforts to provide all Roma with identity documents free of charge'²⁸.

48) According to the representative of the Ukrainian Office of Ombudsman, the lowest level of tolerance amongst Ukrainians is towards Roma; the tolerance level is unacceptably low even among the most educated members of society such as judges, prosecutors, and teachers. As a State Party to all core human rights treaties which prohibit discrimination, Ukraine bears an international obligation not only to ensure the equal treatment of Roma and other groups but also to adequately identify and address the particular needs of the Roma. As a result, the discriminatory implementation practice directed at Roma in the documentation process creates a serious impediment to overcoming the issues of statelessness and its risk among the Roma population of Ukraine.

49) Therefore, in fulfilment of its international legal undertakings under the 1954 Convention, 1961 Convention, the CRC, the ECN and human rights framework, including the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, Ukraine should ensure the birth registration of every child born in the territory of Ukraine, including Roma children, and to enhance the free and direct access to documentation for all Roma in Ukraine.

RECOMMENDATIONS:

50) Drawing on the information presented in this submission, and the collective expertise of the co-submitting organisations, we propose the following recommendations to be made to Ukraine:

- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons as set out by International (human rights) treaties.
- II. Ensure the right to acquire a nationality for all otherwise stateless children in Ukraine in accordance with Article 7 of the Convention on the Rights of the Child.
- III. Ensure that all children have equal and free access to birth registration, regardless of their parent's (legal) status or documentation. Fully implement the recommendation of the UN Committee on the Rights of the Child in this regard.
- IV. Ensure that the draft law, which aims to introduce a statelessness determination procedure in Ukraine, is enacted as a matter of priority, after being improved to bring it in line with international law standards and UNHCR Guidance. In particular, the law should ensure that the statelessness determination procedure is fair, effective and accessible to all persons in Ukraine regardless of their legal status, including those who are subject to removal and detention proceedings; reduce the burden of proof of the applicant; and provide applicants with temporary documentation and status until a final decision is made.
- V. Ensure that the definition of 'stateless person' under Ukrainian law is fully consistent with the definition provided in the 1954 Convention and that no stateless persons are excluded from this definition.
- VI. Ensure that stateless persons are not subject to arbitrary detention. The 2016 law reform, which requires a court order to detain before a person can be subject to detention, must be fully implemented. The practice of detaining persons pursuant to a court order to remove must end.

²⁸ The Concluding observations and recommendations of the Committee on the Elimination of Racial Discrimination on the combined twenty-second and twenty-third periodic reports of Ukraine. – CERD/C/UKR/CO/22-23. – 4 October 2016. – Paras. 19-22. – Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fUKR%2fCO%2f22-23&Lang=en.

- VII. Ensure that detention is only implemented as a last resort, when necessary and proportionate, after all alternatives (starting with the least restrictive) have been exhausted. The list of alternative measures should be expanded and their application simplified. In order to determine if detention is necessary and proportionate, statelessness must be identified at the point of the decision to detain and reviewed on a continued basis.
- VIII. Ensure that the barriers to obtaining temporary residence permits for former detainees who cannot be removed – including the requirement of compulsory registration of the place of residence/stay, and the requirement that the applicant was detained for the maximum detention period – are abolished. Furthermore, grant temporary residence permits for periods longer than one year, and ensure that permit holders have stay rights including the right to study and to work.
- IX. Take all necessary steps to address historical and structural discrimination against the Roma community, which heightens their lack of documentation and risk of statelessness. Fully implement the recommendations of the UN Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Office of the Ukrainian Ombudsman, to break the cycle of discrimination and statelessness faced by Roma, and ensure their equal access to all human rights.
- X. Take adequate measures to quantify the scale of statelessness in Ukraine and assess the risk of statelessness among particularly vulnerable populations.

OBSTACLES TO WOMEN'S MEANINGFUL PARTICIPATION IN PEACE EFFORTS IN UKRAINE

IMPACT OF AUSTERITY MEASURES AND STIGMATISATION
OF ORGANISATIONS WORKING FOR DIALOGUE

Joint submission to the UPR Working Group 28th session
(NOVEMBER 2017)

I. INTRODUCTION

1. During the last two years, Ukraine has experienced considerable humanitarian consequences of the conflict in the east of the country, causing extensive suffering of civilians in the conflict area and throughout the country as a whole. Parts of the population of Ukraine are on the brink of survival. The narrowing of access to social services, arising from the armed conflict and macro-economic reforms linked to interventions by international financial institutions run against Ukraine's obligations to respect, protect, and fulfill women's equal human rights, without retrogression and using maximum available resources. Shifting the burden of care from the state to women and reducing women's access to paid work and livelihoods have significantly reduced the quality of life and safety of women.

2. This submission focuses on the obstacles to women's meaningful participation in Ukraine's peace efforts. Firstly, it draws attention to the stigmatization of organisations working for dialogue and cooperation, including women's human rights organisations. Secondly, it highlights violations of economic and social rights resulting from implementation of austerity measures relating to increased interventions by international financial institutions, mainly the International Monetary Fund (IMF).

3. The submission illustrates how the conditionalities linked to the funding provided by these institutions have disproportionately affected women and contributed to the feminization of poverty and the deepening of gender inequalities within the family and in society as a whole, thereby negatively impacting on women's ability to participate in decision-making processes. This is because firstly, women are among the primary beneficiaries of pro-social spending. For example, cutbacks in public health and social service expenditures rely on shifting the burden of care to women. Gendered social norms mean women are expected to compensate for reduced state support by spending more time to care for sick and elderly family members. This, in turn, also reduces the amount of time available for remunerated work. Secondly, due to the feminization of care in both paid and unpaid work, women tend to be employed in the sectors where most job cuts have taken place.

II. WOMEN, PEACE AND SECURITY

4. As per UPR II, Recommendation 97.52, Ukraine committed to increase the number of women in decision-making positions and to address the persisting wage gap between men and women. Austerity measures implemented in Ukraine run counter to this commitment.

5. The Ukraine launched its first National Action Plan (NAP) for Security Council resolution 1325 (UNSCR1325) on 24 February 2016. The NAP aims at contributing towards the elimination of cultural barriers that hinder the full participation of women in all aspects of negotiations and resolution of conflicts and/or matters of peace and security at the national level.¹

6. A key element of UNSCR 1325 and subsequent resolutions on women, peace and security is participation of women and inclusion of gender perspectives in peace negotiations, humanitarian planning, peace-keeping operations, and post conflict peace-building and governance. Participation means participation in every stage, in every part and every process, whether it be at the state level, in the community, or within the multilateral system. Women's participation in peace-building and prevention of conflicts is indeed among the pillar of actions of the Ukraine's NAP.²

¹ <http://peacewomen.org/action-plan/national-action-plan-ukraine> (last accessed on 28 March 2017).

² <http://peacewomen.org/action-plan/national-action-plan-ukraine> (last accessed on 28 March 2017).

7. The Ukraine NAP monitoring framework commits to developing analysis of practices and conditions of women's participation including on internal and external challenges (Task 1.3), as well as needs assessments for populations including in employment (Task 2.1) and social services (Task 2.2). It also commits to increasing women's participation in peace-building and peace-keeping, including in peace operations, peacekeeping, military-civil administrations in Donetsk and Lugansk oblast state, monitoring missions and international security organizations, and security and defense sectors (Task 4.1, 4.2, 4.3, 4.4, and 4.5). Fulfilling these commitments as well as realizing holistic action on the Women, Peace and Security Agenda requires overturning structural as well as direct obstacles and ensuring women's meaningful participation in institutions for the prevention, management, and resolution of conflict from formal (track one) to community (track two or three) levels, including inclusive participation of women led civil society.

ENJOYMENT OF ECONOMIC AND SOCIAL RIGHTS: A NECESSARY PRECONDITION TO MEANINGFUL PARTICIPATION

8. One of the biggest inhibitors to women's participation is the lack of enjoyment of social and economic rights. If women do not have the economic resources to free them up to be able to be active participants in Ukraine's political life and peace and mediation efforts, to speak about women's meaningful participation is meaningless.

9. Therefore, addressing the disproportionate impact of austerity measures on women is crucial because the effective, meaningful and inclusive participation of women and women's organizations in preparations for a peace process, peace negotiations, post-conflict reconstruction and peace-building is intimately linked and interdependent with the protection and promotion of women's economic and social rights. Women will not be able to participate in peace negotiations if they struggle to meet the most basic needs for themselves and their families.

10. In order to address that impact effectively and develop gender-sensitive policies, gender-disaggregated data are essential. The statistical assessment of poverty by gender is limited in Ukraine, as the national methodology is targeted at households as units of measuring. Thus, the data on the well-being of individual household members cannot be disaggregated in terms of poverty. Based on the 2013 Household Survey, there are more female-headed households in Ukraine in most age groups, except for the population aged 25-39. A share of female-headed households is particularly large among population aged 65 and over (65 % of total households), reflecting the features of the sex-age composition of a population, with significant prevailing of women among elderly. There are also more women in the single-person households, constituting for more than 80% of such households among population aged 56 and over.³

11. The poverty risks are increasing among rural population and residents of small settlements with poorly developed labour markets and lower incomes of employment. In terms of non-monetary criteria of poverty, rural residents also face multiple deprivations from access to basic services, infrastructure and education. The impact of IMF conditionalities is discussed in more detail later in this submission.

RECOMMENDATIONS:

- gather gender-disaggregated data on enjoyment of women's economic and social rights, with a specific collection of disaggregated data on residents in rural areas and IDPs, including with regard to access to employment, health and social services, and education;

³ <https://openknowledge.worldbank.org/bitstream/handle/10986/24976/Country0gender0ent0for0Ukraine02016.pdf> (last accessed on 28 March 2017).

- update statistical data on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single-parent households, rural/urban population;
- develop a gender indicator system to improve the collection of data in order to assess the impact and effectiveness of policies and programmes aimed at mainstreaming gender equality and enhancing women's enjoyment of their human rights; and
- collaborate with women's organisations that can assist in the collection of accurate data.

STIGMATISATION OF ORGANISATIONS WORKING FOR DIALOGUE AND COOPERATION

12. The stigmatisation of organisations working for dialogue and cooperation is another obstacle to women's participation in peace efforts. Freedom of expression, association and peaceful assembly are necessary to allow civil society to play its part in constructive societal change. Negotiated agreements between conflict parties at state level can only be effectively implemented, and deliver sustainable peace in the longer term, on a basis of inter-community communication and cooperation.

13. Civil society actors engaging in dialogue across ethnic or national divides provide a valuable counter to violence and also sources of ideas and support for peace processes. As women play a much more prominent part in civil society initiatives for dialogue and cooperation than in official Track I peace negotiations, such activities also provide a valuable channel for feeding in the views of women from the community level as well as drawing on their skills and engagement to contribute to resolution of the conflict. They also provide a means to discuss the practical steps that will be needed to re-establish a peaceful and prosperous society once hostilities cease.

14. In Ukraine, local groups engaging in dialogue and cooperation, particularly cross-border, are often subject to smear campaigns, being labeled as 'enemies of the state', 'traitors', 'pro-Russian' or 'pro-separatist'. Calls for civil society dialogue initiatives to be brought under the coordination and control of the government as, for example, in the video⁴ of an event with Hanna Hopko (parliament member) and representatives of Ukrainian NGOs, completely undermine the concept of civil society action. Dialogues bringing together representatives of civil society from Ukraine, Russia and the non-government controlled territories are portrayed as inherently dangerous and those engaging in such activities as either unwittingly, or wittingly, becoming agents of "the enemy".⁵

15. A number of these civil society dialogue initiatives have taken place under the aegis of the OSCE and have also included dialogue with the Office of Reforms in Ukraine and with other government authorities. Even here such activities are viewed with suspicion, and stigmatization often follows, hindering the work and making it more difficult to contribute to state efforts for constructive resolution of conflicts.

16. There are attempts to create a public opinion that dialogue processes initiated by civil society activists are outside the legal framework of Ukraine, that such dialogues contradict government policies and undermine state security. The dialogue between groups of citizens who live on opposite sides of the contact line does not contradict existing legislation; in fact, it is recommended by the recent Regulation of the Cabinet of Ministers⁶.

⁴ <https://www.youtube.com/watch?v=C6CqeR0kpUc> (last accessed on 28 March 2017).

⁵ See for example the statement by Hanna Hopko that "we should not follow the scenarios of pseudo peace that will lead to more victims. And we see how Ukrainian NGOs are used in order that they will be part of the scenario written in Kremlin" (37'42 of the video: <https://www.youtube.com/watch?v=C6CqeR0kpUc> (last accessed on 28 March 2017).

⁶ Regulation of the Cabinet of Ministers, No 8-r (11 January 2017) on "Approving of the plan of measures for the implementation of some principles of public internal policy in the certain areas of Donetsk Lugansk regions where government authorities temporarily cannot exercise their powers" <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249657353> (last accessed on 28 March 2017).

17. Moreover, such dialogue is considered to be a part of the state policy for certain areas of Donetsk and Lugansk regions where public authorities temporarily cannot exercise their authority.

18. In particular, paragraph 13 of the action plan part of the above-mentioned regulation includes the following activities: “facilitation” of people’s diplomacy “in order to maintain a constant dialogue directly between different groups living on both sides of the contact line.” This activity is aimed at “attracting international organizations with experience in mediation for the peaceful settlement of conflicts, initiating dialogue between people living on controlled and on non-government controlled territory.” Furthermore, the Regulation recommends “to attract young people and women in the civil movement through programs that promote their role as peace-builders, supporting civil society organizations in promoting a structured dialogue on the promotion of tolerance.”

19. Thus, by conducting dialogue processes, civil society is directly following government regulations. Government authorities even draw upon these experiences and discussions for their reports on the implementation of the Regulation.

20. Cases have been reported in which some civil society actors – (members of CSOs that provided humanitarian assistance to people residing in non-government controlled territories (NGGA), and even those who have been implementing humanitarian projects in partnership with the UN agencies and international donor organizations) – who travelled to NGCA were put, without any reasons being given, in the lists of “collaborators and supporters of DNR/LNR” by the Ministry of Internal Affairs and the State Security Service of Ukraine. This led to situations where activists were stopped without any reason at the checkpoints and had to spend several hours at the National Police/State Security Service.

RECOMMENDATIONS:

- support the neutrality of humanitarian actors within the non-government controlled areas and facilitate their work;
- take steps to promote and protect civil society space and ensure a safe and enabling environment for civil society activities in order to fulfill its obligations under international human rights law;
- this should include taking concrete steps against the stigmatization of civil society actors engaged in dialogue and cooperation activities and promoting awareness-raising programs for the public and officials about the importance and legitimacy of such activities.

III. IMPACTS OF INTERVENTIONS BY THE IMF

21. In early 2014, the Government of Ukraine requested support from the IMF to restore macroeconomic stability in Ukraine. In early 2015, a revised economic reform programme totaling 17.5 billion USD was agreed between the IMF and the Government, requiring the restructuring of the state debt on the terms and conditions proposed by the IMF. The IMF remains the only active lender of “last resort” in Ukraine because the country does not have access to international debt markets.

22. IMF loans play now a very important role in maintaining the required amount of reserves of the National Bank of Ukraine and, more generally, in ensuring the relative stability of the financial system. Each new tranche of funding from the IMF, however, leads to additional requirements of national budget savings, including the elimination of subsidies and social guarantees.

23. The IMF's requirements for Ukraine are based on a standard set of measures. This is based on prioritizing financial stability and reducing inflation, which is having a negative impact on social stability, sustainable economic growth and the population's living conditions. Austerity measures implemented as part of IMF's requirements include public sector cuts, welfare cuts, tax increases for individuals and the *de facto* elimination of fuel subsidies. For instance, as it is stated in the Memorandum with IMF, Ukraine has "optimized the school network through closing smaller schools"⁷ and has "lowered the limit on the number of hospital beds per ten thousand residents to 60 from 80", also "[downsized] [...] hospital staff"⁸.

24. As per UPR II Recommendation 97.27 and 97.57, Ukraine committed to adopt a comprehensive anti-discrimination legislation that would also include indirect discrimination. The cuts in employment in the state sector, reductions in health and social services, family and child benefits highlighted in this report constitute indirect discrimination, since these austerity measures often impact women disproportionately.

RECOMMENDATIONS:

- assess and rectify the negative effects of IMF conditionalities on most vulnerable or poor sectors of population;
- recognize that austerity measures impact men and women differently, even if they might seem 'gender neutral', because they operate in highly gendered and unequal economic and social contexts; and assess and rectify such gendered impacts;
- use a gender-sensitive approach in all poverty alleviation programs, as recommended by the CEDAW Committee⁹, and in UPR II Recommendations 97.47 and 97.48, both accepted by Ukraine; and
- harmonize the anti-discrimination legislation, which should encompass direct and indirect discrimination in the public and private sphere, as well as multiple forms of discrimination.

IMPACT OF THE ELIMINATION OF SUBSIDIES FOR FUEL AND HEATING

25. Before accepting IMF conditionalities, the average utility bill for heating was comparatively low thanks to subsidies to energy suppliers and utility companies provided by the State. The conditionalities linked to the funding provided by the IMF have required the State to reduce fuel subsidies. Previously, subsidies were allocated to the main energy supplier Naftogaz, and prices for consumers were lower than world market prices. IMF requested the application of world market prices, which has led to higher prices for gas, heating, electricity, transportation and other goods and services related to fuel use. The corresponding increase in tariffs, whilst increasing profits for gas, heating and electricity distribution companies, has had an extremely negative impact on the living standards of much of the population. In fact, in a country in which prior to the conflict some 60-80% of households received subsidies to pay for utility bills, energy consumption has decreased by 30% compared to 2011. This reduction is not due to energy efficiency, but results directly from elimination of the fuel subsidies.

26. In 2017, citizens received new bills for heating, with the amount being five to six times higher. This massive increase is not matched by a corresponding increase in real wages and has affected not only vulnerable groups but also the so-called "middle class", who after paying utility bills have very little budget left for clothes, food and similar expenditures. Poorer urban residents have no money for energy efficiency measures and modernization and most of them are living in apartments in old buildings built in the 1960s-80s.

⁷ See page 25 in "Ukraine: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding", September 1, 2016 at <http://www.imf.org/External/NP/LOI/2016/UKR/090116.pdf> (last accessed on 28 March 2017).

⁸ See page 26 in "Ukraine: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding", September 1, 2016 at <http://www.imf.org/External/NP/LOI/2016/UKR/090116.pdf> (last accessed on 28 March 2017).

⁹ UN Doc CEDAW/C/UKR/CO/7, 5 February 2010, paragraph 37.

27. Tariffs should be increasing along with increasing incomes of the population. However, the rates are constantly increasing, while income and salaries are growing at a slower rate than inflation. According to the State Statistics Committee, the Consumer Price Index (CPI) from December 2010 to November 2016 was 209%, while the price index for housing, water, electricity, gas and other fuels was 450% and for transport 240%. During the same period, the average pension increased only by 64%. This means in actual terms that there was a sharp increase in prices for pensioners. Further, real wages in 2015 compared to 2013 decreased by at least 25%. Thus, from 2010 to 2015 the share of household expenditures on housing, water, electricity, gas and other fuels has increased by 27% with a corresponding decrease in the share of expenditures on clothing, shoes, recreation, culture, education and communications. The Ukrainian population as a whole has experienced severe impoverishment, leading to a reduction in all consumption that is not related to immediate survival.

28. "The cost of living" (subsistence minimum) is the main criterion for determining the salary rate and social benefits and subsidies and is set up on the basis of a set of food and non-foods items and services approved by the Resolution of the cabinet of Ministers No780 on 11 October 2016¹⁰. The Resolution was approved in 2016, yet at present the subsistence minimum does not satisfy even the most basic needs of living. The Law on state budget in 2017 defines the subsistence minimum by January 2017 at the amount of 1600 UAH, which is about 59 USD¹¹ per month. In comparison, in 2012, the subsistence minimum was at an equivalent of USD 127 per month. Consequently, this reduced amount of the cost of living in fact leads to a decrease in pensions, salaries, subsidies to the low-income categories and diminishing in real income of the population. The next planned increase in tariffs in 1 April 2017 was planned on 75% parity of imported fuel plus VAT, in addition to the cost of transportation. However, the government decided to raise tariffs to 100%, a rate even higher than that requested by the IMF.

IMPACT OF THE ELIMINATION OF FUEL SUBSIDIES IN RURAL AREAS

29. The situation remains extremely difficult for those living in rural areas, where one third of the total population is located. The mortality rate in rural areas is much higher than in urban areas. Rural women tend to age faster and suffer from worse health than urban women. They also tend to experience more than both urban women and rural men unemployment, domestic violence and harsh living conditions including because, as a general rule in Ukraine, women earn less than men. The impact of the cancellation of fuel shortages on residents in rural areas, who rely more on gas boilers, coal and firewood than on central heating found in urban areas, is highly disproportionate. The CEDAW Committee has recently expressed concern about the disadvantaged status of women in rural areas in Ukraine.¹²

RECOMMENDATIONS:

- introduce changes in the method of calculating the basic indicator in the system of social protection – the subsistence minimum – which should reflect a realistic situation;
- take into account the rates of increase of income and salary and inflation rate when increasing tariffs for heating, electricity, transportation and other goods and services related to fuel use.

¹⁰ Regulation of the Cabinet of Ministers of Ukraine "On Amendments to the Regulation of the Cabinet of Ministers No1149 from 08.12.2010" of 25.03.2014 <http://zakon4.rada.gov.ua/laws/show/96-2014-n> (last accessed on 28 March 2017).

¹¹ 1 USD = 27,19 UAH.

¹² Un Doc CEDAW/C/UKR/CO/8, 3 March 2017, paragraph 40(a).

CUTS IN THE PUBLIC SECTOR

30. Already before the conflict, the overall policy relating to provision of social services and employment in the state sector caused great concern. The financial effects of the armed conflict have exacerbated the situation. Although Ukrainian legislation does not contain discriminatory norms on equal access for men and women to social services, the *de facto* distribution of resources among men and women is unequal, primarily due to a much greater level of involvement of women in the household, and their role in taking care of children and of sick and elderly family members. Therefore, the lowering of social standards and narrowing of access to social services, arising from the armed conflict and macro-economic reforms, significantly and primarily reduces the quality of life and safety of women.

31. Cutting, capping or freezing wages or recruitment in the public sector is one of the most clear-cut ways in which macro-economic policy can undermine gender equality, as such policies disproportionately affect women. The policy of cutting jobs in the health, education and social services sectors primarily affects women who pre-conflict constituted up to 80% of the total number of employees. While the wages in these sectors are the lowest, women employees have previously benefited from a stable income and guarantees of social protection of workers, including pensions, paid holiday, and maternity leave.

32. As well as reducing social spending, the Government has also reduced the taxation for big businesses, whilst simultaneously increasing the tax burden on end-users, employees, and medium and small businesses. The vast majority of people affected by these changes are women, including because owners of middle and small businesses tend to be women.

CUTS IN CIVIL SERVICE EMPLOYMENT

33. In accordance with IMF requirements, during 2014-2015, 165,000 civil service jobs were cut, with overall plans of a 20% reduction in the civil service workforce. This reduction has been undertaken through, inter alia, the reorganization of ten and closing of eight government agencies. There are plans for further downsizing of the public sector with the goal of lowering the overall spending on salary for civil servants to around 9% of GDP in the medium term. Women comprise more than 75% of the civil service, predominately in non-managerial positions.¹³ Accordingly, women have been disproportionately impacted – and will continue to be – by these cuts in the public sector workforce.

34. While recognizing that civil service employment and management structures require overhauling, the job cuts should have taken place in parallel with professional re-orientation programmes for affected employees so that they could secure work in other sectors of the economy.

RECOMMENDATIONS:

- provide professional re-orientation programmes for state employees affected by the cuts so that they can secure work in other sectors;
- gather gender disaggregated data on the impact of cuts in the civil service workforce;
- design specific interventions to leverage opportunities for women's economic empowerment and ensure that they are involved in the design of those strategies and programmes, focusing on women not only as victims or beneficiaries but also as active participants in the formulation and implementation of such policies;

¹³ <http://infolight.org.ua/content/derzhavna-sluzhba-v-ukrayini-u-2005-2012-rokah-osnovni-pokazniki-yakisnogo-ta-kilkisnogo-skladu> (last accessed on 28 March 2017).

- create an environment for women to become economically independent, including through raising the awareness of employers in the public and private sector about the prohibition of discrimination in employment against women, and promote the entry of women into the formal economy, including through the provision of vocational and technical training.

CUTS IN THE SOCIAL AND HEALTH SERVICES

35. As per UPR II Recommendation 97.46, Ukraine committed to take effective measures to increase budgetary allocation to the health sector. Policies undertaken as part of austerity measures run against implementation of this commitment. The CEDAW Committee has also recently reiterated the need to ensure appropriate budget allocations to health services.¹⁴

36. In 2014, 12,000 social workers lost their jobs; many of them were women.¹⁵ These cuts had extremely negative consequences for both the beneficiaries of social services and the women whose jobs were cut.

37. A year later, the State cut down 25,000 healthcare professionals, again disproportionately impacting women since the vast majority of workers in schools, hospitals and clinics are women.¹⁶

38. In the last three years, decentralization initially agreed by the government in April 2014, and as required by the IMF, has led to a significant transfer of responsibilities for the financing of education, science and healthcare to local budgets, most of which have very limited financial resources. This has led to a reduction in the number of hospital beds and hospital staff, and in many cases, local government authorities have had to close schools, hospitals and clinics due to the lack of resources. One of the most well-known examples was the closing of the hospital and several schools in the town of Romny, which caused a wave of protests and outrage across the country.

39. Cuts in public health and social service expenditures mean that women must spend more time taking care of sick or elderly family members; this reduces the amount of time available for remunerated work. As a result, women are usually forced to increase household income by working longer hours, usually in the lowest earning jobs, and to increase the hours of unpaid work to make up for shortfalls in public services.

40. In the areas close to the armed conflict, there are significant problems with access to primary medical services and medication. There are no clinics, laboratories, prenatal centers, or medical staff in the areas close to the armed conflict. Because of poor working conditions, low pay, and the reduction in numbers of medical professionals, there is a critical shortage of medical staff and medical services. In order to access medical services in district or regional urban centers in areas close to the armed conflict, those living in areas close to the conflict have to spend up to 100% or 200% of their monthly income on transport. In such a situation, many do not even try to access medical care. Further, because of the poor condition of roads, closure of roads, checkpoints and the exorbitant costs of transport, and because many consider the roads insecure, some women do not consider that it is safe to travel, even for emergency obstetric care. Specifically, according to the amendments of the Temporary Order issued by the Headquarters of the Anti-terrorist Operation, which establishes the legal conditions for crossing the contact line, public transportation via the contact line is prohibited. Thus, since June 2015, it has not been possible to cross the control points and “zero” check-

¹⁴ Un Doc CEDAW/C/UKR/CO/8, 3 March 2017, paragraph 39(a).

¹⁵ <http://zakon4.rada.gov.ua/laws/show/96-2014-n> (last accessed on 28 March 2017).

¹⁶ <http://www.fpsu.org.ua/nasha-borotba/novini-chlenskikh-organizatsij/6981-skorochennya-merezhi-ta-chiselnosti-pratsivnikiv-zakladiv-okhoroni-zdorov-ya-e-neprijnyatnim> (last accessed on 28 March 2017)

points¹⁷ by public transport.¹⁸ Currently, there are five operating traffic corridors via the contact line; four serve both pedestrians and vehicles in Donetsk region, and one serves only pedestrians in Luhansk region.

RECOMMENDATIONS:

- Improve access to high-quality healthcare and health-related services, and to that end; increase the budget allocation for the health sector, in addition to revising cuts in social services;
- Implement the High Commissioner's recommendation to review restrictions on freedom of movement in the areas near the contact line, and in particular the legality, necessity and proportionality of the restrictions on movement of civilians and goods and sex and age disaggregated data on people crossing the contact line.¹⁹

CUTS IN THE EDUCATION SECTOR

41. As per UPR II Recommendation 97.126, Ukraine committed to "ensure adequate funding for the public education system and improve availability, accessibility and quality of general education in rural areas". Austerity measures implemented by Ukraine have gone against the implementation of this recommendation.

42. Since 2013, there has been a sharp decline in state spending on education services. This has impacted both the beneficiaries of these services and the employees in this sector, who are finding it necessary to look for additional part-time jobs to supplement their income. The Government plans to reduce workers in the education sector to fulfill the IMF requirement of 'optimization' of the network of schools and educational institutions.

43. In 2016, 45 billion USD was allocated to the education system; in 2017, the Government is planning to reduce this funding to 41.9 billion USD – a reduction of approximately 7%. At the same time, the Government has undertaken to increase the salaries of teachers by 20-30% during 2017. Such an increase, together with the projected reduction in funding to the sector, can only be undertaken through the radical reduction of the number of teaching staff, increasing the working hours of teachers and thereby reducing the quality of school education.

44. Spending cuts in the educational sector has led to the closing of several educational facilities. In 2012, there were 20,090 educational institutions in Ukraine. The number has steadily decreased to 17,604 in the academic year 2014/2015 and 17,337 in the academic year 2015/2016. In particular, between 2014 and 2016, 38 schools were closed in urban areas and 231 in rural areas.²⁰

45. This trend is expected to continue; there are now 2,500 schools that are candidates for closure due to their small numbers of pupils (10-100 pupils).

Access to education in rural areas

¹⁷ "Zero" checkpoint – the last checkpoint before the contact line.

¹⁸ Note that there is a difference between control points and "zero" check points in terms of the procedure. The latter are the last ones the government controlled territories, very close to the conflict line.

¹⁹ OHCHR has recommended that the "Headquarters of the Anti-Terrorism Operations should reconsider the restrictions on freedom of movement imposed by the Temporary Order ensuring they are in line with international law, particularly the legality, necessity and proportionality of the restrictions on movement of civilians and goods". Also, to collect sex and age disaggregated data on people crossing the contact line, so that the State Border Guard Service can take better measures to shorten processing time, provide necessary facilities and establish effective complaint mechanism. UN report A/HRC/34/CRP.5, of 16 March 2017, paragraph 167 (c).

²⁰ Ministry of Education and Science of Ukraine, <http://mon.gov.ua/usi-novivni/novini/2016/01/13/zagalnoosvitni-navchalni-zakladi-statistika-za-dva-navchalni-roki/> (last accessed on 28 March 2017).

46. Currently several thousand villages in Ukraine do not have schools, which is a cause for concern because this leads to an increase of the number of illiterate children in the rural areas. On 28 December 2014 the Parliament of Ukraine adopted the Law №1577 “On amendments and termination of some legislative acts of Ukraine”, which cancelled the moratorium on the closure of secondary schools adopted in the summer of 2014. In most cases this affected rural schools, because they can now be closed with a decision of the local authorities without need for consent of the general meeting or a referendum of the territorial community, as it was the case before. Also, the creation of rural schools now depends on the number of pupils.

47. Based on the UN Millennium Declaration and UN Sustainable Development Goal number 4 Ukraine is to provide “Lifelong Learning for all”. The laws on “Professional development of employees” and on “Employment” include several basic provisions related to this issue, yet the system of adults’ learning is not well developed.

48. As a consequence, gender-specific career paths, characterized by more part-time work and career breaks for child care among women, result in higher risk for old-age poverty among women. Women in Ukraine encounter therefore higher risks of unemployment in the pre-retirement ages, as employer’s biased attitude to older workers is among the main forms of discrimination in employment in Ukraine.

RECOMMENDATIONS:

- increase the budget for the educational sector and improve the availability, accessibility and quality of general education, especially in rural areas;
- assess and redress the negative impact on the enjoyment of access to education of closing educational facilities;
- develop a gender-sensitive support mechanism for adults’ learning and establish an efficient system of Lifelong learning and professional re-orientation.

PENSION REFORMS

49. In response to IMF requirements, the Government has undertaken major reform of the pension system to address the pension fund’s deficit.²¹ These reforms include increasing the retirement age and eliminating special pensions for civil servants and other groups, including those working in hazardous conditions.

50. Specifically, the Government has significantly reduced the classification of professions eligible for enhanced retirement benefits due to the hazardous conditions in the industries in which they work. According to the State Statistics Service, the number of workers employed in hazardous industries was more than one million people in 2016. Following the adoption of Resolution of the Cabinet of Ministers of Ukraine №461 of 24 June 2006, 40% of these workers have lost the right to their retirement pension on preferential terms. The professions that remain eligible to receive pensions on preferential terms are sectors in which men tend to dominate, including miners, nuclear engineers, pilots, and medical specialists. The slashing of the preferential pension terms should be considered in light of the fact that working conditions in most sectors have significantly worsened.

RECOMMENDATIONS:

- undertake a human rights and gender impact assessment of the negative effects of the increase in the retirement age and the revisions of eligibility for enhanced retirement benefits, and implement alternative policies to rectify the regression in the enjoyment of economic and social rights.

²¹ In October 2016, the deficit stood at 150 billion UAH (more than 5 billion USD); Official National Bank of Ukraine rate 1 USD = 25,91 UAH (01 October 2016).

CUTS IN CHILD BENEFITS

51. The monthly payments of assistance for childcare until the age of three was *de facto* abolished in July 2014, as part of the IMF required reforms in the areas of social services. These payments, which ranged from 130 to 1032 UAH (from 11 USD to 88 USD)²² on a monthly basis for childcare, were one of the most effective types of social assistance to families with children. In the case of low-income families and single parents, this benefit helped low-income families and single parents to survive during their time away from the labour market. In addition to this monthly payment for childcare, each family would receive a one-off payment of 30,000 UAH (2500 USD) for the birth of the first child, 62,000 UAH (5300 USD) for the birth of the second child, and 124,000 UAH (10,500 USD) for the third and subsequent child. Since July 2014, the monthly payment for childcare up to the age of three has been replaced by a payment of 41280 UAH (about 1500 USD)²³ for each child; this amount is fixed and not adjusted on whether it is the first, second or third child. The payment of this benefit is given in installments: 10,320 UAH are initially paid immediately after birth, and the rest on a monthly basis (860 UAH) over a period of three years.

52. According to State statistics for 2013, only 1% of men took the opportunity to take parental leave to care for children: this shows that the responsibility for childcare falls almost entirely on women. These changes primarily affect the economic independence of women, especially single mothers, and tend to particularly aggravate economic violence against women in intimate relationships.

RECOMMENDATIONS:

- reinstate the monthly childcare benefits, in addition to increasing one-off payments made immediately after birth, paying particular attention to low-income families and single parent households;
- adjust childcare benefits to the number of children and income of the family;
- collect, assess and address gender and income disaggregated data on the impact of *de facto* termination of childcare assistance benefits until the age of three.

²² Official National Bank of Ukraine rate 1 USD = 11,79 UAH (01 July 2014).

²³ Official National Bank of Ukraine rate 1 USD = 27,43 UAH (23 January 2017).

SUBMISSION

FOR THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

FROM THE COALITION “JUSTICE FOR PEACE IN DONBAS”

TO THE UNIVERSAL PERIODIC REVIEW (UPR) THIRD CYCLE

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INTRODUCTION

The Coalition “Justice for Peace in Donbas” (hereinafter – the Coalition) is an informal union of 17 human rights organizations and initiatives established in 2014. Members of the Coalition have combined efforts to conduct coordinated documenting of human rights violations, committed during the armed confrontation in eastern Ukraine.

The submission was prepared on behalf of the Coalition by the following member organizations: Eastern-Ukrainian Center for Civic Initiatives, Charitable Foundation “Vostok SOS”, Luhansk Human Rights Center “Alternatyva”, Public Organization “Mirny bereg”.

If the UPR was held in 2012, it did not cover human rights challenges related to the conflict. This submission highlights the human rights violations that resulted from the armed conflict in Donbas. Organizations that prepared this submission have conducted separate specialized studies in relation to these violations. The topics presented in the submission outline the impact of the conflict on the human rights situation in Luhansk and Donetsk regions and illustrate the systemic issues, for which the conflict served as a catalyst. The submission takes into account specific characteristics of the region affected by the conflict, in particular concerning the mining towns and villages.

1. PLACES OF ILLEGAL DETENTION ESTABLISHED AS A RESULT OF THE ARMED CONFLICT

1.1. The practice of establishing places of illegal detention by the “LPR/DPR” armed groups became widespread due to the power vacuum in Luhansk and Donetsk regions during the initial stage of the conflict. Based on the collected information, the EUCCI along with other members of the Coalition conducted an analysis of operations of the network of these places¹ over a period from April 2014 until January 2017.

1.2. By January 2017, based on the address data and detailed description provided by the victims, it was possible to identify 147 places of illegal detention established by the separatists (84 and 63 facilities in Donetsk and Luhansk regions respectively), as well as six facilities (three in the Luhansk region, two in the Dnipropetrovsk region and one in the Kharkiv region) established by Ukrainian voluntary groups. The study showed different places of detention (basements, pits, cages, office premises etc.) with varying numbers of prisoners (from several people to several hundred).

1.3. Persons released from these places of detention often pointed at the lack of access to water, absence of sleeping accommodations, inadequate sanitary conditions, as well as the lack of access to fresh air.

1.4. Detention in these facilities was often accompanied by physical, sexual and psychological violence. Prisoners of the illegal armed groups were subjected to torture and other cruel, inhuman or degrading treatment or punishment, forced labor and sexual violence. They also witnessed extrajudicial killings.

1.5. By now, the number of these facilities in the “LPR/DPR” has decreased due to a smaller number of competing armed groups and a certain “centralization” of power. According to open sources, some Ukrainian

¹ Bielousov I.L., Korynevych A.O., Martynenko O.A., Matviychuk O.V., Pavlichenko O.M., Romensky Y.V., Shvets S.P. (2015). *Surviving Hell: Testimonies of Victims on Places of Illegal Detention in Donbas*. Kyiv: “TsP Komprint” Ltd. Retrieved from http://www.hfhr.pl/wp-content/uploads/2016/01/SURVIVING-HELL_eng_web.pdf; Shcherbachenko, V., Ivanova, G., Pavlichenko, O. (2016). *PLACES OF ILLEGAL DETENTION IN EASTERN UKRAINE DURING THE MILITARY CONFLICT (Rep.)*. Retrieved from https://jfp.org.ua/system/reports/files/82/en/Justice_for_peace_in_Donbas_EUCCI_Illegal_detention.pdf.

military prisoners are held at the Makiivka correctional prison in the “DPR”² and the Luhansk remand prison in the “LPR.”³

1.6. Detention facilities in the “LPR/DPR” are inaccessible for monitoring, in particular, for the UN and OSCE missions. Therefore, there are no grounds to state that they are no longer operating or conditions therein have improved. Even the “law enforcement bodies” of the self-proclaimed republics confirm the existence of illegal detention facilities. For instance, according to a statement of the “LPR General Prosecutor’s Office” of 24 September 2016, a group of separatist leaders was detained in one of the “LPR” administrative buildings on treason charges. One of the “accused”, a former head of the “Council of Ministers of the LPR” Hennadiy Tsytkalov, hung himself in the same building “having realized” the gravity of his crime.⁴

1.7. According to official sources, over 3,000 persons have been released. Between 110 people (official data) and several hundred people (information from volunteer organizations) remain in the illegal detention facilities of the “LPR/DPR.”⁵

1.8. As of March 2017, the Coalition members do not have documented evidence about illegal detention facilities established by Ukrainian armed groups that are still functioning.⁶

1.9. Despite the gravity of the problems faced by former prisoners of illegal detention facilities, there is no state program of medical and psychological support for victims of violence in places of detention. For instance, based on interviews of Coalition members with the people who had been in illegal detention facilities, only 28 percent of them sought medical assistance and only in case of urgent need.

RECOMMENDATIONS:

1.10. To ratify the European Convention on the Compensation of Victims of Violent Crimes.

1.11. To establish an interagency working group involving state authorities, law enforcement bodies, and representatives of international organizations, to oversee compliance with the international humanitarian law and international human rights law on the territory which is temporarily outside of Ukrainian control, as well as the area of the anti-terrorist operation (hereinafter – the ATO).

1.12. To ensure free examination and medical assistance for persons who had been detained in illegal detention facilities in accordance with international standards for documenting torture and other forms of cruel, inhuman or degrading treatment or punishment.

1.13. To ensure on the state level the functioning of a psychological support service for persons released from illegal detention facilities and their families, including provision of adequate funding.

² Herashchenko: boeviki uderzhivayut zahvachennyh ukrainskih voinov v ispravitelnoi kolonii v Makeevka [Herashchenko: the militants are keeping the detained Ukrainian soldiers in Makiivka correctional prison]. (2017, February 13) Donbass.ua. Retrieved from <http://donbass.ua/news/ukraine/2017/02/13/gerashchenko-boeviki-uderzhivayut-zahvachennyh-ukrainskih-voinov-v-ispravitelnoi-kolonii-v-makeevke-video.html>.

³ GTRK LNR [GTRK LNR]. Rodstvenniki uderzhivaemyh v LNR ukrainskih voennosluzhashchih pribyli v Lugansk [Relatives of Ukrainian soldiers imprisoned in the LPR arrived in Luhansk]. (2017, March 12) [Video file]. Retrieved from <https://www.youtube.com/watch?v=RHQXWEtG4R8>.

⁴ GTRK LNR [GTRK LNR]. Zaderzhannyi po delu o popytke gosperevorota Gennadii Tsytkalov sovershil samoubiistvo [Gennadii Tsytkalov, arrested on charges of coup d’etat committed suicide] (2016, September 24) [Video file] Retrieved from https://www.youtube.com/watch?v=_b10aAjdBws.

⁵ Ukrainskie plennye napisali rodnym pisma. Est li nadezhda na obmen? [Ukrainian soldiers wrote letter to their families. Is here hope for exchange?] (2016, December 8). Hromadske radio. Retrieved from <https://hromadskeradio.org/ru/programs/kyiv-donbas/ukrainskie-plennye-napisali-rodnym-pisma-est-li-nadezhda-na-obmen>.

⁶ The cases of illegal detention by the Ukrainian armed groups were documented by the members of the Coalition in the beginning of the armed conflict. See. PLACES OF ILLEGAL DETENTION IN EASTERN UKRAINE DURING THE MILITARY CONFLICT (Rep.). Retrieved from https://jfp.org.ua/system/reports/files/82/en/Justice_for_peace_in_Donbas_EUCCI_Illegal_detention.pdf.

2. SEXUAL VIOLENCE RELATED TO THE CONFLICT IN EASTERN UKRAINE

2.1. The level of conflict-related gender-based and sexual violence has increased due to the atmosphere of impunity in the “LPR/DPR”, the absence of the rule of law and access to justice, as well as popularization of gender roles based on traditional perception of the woman’s role and orthodox interpretation of Christianity by those in power in the areas which are temporarily outside of Ukraine’s control. In the government-controlled areas, violence has taken new forms because of the ATO.

2.2. By January 2017, the EUCCI along with other Coalition members has conducted 280 interviews with victims of conflict-related human rights violations, as well as experts who have information about human rights violations in the conflict area based on their professional activities.

2.3. Various forms of sexual violence were mentioned in a third of all interviews. These include rape, forced prostitution, forced sterilization, mutilation of sex organs and anus, forced stripping, forced public appearance naked, assaults, humiliation, coercion, punishments of sexual nature and threats of sexual violence, as well as damage to a pregnant woman’s abdomen. There were also cases of gender-based violence against women: prolonged detention of men and women together, unlawful imprisonment of women by representatives of illegal armed groups.

2.4. According to the study, at least 206 persons (94 men and 112 women) suffered from sexual violence. At least 162 different cases of sexual violence in different forms were identified. Fifty-nine interviewees said that they suffered from and/or witnessed sexual violence during unlawful confinement. 94 women suffered from sexual violence in illegal detention facilities established by armed groups of the self-proclaimed republics.

2.5. Though sexual violence is a common practice in illegal detention facilities established in the “LPR/DPR” area, competent Ukrainian authorities do not record instances of sexual violence related to the armed conflict in Donbas adequately, including cases that may amount to war crimes; nor do they analyze available information or create an evidence base for the national and international justice system with the aim of preventing violations of international and domestic law. For instance, according to the National Police of Ukraine, based on interviews with former male and female prisoners, there were no reported cases of sexual violence committed by representatives of illegal armed groups in Luhansk region. There is no information about the abovementioned facts in the Unified State Registry of Pre-Trial Investigations.⁷

2.6. There is no definition of gender-based or sexual violence in Ukrainian legislation. The Criminal Code provisions on liability for crimes against sexual liberty and inviolability do not take into account the specificity of violence during the conflict; these provisions do not meet international standards. Investigation and prosecution for sexual violence committed by Ukrainian military is impeded by a series of problems and stereotypes. Investigation is ineffective and rarely leads to perpetrators being held responsible. For example, according to the ATO force military prosecutor’s office, there were two criminal proceedings against the military men under article 152 of the Criminal Code of Ukraine (rape) in 2015. They were closed due to the lack of the elements of a crime. In 2016, there were no criminal proceedings.⁸ We should note that statistics do not reflect the actual scope of the problem, since the gender aspect is often omitted in legal qualification.

⁷ Main Directorate of the National Police in Luhansk region. (2017, February 10) Letter No. u-13i/111/18/02-2017 in response to the information request from the Eastern-Ukrainian Center for Civic Initiatives.

⁸ Office of the Military Prosecution of ATO forces. (2017, February 17). Letter No. 10-86eux-17 in response to the information request from the Eastern-Ukrainian Center for Civic Initiatives.

RECOMMENDATIONS

2.7. To organize effective data collection and recording of sexual violence related to the conflict in accordance with international standards for documentation.

2.8. To conduct effective investigation of the acts of sexual violence related to the conflict committed by Ukrainian military.

2.9. To ensure development and implementation of a specialized program for law enforcement officials in Ukraine on combating and preventing sexual and gender-based violence related to the conflict, investigating and recording these cases.

3. INVOLVEMENT/RECRUITING OF CHILDREN TO ARMED GROUPS

3.1. The armed conflict in eastern Ukraine has significantly increased the risks of involvement of children in armed conflict. Based on open-source information and testimonies of civilians and military personnel, the EUCCI along with other Coalition members has recorded 95 cases of involvement of children in armed groups where we were able to identify names, age, forms of recruitment, children's duties and identity of recruiters. In particular, there were 85 cases of involvement of children in illegal armed groups recorded on the territory outside of Ukraine's control, and 10 cases of involvement in Ukrainian voluntary groups.

3.2. At least 32 documented cases can be qualified as war crimes pursuant to Article 8 of the Rome Statute: in 24 cases the children were under the age of 15 at the time of recruitment, in 8 cases the exact age of the children could not be determined, but there are reasons to suppose that the children were not older than 15 years.

3.3. Children took both direct and indirect part in the armed conflict. In particular, they performed armed duty at checkpoints as fighters, served as guards, mailpersons, or secretaries. They provided logistical support (for instance, kitchen work). What is more, individual instances of sexual exploitation of children were also recorded. According to collected testimonies, a 14-16 year old girl who was unlawfully detained in a basement by the "Batman" illegal armed group was sent to the frontline for fulfilling sexual needs of the group's fighters as a punishment for disciplinary violations.

3.4. At least 15 illegal armed groups were involved in the recruitment of children in the areas outside of Ukraine's control, including "Vostok" brigade, Cossack National Guard of the All-Great Don Army, Cossack Union "Oblast viiska Donskogo" [Don army region], "Sparta" battalion, "Prizrak" ["Ghost"] brigade, "Somali" battalion, "Pyatnashka" international brigade, "Bryanka" USSR battalion, "Narodne opolchennya Donbasu" "Donbas people's militia", "Batman" rapid response groups, and "Oplot" battalion.

3.5. Cases of involvement of persons under 18 years of age in Ukrainian voluntary battalions were recorded only during the initial stage of the conflict in 2014.

3.6. With the beginning of the armed conflict, youth militarized patriotic movements have become more active in the territory under government's control, as well as in the areas outside of Ukraine's control. One form of activity of such movements are military patriotic camps where children (on average, aged between 10-17) receive marching, firearms, as well as medical training, and learn combat tactics, unarmed combat etc.

3.7. We were able to identify involvement of approximately 200 children from the areas of Donetsk and Luhansk regions outside of Ukraine's control in military camps in Russia or in areas de facto controlled by Russia

(Abkhazia, Crimea). Some of these camps took place in the military bases of the Armed Forces of the Russian Federation (for instance, “Boevoe bratstvo”⁹ [Combat brotherhood] and “Hvardeets”¹⁰ [Guard officer] camps) or involved representatives of law enforcement structures of the Russian Federation (for instance, members of a specialized group of the internal military of the MoI of Russia were among instructors in “Borodino” camp). During the military conflict, there is a risk of using military and patriotic rhetoric to cover-up recruitment of boys and girls to illegal armed groups.

3.8. Contrary to the 2011 recommendation of the UN Committee for the Rights of the Child,¹¹ as of March 2017, national legislation of Ukraine has no provisions that clearly establish criminal liability for recruiting persons younger than 18 years old and their use in illegal armed groups. In addition, there are no regulations on activities of military and patriotic clubs and associations; there is no defined age limit for training on the use of small arms.

RECOMMENDATIONS

3.9. To introduce amendments to the Criminal Code of Ukraine criminalizing recruitment and involvement of children in military action and militarized groups.

3.10. To ensure systematic data collection in relation to children who have been recruited or used in combat.

3.11. To introduce legal regulations on a minimum age limit for a child to study military tactics and handling of small arms to prevent recruitment and involvement of children in illegal armed groups.

4. PERSONS WHO DISAPPEARED AS A RESULT OF THE ARMED CONFLICT

4.1. An increase in the number of disappeared persons is unavoidable during military conflicts. Every state has procedures for searching for disappeared persons during peaceful time. However, they are usually ineffective in extreme situations, such as a military conflict.

4.2 According to the ICRC, over one thousand people disappeared during the conflict in Ukraine.¹² Documentation of disappearances was ceased in 2014 during escalation and was renewed afterwards in separate efforts for government-controlled areas and on the territory controlled by illegal armed groups. The lack of coordination between different state authorities led to different estimates as to the number of disappeared persons in the conflict area – from 488 to 1376.¹³

4.3. The lack of accurate data on the number of disappeared persons is a consequence of the shortcomings of Ukrainian legislation. In particular, there is a need to adopt a specialized law to regulate coordination of search efforts between the state and non-state parties. On 22 November 2016, parliament members introduced a draft law “On the legal status of disappeared persons” (registered in Verkhovna Rada under No.

⁹ *Mezhdunarodnyi molodezhnyi patrioticheskii lager “Boevoe bratstvo” Kovrov 2016 [International youth patriotic camp “Combat brotherhood”, Kovrov-2016].* (n.d.) Retrieved from <http://bbratstvo.com/ob-organizatsii/proekty-organizatsii/patrioticheskie-proekty-organizatsii/mezhdunarodnyj-molodezhnyj-patrioticheskij-lager-boevoe-bratstvo-kovrov-2016/>.

¹⁰ Strizhova, O. (2016, June 26). *Voennye lageria “LNR”: “zombirovanie” detei ili tselenapravlennaia podgotovka armii? [“LPR” military camps: brainwashing of children or deliberate army training?].* Radio Svoboda. Retrieved from <http://www.radiosvoboda.org/a/27824036.html>.

¹¹ UN Committee on the Rights of the Child. (2011). *Consideration of reports submitted by States Parties under article 12 paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Ukraine.* Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPSC/UKR/CO/1&Lang=En.

¹² *V rezultati viiny na Donbasi znyklo bilshe tysiachi liudei – Chervonyi Khrest [Over a thousand people disappeared as a result of war in Donbas – the Red Cross]* (2016, January 28). 5 Kanal. Retrieved from <http://www.5.ua/ato-na-shodi/v-rezultati-viiny-na-donbasi-znyklo-bezvisty-bilshe-tysiachi-liudei-chervonyi-khrest-104731.html>.

¹³ Office of the United Nations High Commissioner for Human Rights. (2016) *Report on the human rights situation in Ukraine, 16 August to 15 November 2016.* (Rep.) Retrieved from http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf.

5435)¹⁴. However, this draft law does not have critical provisions on the prevention of enforced disappearances which pose a significant risk in areas affected by hostilities. In particular, we should note reports of national and international organizations about conflict-related enforced disappearances committed by the Security Service of Ukraine.¹⁵

4.4. In June 2015, Ukraine acceded to the International Convention for the Protection of All Persons from Enforced Disappearance.¹⁶ This means that Ukraine has an obligation to take into account the Convention and other international instruments ratified by Ukraine in relation to enforced disappearances. However, current criminal law in Ukraine does not reflect in full the legal nature of enforced disappearances.

4.5. The above-mentioned draft law does not provide for any assistance, including material, to relatives of the disappeared person if the victim was the breadwinner. Clearly, relatives of a disappeared person whose subsistence was provided by the victim (in particular, children) constitute a socially vulnerable group and require additional social protection.

4.6. The situation resulting from disappearances of military personnel of the Armed Forces of Ukraine also requires attention. According to NGO “Mirny Bereg”, by early March 2017, 425 military service people were considered missing. The laws of Ukraine and Statutes of the Armed Forces of Ukraine outline a procedure of accounting for disappeared military service people and a mechanism of material support for their families. However, these norms are ineffective in the present situation, since they are often disregarded.

4.7. Military base command often fail to conduct effective, if any, internal investigations and do not provide financial support to family members of disappeared persons. In addition, those responsible within the military do not face adequate liability for inadequate performance of duty because of the inactivity of competent authorities.

4.8. Several state authorities search for a disappeared military service person at the same time. They do not coordinate their actions, which makes the search ineffective, and the process often comes down to bureaucracy, while non-traditional approaches and means are necessary.

4.9. In relation to military service people and law enforcement officials, we should note that there is still no unified DNA database in Ukraine. Instead of conducting a DNA expertise for all military service people before engagement in the combat zone, material for expertise is collected from unidentified bodies and family members of disappeared persons to then compare the results. It makes the identification procedure significantly longer or even impossible, in case of a mismatch.

RECOMMENDATIONS

4.10. To adopt a comprehensive law regulating cooperation and coordination of state and non-state parties in their efforts to locate a disappeared person and ensure social protection for the relatives of disappeared persons.

4.11. To develop and provide funding for state programs on prevention of enforced disappearances and effective search for disappeared persons, as well as engage public organizations in implementation of these programs.

¹⁴ Verkhovna Rada of Ukraine. Draft Law on the legal status of disappeared persons. Fifth Session, VIII Assembly, No. 5435 (2016, November 22). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60560.

¹⁵ Zakharov, Ye. *Sluzhba bezpeky Ukrainy ta prava liudyny [State Security Service and human rights]*. (2017, February 07). Kharkiv Human Rights Protection Group. Retrieved from <http://khpg.org/index.php?id=1486465129>. See also: Office of the United Nations High Commissioner for Human Rights. (2017) Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017 (Rep.) Retrieved from http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf.

¹⁶ UPR of Ukraine (Second Cycle). Recommendations 97.1, 97.2.

4.12. To develop mechanisms for preventing enforced disappearances and introduce necessary amendments to the Criminal Code establishing criminal liability for enforced disappearance.

4.13. Ensure provision of material and psychological support to relatives of the disappeared person.

4.14. To develop and adopt a law mandating creation of a DNA database for all military service persons.

5. SHELLING OF MEDICAL FACILITIES IN THE ARMED CONFLICT

5.1. International humanitarian law restricts the use of allowed weapons and military action against civilian population and objects. In particular, it is prohibited to direct attacks and bomb non-defended towns, dwellings, buildings and hospitals provided they are not being used for military purposes. In May 2016-2017, Luhansk Human Rights Centre "Alternatyva" conducted a study of attacks against healthcare facilities, their use for military purposes and consequences of these actions. Information was gathered through requests to state authorities, open sources, interviews with witnesses, victims, and persons who have relevant information, as well as monitoring visits to health care establishments in the ATO zone in the area controlled by Ukrainian government.

5.2. The study included 64 interviews with witnesses, victims, and persons who have relevant information, monitoring visits to healthcare facilities, as well as 78 information requests. As a result, numerous cases were recorded of using indiscriminate weapons against inhabited areas and civilian health care objects on their territory, which can be qualified as indiscriminate attacks:

5.3. "We had patients in the outpatient unit, surgery, and intensive care. During the shelling, medics were carrying people to the bomb shelter – down the stairs, in the darkness, amid explosions. I was there until four in the morning, while the attack was on. When I left the basement in the morning, it was a horrible sight – there were almost no untouched windows, the roof was seriously damaged, and there was glass everywhere", says a staff member of Stanytsia-Luhanska central district hospital.

5.4. There are recorded cases of placing armed persons and military equipment on the territory of health care facilities and exerting psychological pressure on the staff: "The clinic was closed for the night. When we came to work in the morning, there were military people at the gate and did not let us into the clinic", says a former staff member of the clinic at Kondrashevskya-Nova station (Donetsk railways).

5.5. In the course of the study, the monitoring team documented 24 shellings of healthcare facilities, 12 cases of armed persons and military equipment being based on their territory, 7 deaths of medical professionals and seven injuries resulting from shellings.

5.6. According to the UN High Commissioner for Human Rights, at least 45 hospitals in Donetsk and Luhansk regions are destroyed or damaged and many other are partially functioning or not operational.¹⁷ During yet another escalation, in particular, in February 2017 in Avdiivka, there were reports of continued shellings of medical facilities and ongoing threat to the life and health of the staff and civilians.

¹⁷ Office of the United Nations High Commissioner for Human Rights. (2014) Report on the human rights situation in Ukraine, 15 November 2014. (Rep.) Retrieved from http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf.

RECOMMENDATIONS

5.7. For all parties to respect inviolability of all civilian healthcare facilities.

5.8. To ensure effective investigation of shelling of medical facilities and prosecution of those responsible.

5.9. To stop the practice of using indiscriminate weapons which cannot be directed towards a specific military target and conduct thorough recording of all shellings of civilian objects.

5.10. To tackle the problem of renovation systematically, e.g. by introducing policies or programs, to ensure proper respect for the right to an appropriate level of healthcare.

6. RESTRICTIONS OF THE FREEDOM OF MOVEMENT WITHIN DONETSK AND LUHANSK REGIONS RELATED TO THE CONFLICT

6.1. The current procedure for crossing the line of contact¹⁸ is more difficult than crossing the state border of Ukraine. In addition to having a document confirming identity and citizenship, one also needs to have a permit obtained in advance.¹⁹ The procedure for obtaining a permit is bureaucratic and flawed. It also serves as a source of corruption. Many problems with the permits take place at the renewal stage (since the permit is valid for one year). At the same time, all entry-exit points at the line of contact are equipped with border control systems that allow for checks of people intending to cross the line of contact.

6.2. It is worth noting that Ukraine does not have control over the 408 km section of the border with Russia in Donetsk and, partially, Luhansk regions. Therefore, anyone with a passport can cross from the territory outside of Ukraine's control to the controlled areas through Russia without obtaining a permit. Notably, there is no permit system for crossing the administrative border with the temporarily occupied territory of Crimea.

On 3 June 2015, Ukraine introduced a ban on regular passenger transit across the line of contact. This ban affected vulnerable groups the most. They do not have their own means of transportation and have to use services of private operators who speculate on these transits. With no other options for crossing the line of contact, members of vulnerable groups are forced to follow unfavorable conditions of the operators. At the same time, passengers and operators, as well as human rights defenders, insist on official bus and railway transportation across the line of contact.

6.3. The lack of transport corridors across the line of contact is a serious challenge concerning the freedom of movement. It is particularly pertinent in Luhansk region that has only one transport corridor in Stanytsia Luhanska. Crossing on foot is only available at the ruined bridge over Siverskyi Donetsk River. Since autumn 2015, there have been regular discussions on reopening the Zolote-Pervomaisk transport corridor, which has already been announced several times. The exit-entry point "Zolote" on the government-controlled territory is fully equipped and ready for the launch; however, the illegal armed groups unreasonably block the movement of people through Pervomaisk.

6.4. Travel to inhabited areas in the "grey zone"²⁰ is often accompanied by unfounded requests of the military to show a permit issued for crossing the line of contact or an IDP certificate. In addition, crossing in some checkpoints is only possible if the name is on the list approved by the city administration.

¹⁸ The line of contact is a conditional separation of the territory of Donetsk and Luhansk regions into the areas where state authorities do not exercise full or partial authority and the areas under the control of the government of Ukraine.

¹⁹ Herein – a permit to cross the line of contact issued by the State Security Service of Ukraine to enter or exit the area under temporary control of illegal armed groups.

²⁰ Grey zone is a territory adjacent to the line of contact in Luhansk and Donetsk regions.

RECOMMENDATIONS

6.5. To eradicate the system of permits for crossing the line of contact within Donetsk and Luhansk regions and introduce passport control procedures similar to state border crossing procedure.

6.6. To restore the regular passenger service (train and bus) through the line of contact.

6.7. To reopen the transport corridor through the line of contact at “Zolote-Pervomaisk” in the Luhansk region.

6.8. To remove restrictions on movement of residents of nearby inhabited areas in the grey zone.

7. THE RIGHT TO SOCIAL PROTECTION FOR RESIDENTS OF AREAS TEMPORARILY OUTSIDE OF THE CONTROL OF THE GOVERNMENT

7.1. The right to social protection is a fundamental right enshrined in the provisions of international law and domestic legislation of Ukraine. Due to the conflict in eastern Ukraine, starting from the fall of 2014, the social protection system in separate areas of Donetsk and Luhansk regions was virtually paralyzed, and funding and its distribution between recipients of social benefits or pensions were significantly restricted.

7.2. Currently, residents of territories controlled by illegal armed groups do not have access to the social security system in Ukraine. As a result, they do not receive any social support or pension from the state. These benefits can be restored only if residents go to the government-controlled territory and register as internally displaced persons. In practice, this system forces people to become IDPs to be able to exercise their right to social security provided by the Constitution. This approach is contrary to the UN Guiding Principles on Internal Displacement that prohibit coercion to relocate.

7.3. At the same time, if residents of areas under temporary control of illegal armed groups move and register as IDPs to, for instance, receive pension, then these persons and their residence on the territory under government’s control are subject to thorough inspection by the state. If the inspection establishes that these persons do not live under the address of their registration stated in the IDP certificate, or they had crossed the line of contact and did not return during a period established by the law (as a rule, during 60 days), all social payments are terminated.

7.4. It should be underlined that if a person entitled to a pension has limited mobility and cannot come to the territory under the control of the government of Ukraine, s/he has no chances to receive their pension. The de facto “authorities” in the temporarily occupied areas provide “pension” payments, however, these cannot be considered pensions since “LPR/DPR” are not states; they do not provide guarantees or have relevant obligations before Ukrainian citizens.

RECOMMENDATIONS

7.5. To develop, in cooperation with civil society organizations advocating for the rights of victims of the conflict in eastern Ukraine, a mechanism for payment of pensions to residents of areas under temporary control of illegal armed groups.

7.6. To involve representatives of international humanitarian organizations to ensure payment of pensions to retirees with limited mobility who reside in the areas temporarily outside of the control of Ukrainian government.

8. IMPACT OF THE WAR ON SOCIO-ECONOMIC RIGHTS OF RESIDENTS IN MINING COMMUNITIES IN THE CONFLICT AREA

8.1. For many years, a large number of mining towns and villages in Donbas have been in a difficult situation. Systemic violations of social and economic rights lead to the lack of public trust and the spread of negative social phenomena. Chronic dissatisfaction with poverty and a low social status in the depressed mining communities caused the residents of Donbas to hate the state, and this hatred was also fueled by Russian propaganda and successfully used to destabilize the situation in the region. The war only exacerbated the social status of miners and their families.

8.2. In 2015, approximately 121 thousand people were employed in the coal industry in Ukraine.²¹ Workers in this industry most often suffer from violations of their labor rights, namely the lack of state guarantees of safe working environment and inability to provide timely remuneration. After the war in eastern Ukraine started in 2014, 76 percent of the mines of all forms of ownership remained in the territory controlled by illegal armed groups, which led to further deterioration of the situation.²²

8.3. Due to a moratorium on inspections introduced by the Ukrainian government, the lack of individual safety gear, outdated equipment and personal negligence of the heads of coal enterprises, even minimal standards of safety are not upheld. In 2016, there were 481 injuries of miners at state-owned mines recorded, including 12 fatal incidents.²³ By 1st February 2017, state coal enterprises of Ukraine were provided with only 60%²⁴ of the necessary self-rescue devices.²⁵

8.4. There are constant salary arrears in the mining industry. According to trade union activists, the amount of salary arrears on 1 December 2016 reached USD 14.4 million, which is almost equal to the monthly amount of workers' wages in state coal enterprises (approximately USD 14.8 million).

8.5. While employment opportunities for women at the coal mines are limited,²⁶ the mines are still key employers in single-industry communities²⁷ in Donbas. This vicious circle forces women to stay at home and give up personal development and career growth, becoming dependent from their husbands-miners, who are primary breadwinners. It is important to note that economic dependency from men increases vulnerability of women to domestic violence.

8.6. The state's inability to ensure labor rights (salary arrears, lack of safety measures at state mines, lack of investments into development of mining towns and villages) stems from the scarcity of budget funds. At the same time, the state apparatus continues to initiate new practices that condone further plunder of public funds. One of these practices was the approved methodology for coal price calculation, known as the "Rotterdam plus" formula.²⁸ According to this formula, the price of coal extracted in Ukraine (including the occupied areas) was calculated as if it had been transported from Rotterdam. Following public pressure, the

²¹ According to information from the official website of the State Statistics Service of Ukraine (<http://www.ukrstat.gov.ua/>).

²² Ministry of Energy and Coal Industry of Ukraine. (2016, October 20). Letter No. 04/34-10974.

²³ Operational information about industrial injuries on the official website of the Ministry of Energy and Coal Industry of Ukraine. Retrieved from http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245171141&cat_id=202151.

²⁴ Ministry of Energy and Coal Industry of Ukraine. (2017, March 03). Letter No. 14.1-bux/40-17.

²⁵ Self-rescue device is individual gear for protection from toxic products of combustion.

²⁶ It is caused partially by the ban on underground work for women, as well as by established opinion about "female" and "male" occupations/professions and miners' subculture based exclusively on "masculinity" and glorification of miners.

²⁷ A small single-industry town is a small town where specialization of labor of the economically active population is defined predominantly by enterprises of one-two key sectors of economy that form municipal budget revenues, ensure the functioning of social infrastructure and other essential services for population.

²⁸ National Energy and Public Utilities Regulatory Commission. (2016, March 03). On Approving the Procedure for Determining an Optimal Market Price for Electricity. Resolution No. 289.

government dismissed the formula “Rotterdam plus”²⁹ in July 2016, however, the price formation process has remained administrative and non-transparent.³⁰ In addition, a large part of state funds is lost through “laundering” of extracted coal at state mines, mixing low-quality coal from pits into the “household”³¹ coal, as well as purchasing old equipment at the price of new one.

8.7. High level of corruption in the industry restricts the possibilities for people to take part in economic activities. It also prevents progressive exercise of social, economic and cultural rights, which directly depends on state resources.

8.8. Mines on the temporarily occupied territory currently do not have adequate occupational safety control. According to media sources, miners are forced to disguise work trauma as household injuries.³² Since many coal enterprises in temporarily occupied areas stopped operations, illegal coal mining became more active in the region. According to the former member of the Donetsk regional council, the number of illegal mining sites has increased threefold in the recent years.³³

8.9. During the military conflict in Donbas, some mines ended up directly in the zone of military activity, which also poses a serious threat to people’s safety. Shelling led to reported mine collapse incidents, emergency power outages and subsequent shutdown of ventilation systems and lack of possibility to evacuate miners working underground at the time. For instance, three mines (Dzerzhynskoho, Pivnichna, and Toretska) lost power during a shelling of Toretsk by illegal armed groups in August 2015, while 216 miners were underground.³⁴

8.10. State mines controlled by illegal armed groups no longer receive subsidies from the state budget and were, therefore, transferred to a self-funding mode. It was not possible to establish the amount of salary arrears in the territory outside of the government’s control. Delays in salary payment in different enterprises controlled by the “DPR” and “LPR” can range from two months (Voykov and Volodarskyi mines, Dovzhansk³⁵) to a year and a half (enterprises that are part of “Donbasantratsyt” and “Luhanskvuhillia” associations³⁶).

8.11. In the areas of Donetsk and Luhansk regions outside of Ukrainian government’s control, the miners have illusory possibilities to defend their rights due to severe restrictions on the freedom of expression and assembly, as well as elimination of independent trade union movement.

8.12. The safe-proclaimed republics organized a campaign to eliminate independent trade unions using two key methods – psychological pressure from coal enterprises exerted on trade union leaders and/or the

²⁹ *Minenergo pereglyanulo formulu formuvannya tsin na vuhillya [The Ministry of Energy has revised the formula for coal price calculations]. (2016, July 13). Ekonomichna Pravda. Retrieved from <http://www.epravda.com.ua/news/2016/07/13/599002/>.*

³⁰ *Minenergetiki otoshlo ot formuly tseonobrazovaniya na ugol “Rotterdam plus”, – Nasalik [The Ministry of Energy dismissed the coal price formula “Rotterdam Plus”, says Nasalik]. (2017, February 13). 112 Ukraina. Retrieved from <http://112.ua/ekonomika/minenergetiki-otoshlo-ot-formuly-cenobrazovaniya-na-ugol-roterdam-plyus-nasalik-371703.html>.*

³¹ *According to the law, current and former employees with a tenure of at least 10 years, living in houses with stove heating, have the right to receive free coal to heat their own houses.*

³² *Na shakhtah v “LNR” gorniakov zastavliaiut “maskirovat” proizvodstvennye travmy [Miners in the “LPR” are forced to “hide” work trauma]. (2016, January 23). Informator. Retrieved from <http://informator.media/archives/140873>.*

³³ *Vuhillia izzony ATO: ZMI rozpovily pro nelegalnu torhivliu palyvom, iaka zbahachuie vatazhkiv “DNR/LNR” [Coal from the ATO area: the media have reported on illegal fuel trade bringing wealth to the “DPR/LPR” leaders] (2016, April 14). UNIAN. Retrieved from <https://economics.unian.ua/energetics/1319015-vugillya-iz-zoni-ato-zmi-rozpovily-pro-nelegalnu-torgivlyu-palivom-yaka-zbahachuie-vatazhkiv-dnr-lnr.html>.*

³⁴ *Boyovyky nakryly vohnem Dzerzhynsk: Misto znestrumlene, zruinovani budynky, ye postrazhdali [The militants have shelled Dzerzhynsk: the city has no electricity, buildings are ruined, and there are victims]. (2015, August 08). Official website of the National Police Directorate in Donetsk region. Retrieved from <https://dn.npu.gov.ua/uk/publish/article/211817>.*

³⁵ *V “LNR” shakhteram mesiatyami ne platiat zarplatu i obeshchaiut uvolit [Miners in the “LPR” do not receive salary for months and receive promises they would be fired]. (2016, December 16). DonPress. Retrieved from <https://donpress.com/news/16-12-2016-v-lnr-shakhteram-mesyacami-ne-platyat-zarplatu-i-obeshchayut-uvolit>.*

³⁶ *Bahalyka, A., Kukin M. (2016, February 06). Shakhteram v “DNR” i “LNR” platiat tolko na “vitrynnyh” predpriatiiah, – Lysyanskyi [Miners in the “DPR” and “LPR” receive salary only at “for show” enterprises, says Lysyanskyi]. Hromadske radio. Retrieved from <https://hromadskeaudio.org/ru/programs/kyiv-donbas/shakhteram-v-dnr-i-lnr-platyat-tolko-na-vitrinnyh-predpriatiyah-lisyanskiy>.*

use of “law enforcement” structures of the self-proclaimed republics to eliminate independent trade unions. According to media reports, on 13 January 2016, miners of “Kholodna balka” (Makiyivka, Donetsk region) organized a protest against salary arrears. All of the 120 protest participants (according to other information – 132 persons) were dismissed; and the self-proclaimed authorities started “criminal cases” against organizers of the protest.³⁷

8.13. The self-proclaimed republics use the trade union as a tool for legitimizing their power. Trade unions and associations of trade unions had to refile their documents in accordance with the so-called legislation of the self-proclaimed republics to continue their operations on the territory of the so-called “LPR/DPR”. It created conditions for screening out the independent trade unions and establishing a vertical system of trade unions under complete control of the so-called “authorities”.

8.14. According to article 170 of the Criminal Code of Ukraine, interference with legal activities of trade unions, political parties and public organizations constitutes a criminal offence. In 2014-2016, there were five criminal cases in Donetsk region and eight cases in Luhansk region launched under this article. At the same time, none of these criminal cases was sent to court.³⁸

RECOMMENDATIONS

8.15. To develop and implement a program to reform the coal industry in Ukraine in order to tackle the socio-economic problems of mining towns and villages.

8.16. To ensure effective investigation and prosecution of participants of corruption schemes in the coal industry.

8.17. To ensure transparent and effective state regulations on coal price calculation.

8.18. To ensure investigation and recording of cases of interference with activities of trade union organizations in Donetsk and Luhansk regions under the control of illegal armed groups.

8.19. To eliminate salary arrears for employees of coal enterprises.

8.20. To increase control over observance of occupational safety norms at coal industry enterprises.

8.21. To ensure that coal industry enterprises are fully equipped with individual safety gear.

³⁷ *Esli trebuesh zarplatu, znachit ty sabotazhnik i predate: terroristy “DNR” nachali repressii protiv bastuiushchikh shahterov [If you demand a salary, you are saboteur and traitor: “DPR” terrorist began repressions against the protesting miners]. (2016, January 17). Dialog. Retrieved from http://www.dialog.ua/news/76544_1452982506.*

³⁸ *Office of the Prosecutor General. (2017, March 13). Letter No. 19/4-405eux-17.*

STAKEHOLDERS' REPORT

UKRAINE

CURRENT STATE OF THE RIGHTS AND FREEDOMS OF INTERNALLY DISPLACED PERSONS IN UKRAINE

The report, is prepared within the Universal Periodic Review of United Nations Twenty-eighth session of the UN Human Rights Council on Universal Periodic Review (THIRD CYCLE)

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THE REPORT WAS PREPARED WITH THE TECHNICAL SUPPORT
OF THE UKRAINIAN HELSINKI HUMAN RIGHTS UNION

The Coalition presenting this submission is an informal association created in February 2017 specifically for joint preparation of this report. It allows covering the issues of internally displaced persons' rights in Ukraine most fully and comprehensively. It consists of formalized structures, i.e. 13 non-governmental organizations.

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1. INTRODUCTION

Since the beginning of the occupation of Crimea and armed conflict in the Donetsk and Luhansk regions, Ukraine faced a new phenomenon of mass internal displacement of people. As of March 6, 2017, according to official data of the Ministry of Social Policy of Ukraine (MinSocPolicy), there are 1,622,835 internally displaced persons (IDPs) in Ukraine.

During three years of internal displacement the Government of Ukraine by slow, uncertain steps implements the policy to stabilize the situation in Ukraine, to ensure the constitutional rights and welfare for IDPs. The society notes a number of positive developments – adoption of the legal framework that enshrines the rights and freedoms of IDPs, creation of the Ministry of affairs on temporarily occupied territories and IDPs (MTOT)¹ as a focal point on above mentioned issues in the Government, etc. Most of the implemented or currently under implementation steps are not quite effective, and some even contradict the Constitution of Ukraine, international law and recommendations which Ukraine has received under the UPR and pledged to implement.

2. STATE OF THE RIGHTS AND FREEDOMS OF IDPS IN UKRAINE

The main problems for IDPs in Ukraine are: suspension or denial of benefits and complicated verification procedures of the place of residence of IDPs. Most frequently IDPs turn to NGOs for legal assistance with: re-issuing of documents (passport, TIN², education documents, documents of title to property), receiving of a IDP certificate, release from the place of work located in the uncontrolled area and further paperwork for employment, obtaining subsidies.

A serious challenge for IDPs are still the issues of employment and finding housing in the context of the discriminatory attitude of the local communities to migrants. The Government in its turn over three years has not taken effective measures to integrate IDPs at the new locations.

2.1. IDP REGISTRATION PROCESS

Only in the end of 2016 the Government took several significant measures to streamline IDP registration process in Ukraine. On August 2, 2016 a centralized database (UIDB)³ of IDPs was put into trial operation.

On September 22, 2016 the Government approved the Procedure for establishment, maintenance and access to data in UIDB of IDPs. The positive is that the Procedure provides partial access to UIDB for volunteers, NGOs and other organizations that can offer assistance to IDPs directly in the database.

But at the beginning of March 2017 UIDB is not available for the MTOT and NGOs that assist IDPs in Ukraine. The UIDB operates without major problems only from the beginning of 2017⁴. And, despite of this, the exact number of IDPs in Ukraine is still unknown, a figure provided by MinSocPolicy constantly decreases over the

¹ The Ministry is the main body in the system of central executive bodies, providing formation and implementation of the national policy on Affairs of the Autonomous Republic of Crimea and Sevastopol and some areas of the Donetsk and Lugansk regions where public authorities temporarily do not exercise their authority.

² Individual tax number

³ Unified information database

⁴ According to R2P monitoring of UIDB functioning in eastern regions in October the UIDB didn't work correct, the problems and mistakes with the database were fixed in November and December as well.

past 8 months, from 1,790,267 in July 2016 to 1,622,835 in March 2017 and it is impossible to find a real trend in the number of IDPs. However, there is no way to meet needs of IDPs without knowing their exact number.

Another issue of great concern is that the MinSocPolicy is responsible for the development and maintenance of the database, as well as its administration, and also controls access to the database. The MTOT, one of the tasks of which is to ensure the development and implementation of Government policy on IDPs is not authorized to register IDPs and does not influence this process. The MTOT under current legislation can only receive information on IDPs and report with data on IDPs. The MinSocPolicy remains the main authority in the field of IDP registration process as it is stipulated by adopted in 2014 Law⁵.

2.2. WELFARE

The current legislation of Ukraine stipulates that the appointment and prolongation of payment of all kinds of social benefits and compensations as well as pensions to IDPs is made at the place of registration of such persons⁶, as confirmed by a certificate of IDP registration.⁷ It means that displaced can receive social aid from the state only if they have IDP certificate.

In 2016 the access to social benefits for IDPs became more complicated. Based on the letter of the MinSocPolicy "On strengthening controls on registering internally displaced persons"⁸ and formed by the Security Service of Ukraine lists of IDPs who supposedly live in NGCA⁹, Departments of Social Protection (DoSPs) automatically stopped validity of IDP certificates, and with it the possibility of all kinds of social benefits for 460,000 people.

These actions took place without written decision with justification of legal grounds, without warning IDPs, contrary to the Constitution of Ukraine and the Law of Ukraine "On ensuring of rights and freedoms of IDPs". In the first half of 2016 access to social benefits for IDPs who had at that time to renew their certificates was complicated due to a legal conflict: Law on IDPs abolished the need for affixing stamps about the place of registration by the State migration service (SMS) at IDPs certificates, but the Government didn't make the corresponding amendments to its by-laws. As a result of the conflict¹⁰ IDPs could not prolong validity of the certificate, and were not able to receive pensions and social benefits.

The situation became more complicated with introduction in spring of the requirement for all IDPs to receive social benefits and pensions in state bank "Oshchadbank" only¹¹, which led to queues, irregular payments. People are still deprived of freedom of choice how to receive pensions and social benefits.

June 8, the Government approved the Procedures for appointment of social benefits for IDPs and for control over social payments to IDPs according to place of their actual residence¹².

These changes significantly worsened the position of IDPs and introduced additional discriminatory mechanisms for re-appointment of social benefits and their control by the state, limited freedom of movement and

⁵ The Law of Ukraine "On the rights and freedoms of IDPs" access address: <http://zakon3.rada.gov.ua/laws/show/1706-18>

⁶ The CMU Resolution No. 637 of November 5, 2014 "On social benefits for internally displaced persons"

⁷ According to the procedure for processing and issuing of the certificate of registration of internally displaced persons, approved by the Cabinet of Ministers of Ukraine Resolution of October 1, 2014 No. 509

⁸ Letter No 672/0/10-16/081 of February 16, 2016

⁹ Non-government controlled area or the territory beyond the control of the Government of Ukraine

¹⁰ As a result DoSPs following by-laws sent IDPs for affixing a stamp to SMS and the SMS, acting in accordance with the amended Law, did not affix such stamps.

¹¹ State Savings Bank of Ukraine

¹² The CMU Resolution "Some issues of social benefits for internally displaced persons" No. 365 of 07.08.2016

right to privacy. Moreover, these innovations are critical in terms of the widespread suspension of payments of all kinds of social benefits and pensions to thousands of IDPs for nearly five months.

Within the UPR Ukraine supported recommendations No. 97.24 to ensure full compliance of the law with international obligations of Ukraine and No 97.59 to continue efforts to combat discrimination. However, the Government, trying to establish control over social benefits for IDPs, ignores them.

2.3. PROTECTION OF IDPS WITH DISABILITIES

Number of IDPs with disabilities is 60,907 people, which is about 4% of IDPs¹³.

Housing. Neither plans for evacuation no resettlement programs took into account the needs of persons with disabilities. They mostly were offered temporary housing in often architecturally inaccessible resort centers, boarding institutions. Their temporary resettlement was not accompanied by a proper level of compensation, so IDPs with disabilities were under threat of eviction.¹⁴ Problems of finding affordable architecturally accessible housing led to the return to NGCA of a significant number of IDPs with disabilities.

Medical care. Topical remain obstacles for provision of rehabilitation facilities, medical supplies, including special food, which is compensated largely by local budgets and ignores IDPs with disabilities. People with disabilities who depend on medicines or procedures, including hemophiliacs are in particularly difficult situation¹⁵.

Employment. Among common to all people with disabilities problems are: lack of help from relatives, unaffordable housing, housing remote from infrastructure, lack of accessible transport. Acquired possibilities of adaptation at own work place and actually the possibility to work in the specialty were lost at a new place. Their new opportunities have a low chance even compared to other categories of IDPs.

Social benefits. Specific obstacles in obtaining guaranteed benefits occur for people with disabilities living in the "line of contact": the need to constantly prove staying at a specific address (which is necessary for all IDPs who receive social benefits/pensions) become more complicated due to inaccessibility; the need to overcome checkpoints, wait in queues, etc.

Partial compensation for housing and utilities is not differentiated by the depth of impairments¹⁶ and many people do not get this assistance at all.

Additional problems arise during checks of documents: IDPs are called into doubt even for people over 30 years staying in a wheelchair and having disabilities from childhood; MSEC¹⁷ issues a new certificate with status "general disease" instead of "disabled from childhood person"¹⁸; MSEC requires to provide from NGCA references and extracts starting from childhood, which is impossible.

Crossing the "line of contact". This way lies through the broken bridges and roads, which for the blind or for a person in a wheelchair, for the physically or mentally weak person is extremely difficult and dangerous. The

¹³ According to Ministry of Social Policy of Ukraine

¹⁴ Media data confirms a significant debt of the governmental bodies to resort centers in Odessa for the settlement of displaced persons with disabilities. As a result, those people in September – November 2016 had to leave institutions <http://korrespondent.net/ukraine/3756202-pereselentsy-ynvalydy-dolznhny-uekhat-yz-sanatoryia-v-odesse-oha>

¹⁵ "The rights of persons with disabilities in situations of armed conflict in the East of Ukraine." Analytical Report of the Ukrainian Helsinki Human Rights Union/Larisa Baida, Pavlo Zhdan, Bogdan Moisa, Evgeniya Pavlova, Miroslav Statkevich / under the general editorship of Arkadiy Bushchenko. / Ukrainian Helsinki Human Rights Union. – Kyiv, Rumes, 2016. – 126 p.

¹⁶ This has a direct impact on the nature of the costs associated with health care, rehabilitation, assistance.

¹⁷ Medical-social expert commissions, implementing medical and social examination of persons applying for disability determination

¹⁸ MSEC do not communicate with the person himself

issue of passage without crossing checkpoints for persons with disabilities and other law mobility groups was partially resolved, but the points of heating, toilets arranged at checkpoints are still architecturally inaccessible.

Within the UPR Ukraine received recommendation No. 97.133 to ensure the implementation of laws and other measures to protect the rights of people with disabilities, but the problems of displaced people are not resolved.

2.4. PROTECTION OF HOUSING, LAND AND PROPERTY RIGHTS

A major challenge for IDPs continues to be the issue of housing.

International human rights law stipulates that no one shall be arbitrarily deprived of his property (possessions)¹⁹. The relevant rules are also enshrined at art. 41, 47 and 48 of the Constitution of Ukraine.

But Ukraine still demonstrates the lack of comprehensive state programs of concessional lending, construction, renovation or acquisition of new housing for conflict-affected population, any mechanisms of restitution or/and compensation for lost property. Comprehensive State program on support, social adaptation and reintegration of IDPs²⁰, which envisages a series of measures aimed at regulation of housing issues for IDPs, was not provided any state funding in 2016 and in 2017. Actual assistance to IDPs in granting land-plots for housing in accordance with the law is not provided.

In March 2017 "Oschadbank" launched the program of preferential crediting for IDPs²¹, but offered conditions do not meet actual needs and real possibilities of IDPs and even deepen negative attitude to the state policy on addressing the housing issue of IDPs. General lack of the security of tenure is accompanied by the cases of the stigmatised attitude of lessors to displaced tenants²². This leads to failures in rental housing, generates conflicts at the local level, sometimes at the level of local governmental bodies or public authorities²³, and discriminatory attitudes at the level of Ukrainian society.

Regulations governing the provision of social housing and housing for temporary use do not guarantee obtaining of social housing for the most socially vulnerable categories of IDPs and IDPs in a difficult situation. Orphans and children deprived of parental care cannot be entered into the housing register upon reaching 16 years.

The share of people who applied for help with temporary housing by regions is on average 7.5%, although independent solving of housing issue by IDPs is very problematic. About 4% of IDPs²⁴ still live in collective centers (in Kyiv and Kyiv region) and do not plan to move elsewhere.

Citizens of Ukraine who appealed to courts to obtain compensation for their destroyed or damaged property, or because of lack of access to their property, experience difficulties (currently about 50 cases)²⁵. As a rule, they

¹⁹ *Universal Declaration of Human Rights, Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms*

²⁰ *The CMU Resolution "On Approval of the Comprehensive public program on support, social adaptation and reintegration of citizens of Ukraine who moved from the temporarily occupied territory of Ukraine and the areas of counter-terrorist operations in other regions of Ukraine for the period till 2017" No. 1094 of 12/16/2015. <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248739241>*

²¹ <http://www.oschadbank.ua/ua/private/loans/na-zhitlo-dlya-vnutrishno-peremishchenikh-osib/>

²² *As reported by IDPs to human rights groups*

²³ *This applies to Kharkiv region and Kyiv, according to information of "Luhansk Regional Women's Legal Defense Public Organization "Chaika"*

²⁴ *"Places of compact settlement of IDPs in Kyiv and Kyiv region": Research of "KrymSOS" NGO. <http://krymsos.com/reports/analitichni-zviti-po-vpo/mistsya-kompaktnogo-prozhivannya-vnutrishno-peremishchenikh-osib-u-mkiyevi-ta-kiyivskii-oblasti/>*

²⁵ *According to NRC*

face challenges in providing evidence or direct opposition of the judiciary bodies due to the lack of a legal framework for compensation from the state budget. Since the first illegal activities in this area were committed in 2014, the main problem now is the expiry of the statute of limitations, which is 3 years under the legislation²⁶.

However, Ukraine made progress by providing the opportunity for certain categories of the IDPs to be enrolled to the housing register²⁷. In the end of 2016 the Government had provided simplified conditions for the possibility of obtaining housing in perpetual use for IDPs among disabled war veterans, their families and families of perished²⁸.

2.5. ACCESS TO MEDICINE

One of the basic needs of IDPs still is access to medical services. As a result of occupation of Crimea and the continuing military conflict in Donbas, many IDPs are in a constant state of stress. There are also difficulties related to moving, lack of own housing, job, familiar social circle and uncertainty in life in general. The health of IDPs has deteriorated significantly since their displacement²⁹. The most vulnerable are elderly people, single parents, people with disabilities, children.

The majority of IDPs who survived the hostilities require help of a psychologist³⁰. Creation of system of such assistance requires additional efforts from the Government. Although international standards enshrine the need for public authorities to provide medical care for IDPs without discrimination as much as possible and as soon as possible, in Ukraine in practice IDPs face problems in sphere of health protection³¹.

Ukraine has not provided adequate conditions for registration or renewal of disability. IDPs with chronic diseases often face serious bureaucratic constraints in this area, particularly during passing through a MSEC. More information on this issue in Chapter 2.3.

IDPs also are not fully provided with prescribed by law free medicines due to the lack of financial resources of local authorities³². Part of IDPs has to pay for medicines and services that should be free of charge³³. Underfunded are programs aimed at treating cardiovascular diseases, cancer, diabetes and other diseases. Besides 40% of IDPs expressed dissatisfaction with medical equipment, technical equipment and quality of service of medical staff in public hospitals and clinics.

2.6. EMPLOYMENT

IDPs employment situation is deteriorating as there are not enough vacancies corresponding to the qualifications of IDPs and because of significant growth of general unemployment in Ukraine over the past two years.

²⁶ *Civil Procedural Code of Ukraine and the Code of Administrative Procedure of Ukraine*

²⁷ *Under the common rule, to the housing register are entered citizens who need better housing, but are registered and permanently reside in certain housing.*

²⁸ *Explanatory note of "KrymsOS" NGO "How to be registered at housing register?": <http://krymsos.com/settlers/legal-issues/pereselentsi-iz-zoni-ato/nedvizhimost/yak-stati-v-chergu-na-zhitlo/>*

²⁹ *According to opinion of people themselves and organizations that are involved in the protection of rights of IDPs.*

³⁰ *According to the coalition "Indivisible Ukraine"*

³¹ *Article 12 of the UN International Covenant on Economic, Social and Cultural Rights defined the right of everyone to the highest attainable standard of physical and mental health, and the UN guidelines on internal displacement (Principle 19)*

³² *In Ukraine, the legislation provides for the possibility of receiving free or reduced-price medicines prescribed by doctors in the case of outpatient treatment of certain groups of people with certain categories of diseases. This is stated in the CMU Resolution "On regulation of free and reduced-price dispensing of medicines prescribed by doctors in the case of outpatient treatment of certain groups of people and on certain categories of diseases" of August 17, 1998 No. 1303*

³³ *According to the "CrimeaSOS" NGO*

Unemployment among IDPs in 2015 was 21% (IDPs who did not work but looked for job and were ready to start to work). Among the IDPs with higher education the unemployment rate is significantly lower (19.5%) compared to those with secondary or vocational education (25.3%)³⁴.

At the same time, IDPs are dissatisfied with the state employment services. From March 2014 to February 2016 66,000 IDPs from Crimea, the Donetsk and Lugansk regions applied to the State Employment Service, which is near 5% of the total number of registered IDPs in Ukraine³⁵. This demonstrates a critically low level of trust to the State Employment Service of the job seekers, as well as deepening poverty and social exclusion of a certain category of citizens.

2.7. RIGHT TO EDUCATION

As of March 2017 the issue of provision of access of IDPs to educational services in Ukraine was partly resolved. For children IDPs additional places in kindergartens and secondary schools were allocated; 18 higher education institutions were moved from Crimea and from Donetsk and Luhansk NGCA³⁶; procedure of the admission campaign for students IDPs was simplified³⁷; mechanism was improved for verification of educational level and transfer of students from universities in the occupied territory of Ukraine (TOT)³⁸; students IDPs were enabled to receive social scholarships³⁹.

However, the state does not fully implement guaranteed by the law beneficial conditions of education for students IDPs. The Law on State Support of IDPs and some other categories of students who study at vocational and higher educational institutions⁴⁰, was supported by appropriate program only in late 2016. This program does not fully ensure the implementation of the Law and discriminates IDPs in comparison to other categories of students, setting for the first the lowest level of support.

Yet there are problems with the allocation of additional budget places for study of IDPs in higher educational institutions, provision of places in dormitories for IDP students on completely free of charge basis is absent, and so on.

In addition, the level of material, technical and financial support for secondary educational institutions, including with the distance learning is extremely unfavorable, which does not allow institutions to function at full capacity. At the same time Ukraine has supported at the past review recommendation No. 97.42 to continue to take measures and programs to promote and protect children's rights, including the right to education.

³⁴– According to the research of the “Center for Employment of free people” NGO (hereinafter – CEFP) conducted in cooperation with the “CrimeaSOS” NGO

³⁵ EMPLOYMENT OF DISPLACED PERSONS: STATISTICS AND LEGAL ASPECTS – Kyiv: CEFP, Crime SOS, 2016: <http://www.czvl.org.ua/blog/2016/05/05/866/>

³⁶ New legislation was adopted to regulate operations of such institutions; The Law of Ukraine “On Amendments to Some Laws of Ukraine on activities of higher education institutions, research institutions, temporarily displaced from the occupied territories and the settlements in the territory of which the public authorities temporarily do not exercise their authority” of 03.11.2016 No. 1731-VIII. <http://zakon2.rada.gov.ua/laws/show/1731-19>

³⁷ Order of the Ministry of Education and Science of Ukraine from 24.05.2016 No. 560 “On approval of Procedure of admission to higher and vocational education of persons residing in the temporarily occupied territory of Ukraine”, registered in the Ministry of Justice of Ukraine on May 31, 2016. http://old.mon.gov.ua/files/normative/2016-06-07/5622/nmon_560.pdf

³⁸ TOT under the Law of Ukraine “On the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine” and in this report means the occupied ARC

³⁹ The government has allowed displaced students to receive social scholarships. <http://krymsos.com/settlers/news/uryad-dozvoliv-studentam-pereselentsyam-otrimuvati-sotsialni-stipendiyi/>

⁴⁰ Law of Ukraine of 14.05.2015 № 425-VIII: <http://zakon3.rada.gov.ua/laws/show/425-19>

2.8. POLITICAL RIGHTS

Approximately 4.5% of the electorate of Ukraine who are IDPs are not able to fully exercise their political rights: to vote in local elections and in single-mandate districts during national parliamentary elections⁴¹. This indicates violation of principle of non-discrimination in ensuring equal rights, freedoms and opportunities and slows the process of integration of immigrants to new local communities.

The Constitution, the Laws of Ukraine and international standards define equality of rights of all citizens⁴². The Committee of Ministers of the Council of Europe (2006) and Parliamentary Assembly Recommendations 1877 (2009) define the obligation of States to ensure by law the rights of IDPs during the elections (including local).

One of the recommendations of Parliamentary hearings on IDPs' rights, which took place in February, 2016⁴³ is to develop mechanism for implementing the political rights of IDPs, for bringing national legislation in line with international standards in the spheres of electoral process and policy concerning IDPs.

Within the UPR Ukraine has received and supported recommendations No. 97.50 to pay more attention to awareness raising of Ukrainian citizens on their rights and the involvement of the society in making important decisions, No. 97.24 to ensure full compliance of the legislation with international obligations of Ukraine and No. 97.59 to continue efforts to combat discrimination.

However, for three years no positive changes in the sphere of protection of political rights of IDPs happened, although the position of human rights NGOs and Parliament Commissioner for Human Rights⁴⁴. On March 27, 2017, Draft Law No 6240 on Amendments to Certain Laws of Ukraine Related to Electoral Rights of Internally Displaced Persons and Other "Mobile" Groups of Ukrainian Citizens was registered at the Verkhovna Rada. The Draft Law was prepared by the Civic organization "Public holding "Group of Influence" and Civil Network OPORA, in consultations with the Central Election Commission, representatives from the Verkhovna Rada, Ukraine's internally displaced community and other key stakeholders.

Amendments suggested by activists provide that voters will be able to apply with a reasoned statement to the authority of the State Register of Voters to determine his/her new voting address, regardless of the registered place of residence. In case the amendments are adopted, IDPs' voting rights will be properly protected. Ability to change voting address at the place of actual residence will be available also to other citizens moving within the country, which will help to reduce conflict in the society and raising the level of public participation in the vote in the elections.

The Draft Law No 6240 seeks to enfranchise the millions of Ukrainians who are displaced by conflict or are voluntarily residing in places that differ from their registered places of residence.

⁴¹ In the parliamentary elections in October 2014, all IDPs (about 500 000 people as of October 2014), had no right to elect a deputy of the Verkhovna Rada of Ukraine in majority district at the new place of residence. In October 2015 in local elections, 1,345,100 IDPs did not participate in the election and failed to elect local councils deputies.

⁴² Article 38 of the Constitution of Ukraine states that citizens have the right to participate in public affairs, at national and local referendums, to freely elect and be elected to state and local governments. Article 24 of the Law of Ukraine "On the rights and freedoms of internally displaced persons" states that IDPs enjoy the same rights and freedoms under the Constitution, laws and international treaties of Ukraine, as other citizens of Ukraine, permanently residing in Ukraine. Discrimination against them in realization of any rights and freedoms on the ground that they are IDPs is prohibited. UN Guiding Principles on Internal Displacement within the country prohibit discrimination against IDPs at using their right to participate on equal terms in the affairs of the community, the right to vote and participate in public and civic affairs, including the right of access to the resources needed to implement this right. Article 2 of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine"

⁴³ The Decree of the Verkhovna Rada of Ukraine of 31.03.2016 "On recommendations of Parliamentary hearings "State of the observance of rights of internally displaced persons and citizens of Ukraine residing in the temporarily occupied territory of Ukraine and in the temporarily uncontrolled territory in the area of anti-terrorist operation": <http://zakon3.rada.gov.ua/laws/show/1074-19>

⁴⁴ According to the Parliament Commissioner for Human Rights, this situation violates the principle of non-discrimination, both in terms of equality of rights and freedoms and equality of opportunities, constitutes indirect discrimination on grounds of residence and belonging to IDPs and contradicts to international legal standards, the Constitution, laws of Ukraine, and Ukraine's commitments to ensure sustainable integration of IDPs at the place of displacement. <http://www.ombudsman.gov.ua/ua/all-news/pr/12915-nm-vidkrite-zvernennya-upovnovazhenogo-verhovnoii-radi-ukraiini-z-prav-ly/>

2.9. RECOGNITION BEFORE LAW

According to paragraph 20 of UN Guidelines on displaced persons within the country, everyone has the right to recognition before law, which includes obtaining the documents necessary for his/her respect and implementation of legal rights. These documents are, in particular, passport, birth certificate, marriage certificate, etc.

Currently, Ukraine does not accept any documents issued by so-called “LPR” and “DPR”⁴⁵, including documents confirming fact of birth or death. On the other hand, in GCA⁴⁶ there are no verification (confirmation) procedures of issued in NGCA documents, that in some situations makes it impossible to exercise rights, such as social protection and receiving aid for child birth, pension, inheritance and so on.

Unfortunately, Ukraine has not created administrative (extra-judicial) procedure for recognition of certificates of birth and death, which occurred in the TOT and NGCA of the Donetsk and Luhansk regions and recording these facts by civil registration bodies. Ukrainian legislation sets only a judicial procedure for establishing these facts⁴⁷.

Another issue is re-issuing a passport of citizen of Ukraine by IDPs and residents from TOT and NGCA of the Donetsk and Lugansk regions if the document was lost for various reasons (destroyed during the shelling, stolen, damaged, etc.). In this case, re-issuance of passport procedures are extremely complicated. First, it is possible only if there is the certificate of IDP registration⁴⁸. Second, because of the actual lack of a centralized database of persons living in mentioned territories for the issuance of passport of citizen of Ukraine it is required to undergo a procedure of identification⁴⁹. It is usually quite a long and complicated procedure for IDPs, as most of their relatives, colleagues and neighbors still live in the occupied or uncontrollable by authority territories.

3. CONCLUSIONS AND RECOMMENDATIONS

Having analyzed the problems, which throughout the period of duration of the conflict IDPs and residents of temporarily occupied, uncontrolled territories of the Donetsk and Lugansk regions faced and continue to face with, we can conclude that Ukraine, unfortunately, insufficiently fulfills its positive and negative obligations towards its citizens who are in really difficult circumstances caused by the aggression of the Russian Federation. The level of security, respect and protection of rights of these categories of people, despite a number of positive developments, is unsatisfactory and requires quality improvement.

On behalf of the civic sector we would like to highlight a few basic recommendations:

TO GOVERNMENT AND PARLIAMENT OF UKRAINE:

1. Finance and properly implement “Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory

⁴⁵ Self-proclaimed Donetsk People's Republic and Luhansk People's Republic

⁴⁶ Government-controlled area

⁴⁷ This procedure has been simplified in February 2016, but it has some significant drawbacks, including the need to pay the court fee (as of now it is about \$12). At that, courts rather formally refer to making decision in this category of cases, and establish the facts of birth or death under the documents issued in these territories usually without additional checking, calling witnesses, etc.

⁴⁸ In the absence of such certificate the person who lived in the TOT or in the uncontrolled territories of the Donetsk and Lugansk regions, will be refused to re-issue a passport.

⁴⁹ The procedure, which includes interviews with relatives, neighbors or any other persons (at least three) who can attest to the applicant's identity when there are no other documents that could confirm identity

of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine for the period until 2017”, approved by the Cabinet of Ministers of Ukraine on December 16, 2015 No.1094.

2. Implement the Recommendations of the parliamentary hearings “Observance of Rights of IDPs and nationals, residing at TOT and NGCA at anti-terrorist operation area” of February 17, 2016, approved by the Verkhovna Rada of Ukraine on March 31, 2016 No. 1074-VIII.
3. In the shortest time to develop a procedural mechanism for establishing and recording damage, the amount of losses (property damage) caused to individuals as a result of the armed conflict in the East of Ukraine, to develop mechanism for their compensation; to develop amendments to legislation for extension (conciliation) of the statute of limitation for cases related to violation of property rights in the context of conflict.
4. Introduce a non-judicial (administrative) procedure of recognition issued in TOT and NGCA of Donetsk and Luhansk regions documents certifying the fact of birth, marriage or death.
5. Ensure the issuance of passports for IDPs and persons residing in TOT and NGCA of Donetsk and Luhansk regions, regardless of whether a person is registered as an IDP or his/her place of residence.
6. Ensure the implementation of political rights for IDPs at the place of their actual residence. Vote for the Draft Law No 6240.
7. Develop and approve a mechanism for payment of pensions and social payments to citizens residing in NGCA in Donetsk and Luhansk regions.
8. Provide a mechanism for implementation of the legislation regarding launching programs of preferential lending for the construction or purchase of housing; ensure the formation of funds for social housing and housing funds for temporary accommodation on the account of the state and local budgets, charitable aid from various sources.
9. Provide funding from the state budget to ensure proper formation, maintenance and administration of the UIDB of IDPs; ensure proper functioning of the UIDB throughout Ukraine, including access to the database for NGOs and volunteers, IDPs and MTOT.

TO GOVERNMENT OF UKRAINE:

1. Abolish the Government Resolution No. 365 “Some issues of social benefits for IDPs”, as such, that does not correspond with the Laws of Ukraine and its international commitments.
2. Amend the Government Resolution No. 505 “On providing a monthly targeted assistance to IDPs to cover living expenses, including housing with utilities”, linking the amount of targeted assistance to growing subsistence level, which will harmonize calculation of all types of social assistance.
3. Amend the Government Resolution No. 637 “On social benefits for IDPs” to exclude provision that an IDP certificate is an obligatory condition for pension and social benefits payment; separate procedures for payment of targeted assistance to IDPs under the Government Resolution No. 505 from other social benefits and pensions.
4. Abolish the Government Resolution No. 167, which states that all social payments should be made exclusively through the accounts and facilities of “State Savings Bank of Ukraine”.
5. Provide differentiation of social assistance paid to IDPs considering health problems and extent of health loss.
6. Initiate for IDP families with persons with disabilities, including mobility, vision, hearing and intellectual psychosocial disorders, government program of lending for acquisition and construction of housing.
7. Transfer control over formation, establishment and maintenance of the UIDB to MTOT.

TO LOCAL AUTHORITIES IN CASE OF HUMANITARIAN EMERGENCIES⁵⁰:

1. Ensure distribution of the humanitarian aid to the place of residence and stay of people with disabilities, elderly people and people with substantial loss of health (approximately 15% of the population).
2. Interact with local organizations working for persons with disabilities as carriers of information about persons in need of humanitarian assistance, but for health reasons are not able to get it at the appropriate point.
3. Organize in settlements additional separate points of distribution of humanitarian aid to persons with disabilities and elderly people.
4. Ensure distribution of humanitarian aid to residents of boarding institutions.

TO THE CENTRAL EXECUTIVE BODIES, LOCAL STATE ADMINISTRATIONS, LOCAL AUTHORITIES:

1. Ensure informing of IDPs about how to obtain benefits and participate in state programs.
2. Use data on the number and needs of IDPs at allocation of funding for health and education and the formation of local budgets;
3. Create an emergency fund of medicines for socially vulnerable people;
4. Simplify mechanism of re-issuance of medical records and registration or re-registration documents on disability.
5. To the Ministry of Defense of Ukraine to initiate the process of developing regulations on possessing (expropriation) of private property, land for the defensive purposes, and informing affected people about that.

⁵⁰ Situations similar to Avdiyivka.

KHARKIV HUMAN RIGHTS PROTECTION GROUP (KHPG)

SUBMISSION

FOR THE THIRD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

**HUMAN RIGHTS IN THE TERRITORY CONTROLLED
BY THE GOVERNMENT OF UKRAINE ALONG THE
DELIMITATION LINE AND IN SO-CALLED LUHANSK
PEOPLE'S REPUBLIC AND DONETSK PEOPLE'S REPUBLIC**

The KHPG has been registered as a legal entity in November 1992.

KHPG is active in three main areas:

- providing assistance to individuals whose rights were abused;
- developing human rights education and promoting legal awareness;
- providing analysis of the human rights situation in Ukraine.

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HUMAN RIGHTS IN THE TERRITORY CONTROLLED BY THE GOVERNMENT OF UKRAINE ALONG THE DELIMITATION LINE

1. Almost 3 years have passed since the start of the Russian Federation's aggression on the territory of Donbas and the beginning of an armed conflict. The Russian aggression led to the establishment of the self-proclaimed Luhansk People's Republic ("LPR") and Donetsk People's Republic ("DPR").
2. Since there are no prospects for an early end to the occupation of Donbas territories, it is necessary to examine the social reality that has emerged in the LPR and the DPR and, in particular, the human rights situation, both at the normative level and in practice.
3. Contact line (delimitation line, "grey zone") – the conditional delimitation of Donetsk and Lugansk regions, in fact – buffer zone of settlements and territories controlled by the Government in which the authorities of Ukraine do not conduct or carry not in full its powers, including the territories of self-proclaimed LPR and DPR.

TYPICAL HUMAN RIGHTS VIOLATIONS IN THE SO-CALLED "GREY ZONE"

DEAD AND WOUNDED AS A RESULT OF SHELLING AND EXPLOSIONS

4. According to the High Commissioner of UNHCR from mid-April 2014 till December 1, 2016 in Donbas were killed at least 9758 people, including more than 2,000 civilians. A further 22,800 people were injured. In this number includes soldiers and civilians who died or were injured on both sides of the conflict. Data of Ukrainian authorities are different.

INAPPROPRIATE DEMINING

5. Since the beginning of the military conflict in the Donbass 1,205 cases undermining of people were recorded. The data provided by the Ministry of Defence of Ukraine are the next: 403 of the victims – civilians, 68 of them – children¹.
6. It did not take appropriate actions for reducing the number of accidents of mine explosion of civilians and soldiers on mines and other explosive devices. Demining is very slow and selective.

PROBLEMS IN THE INVESTIGATION OF CASES OF CAUSING DEATHS AND INJURIES OF CIVILIANS

7. The facts of causing deaths and injuries in parts of Donetsk and Luhansk regions controlled by Ukrainian authorities are registering into the Unified Register of pre-trial investigation (hereinafter – URPI), but the investigation is quite inefficient.
8. Firstly, the local police often do not register information about the crime with the purpose to reduce the negative statistics on crimes related to the conducting of ATO.

¹ <https://hromadske.ua/posts/oberezhno-miny-spetsproekt-siri-zona>

9. Even if such information were included to the URPI, there is no single approach how to qualify such crimes. In particular, some episodes of killings and injuries of civilians was submitted to the URPI under Article 258 of the Criminal Code of Ukraine (hereinafter – the CCU) – terrorism, and some – for article 115 of the CCU (pre-meditated murder), if people were injured – under Article 15 and Article 115 of the CCU (attempt to murder).

10. Secondly, criminal proceedings are opening by local police and automatically transferring to the Office of Security Service of Ukraine (hereinafter – SSU) in the Donetsk and Luhansk region, located in Mariupol and Severodonetsk, respectively, for further investigation, which does not conduct appropriately, according to the interviewed victims.

11. Thirdly, persons who were injured or relatives of dead persons are often not recognized as victims in these criminal proceedings. For obtaining of this procedural status they need to send motion to the investigator, who in most cases refusing to satisfy it and there is need to appeal such refusal to the investigating judge.

12. Fourthly, there is a tendency to underestimate the number of deaths of civilians using incorrect indication of causes of death. In particular, the KHPG's monitors received confidential information about the fact of a pressure to forensic experts with the purpose to induce them to change the real causes of death related to the ATO (mine-explosive trauma, gunshot wound, etc.) to domestic (household injury, explosive injuries that not concerning the ATO), or even the natural causes of death (heart attack, pneumonia, etc.).

VIOLATIONS OF PROPERTY RIGHTS – DESTROYED AND DAMAGED PROPERTY

13. During the all period of conducting the ATO the violations of the silence had occurred almost every day on the contact line. It caused many damages and destruction of residential buildings, multifamily and private. Both sides of the conflict are using weapons of lethal force, to the civilian targets as well, particularly in residential areas, residents do not know when the next attack will be. These attacks are not planned and controlled so as to reduce or minimize harm to the civilian population of the use of lethal force.

14. For almost 3 years Ukraine has not developed an effective mechanism for compensation of damage that was caused to real and personal property of civilians. There is no court practice in civil proceedings for recovering such damages. Some settlements have no district inspectors of police or their schedule contains only a few hours a week. Citizens, whose property was destroyed or damaged, are unable to contact the police for initiating the criminal proceeding's opening.

VIOLATIONS OF CHILDREN'S RIGHTS TO A SAFE ENVIRONMENT AND EDUCATION

15. The KHPG's monitoring team had recorded the next situation: there is no proper school in the territory controlled by Ukraine (Lopaskino, Lobachevo towns) so children every day in a small boat are crossing the river to the uncontrolled by Government territory. This situation is well-known by Tryohizbenka military and civilian administration, but no steps to address it has not been done.

16. In addition, children under three years of constant fighting received varying degrees of psychological trauma associated with the situation. Many children saw injury or death of relatives or friends, which led to grave consequences for the normal development of the mind, but there is still no state program for the relevant psychological rehabilitation.

VIOLATION OF THE RIGHT TO A SAFE CROSSING OF THE DELIMITATION LINE

17. There are some problems in check point of entry and exit "Stanitsya Luhanska" – the only one checkpoint in Luhansk region that is working. It is the need of significant of logistic, reducing of time for waiting and creating normal conditions for people crossing the delimitation line, especially for those who couldn't wait long because of state of health. The safety should be ensured for civilians, passing through the line of demarcation and for persons providing this crossing.

18. In addition, we are concerning of frequent attacks to the check-points that lead to injuries and deaths of civilians (the latest case – December 2016 – check-point "Mayorske"), as well as numerous cases of subversion in mines and shells near check-points on roadsides.

HUMAN RIGHTS IN THE SO-CALLED LUHANSK PEOPLE'S REPUBLIC AND DONETSK PEOPLE'S REPUBLIC

VIOLATIONS OF HUMAN RIGHTS IN THE QUASI REGULATORY FRAMEWORK OF THE LPR AND DPR

19. Human rights and fundamental freedoms are violated in the LPR and DPR already at the normative level.

20. The Constitution of the LPR contains provisions that lead directly to the violation of the Convention. For example, Article 22 section 5 contains the following 'gem': "Censorship is prohibited, except as provided by law," which is in breach of Article 10 of the Convention. Article 5 section 4 reads: "The sale of land is prohibited in the Luhansk People's Republic", which goes against Article 28 that guarantees the right of ownership, and leads to the violation of Article 1 of the First Protocol to the Convention.

21. Direct violations of human rights are also laid down in ordinary legislation. The acts 'On the mass media' prohibit the distribution of foreign periodicals without the permission of the registration authority. This prohibition applies to the media financed by foreign countries, legal persons or citizens. The same acts ban foreign journalists from working in the DPR and LPR without accreditation. All of them are disproportionate restrictions on freedom of expression, protected by Article 10 of the Convention.

22. The requirement of accreditation laid down in the acts applies to all journalists coming to the DPR and LPR, not just to foreign ones. It should be noted that an accreditation in the LPR and DPR means much more than just the registration of journalists: it actually introduces access control. Without presenting an accreditation pass a journalist cannot speak to any official.

23. Many odious norms that violate human rights can be found in the Criminal Code and Criminal Procedure Code, both of which are part of the quasi-regulatory framework of the DPR and LPR. For example, "wilful refusal by a head of an organisation or a citizen to repay substantial payable debts or to repay securities after the entry into force of the relevant judicial act" is punishable with imprisonment of up to two years. This provision of the Criminal Code of the LPR is a medieval vestige, directly contradicting Article 1 of Protocol 4 to the Convention (prohibition of imprisonment for debt). The Criminal Code of the DPR provides for death penalty as a punishment.

24. So, the violations of human rights and fundamental freedoms are directly enshrined in the legislation, a fact which will inevitably lead to systematic and massive violations of human rights and entail further violations.

CIVIL AND POLITICAL RIGHTS AND FREEDOMS

25. In the 16th report of the UN High Commissioner for Human Rights states that "armed groups regularly subjected detainees to torture and ill-treatment" and provides many examples (pp. 47-56). There are many reports of enforced disappearance. Thus, in July 2016, three young taxi drivers had gone missing in Luhansk in one day between 22.00 and 23.00. At this time in the curfew begins. All three missed drivers had special permission for working during the curfew. Young people were working in taxi service. They received calls by radio to different areas of the city and after that they gone missing. A few days later all three cars were found in different parts of the city. One of the taxi drivers, 27-year-old Dmitry Krylov, found the morning after the disappearance, he was dead without knife or gunshot wounds.

26. On freedom of opinion, freedom of speech, freedom of information, freedom of assembly and freedom of association in the self-proclaimed republics inhabitants should not even dream. In the local media there are no alternative points of view, media is using very aggressive terminology. Even just an attempt to speak impartially on the Internet can lead to repression. So, bloggers from Luhansk Eduard Nyedyelyayev and Genadiy Benytskiy were accused of "extremism" (punishment – up to 4 years in prison) for publishing in their blogs critical materials on "authorities of LPR". Both were forced to publicly confess (we can only guess that means for this purpose), Nyedyelyayev even confessed on spying. Two young football team fans of "Zorya" from Luhansk – Vlad Ovcharenko and Artem Akhmerov were accused of "treason" (sanction – to 15 years imprisonment) by just sharing their views.

27. People living in the two republics are frustrated, and the sense of disappointment, hopelessness and depression prevails. People are tired of the war, uncertainty and disbelief. They do not trust any authorities and do not expect anything good in the future. The negative attitude towards the Ukrainian authorities is supported by aggressive Russian propaganda, and is reinforced by the memory of the dead and wounded, and the deprivation of housing and other property as a result of destruction. The expectations that the young republics supported by the Russian Federation would succeed have been replaced by disappointment. The most optimistic residents continue to hope that these difficulties are temporary and will be overcome. Nevertheless, families with children who attend high school are trying to find possibilities for their children to graduate in the controlled area, pass the final exams and go to college in the controlled area.

28. It should be noted that the number of hours for teaching Ukrainian language and literature drastically reduced. For example, for Ukrainian literature it's only one hour a week.

THE SOCIAL AND ECONOMIC RIGHTS IN THE DPR AND LPR

29. In the spring of 2015 pensioners and public sector employees began receiving regular pensions and salaries/wages in Russian roubles. Payments were made on the basis of the previously received pensions and salaries using the conversion rate of 1 UAH = 2 RUB, even though the actual exchange rate varies from 2.4 to 2.8 roubles, depending on the location. The minimum pension of 2,000 RUB (1,000 UAH) actually turned into 760 UAH (minimum pension on the controlled territories is 1,130 UAH).

30. Our analysis of the food component in the minimum consumer basket in the cities of Ukraine and DPR/LPR shows that the prices on almost all food products except bread/grains are higher in the LPR and DPR than in Ukraine, with some prices being substantially higher. It is known that a subsidy has been introduced for bread/grains. It should be noted that the prices on utilities in the LPR and the DPR have remained unchanged, i.e. they are significantly lower than in Ukraine. Petrol is also noticeably cheaper.

31. According to the data from the Ministry of Economic Development of the so-called DPR, 'the average monthly number of actual population in 2015 in the whole of the Donetsk People's Republic was 2,277.2 thousand people, of whom 68% live in the three largest cities of the DPR: Donetsk (962.0 thousand people), Makeyevka (382.8 thousand) and Gorlovka (210.0 thousand people). A similar distribution was recorded for the average recorded number of people in full-time jobs, which amounted to 346.4 thousand people in the whole Republic, or 15% of the total population. In the three major cities, the figures were, respectively: 146.1 thousand, 55.3 thousand and 30.3 thousand people.

32. The average monthly salary of one full-time employee in 2015 in the regions and cities of the Donetsk People's Republic varies widely: from 4,685 Russian roubles in Gorlovka to 10,850 Russian roubles in Zhdanovka. In Donetsk, the figure was 6,782 Russian roubles. The average monthly payments per retiree are somewhat less varied: in 2015 they ranged from 2,619 Russian roubles in Telmanovski district to 4,368 Russian roubles in Zhdanovka.

33. Thus, with the higher prices on staple foods, the income received by residents of LPR and DPR is substantially lower than the one in areas controlled by Ukraine. It is very difficult to survive on such income. This is felt particularly acutely by vulnerable groups, such as pensioners, disabled citizens, single mothers and families with many children, who survive on humanitarian aid.

34. The right to medical assistance is very limited. Pharmacies have hardly any medicines and people specifically cross the demarcation line to get them. Anyone who has the possibility to pay for medical treatment opts for hospitals in Kharkov, Dnepropetrovsk and other cities.

RECOMMENDATIONS:

35. The parties of the armed conflict should take all measures to stop the fighting and violence in the conflict zone.

36. The parties of the conflict should immediately release all persons arbitrarily deprived of liberty.

37. Efforts should be taken to exclude situations where firearm attacks on the opposite side are carried out from the territory of residential areas.

38. To take a unified government program for compensation of damage which was inflicted for real property and other types of property of civilians that have been damaged as a result of armed conflict and / or establishment of judicial practice regarding such compensation.

39. The parties should take all measures for development an appropriate infrastructure for settlements on the contact line, supporting kindergartens, schools, hospitals et cetera.

40. To strengthen control over the procedure on the check points of entry and exit, make "transparent" procedure for public control over the passage of civilians crossing checkpoints, to open more "windows" to minimize queues at checkpoints.

41. The normative documents and the practice at check points in the case of firearm attacks on the surrounding areas should be changed in order to protect people crossing the delimitation line.

42. Ukrainian authorities should take all measures to ensure that pensioners residing in the territory of the self-proclaimed DPR and LPR receive their pensions.

43. To conduct a proper demining of all territories.

UNIVERSAL PERIODIC REVIEW UKRAINE

REPORT PREPARED BY A COALITION OF UKRAINIAN NGOS
WITH THE SUPPORT OF THE HUMAN RIGHTS HOUSE FOUNDATION (HRHF)

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INTRODUCTION AND BACKGROUND INFORMATION

1. This report is a joint contribution to the 28th session of the Universal Periodic Review (UPR) for Ukraine. It was prepared by a coalition of Ukrainian NGOs with the support of the Human Rights House Foundation (HRHF).

2. The present report focuses on human rights violations linked to the illegal annexation of Crimea by the Russian Federation and in particular on the responsibilities that lie with the Ukrainian authorities in this respect. This report highlights several areas in which the Ukrainian authorities have the possibility to take steps aimed at contributing to the improvement of the rights of current and former inhabitants of the Crimean Peninsula. The authors of this report wish to stress that the underlying responsibility for the currently dire human rights situation in Crimea lies with the Russian authorities who are to be held accountable as occupying power.

3. The Centre for Civil Liberties (CCL), the Crimean Human Rights Group (CHRG), the Ukrainian Helsinki Human Rights Union (UHHRU) and the Human Rights Information Centre (HRIC) have been monitoring the human rights situation in Crimea since the beginning of the Russian occupation. These organisations have provided first hand and reliable information on the worsening human rights situation in Crimea in the last three years while also addressing shortcomings in Ukraine's policy towards its occupied territories. The information submitted in this report is mainly based on the observations and calls made by these organisations.

4. Since the illegal annexation of Crimea by the Russian Federation, the Ukrainian authorities have adapted their legislative framework to face this new situation. However, a number of measures undertaken by the Ukrainian authorities do not go in the direction of protecting the rights of the Crimean people, including those who have in the meantime left the peninsula and resettled in mainland Ukraine. It is key that the Ukrainian authorities refrain from taking measures that negatively affect the rights of Crimean citizens, create barriers and narrow the opportunities for enjoying rights and exercising freedoms on the Crimean peninsula – including, for instance, freedom of movement and property rights.¹

5. Ukrainian state bodies such as the Ministry of Temporarily Occupied Territories and IDPs, the Ministry of Justice and the Ministry of Foreign Affairs have taken a number of positive steps to amend legislation regulating the rights of people living in the occupied Crimean territories. However, such steps need to be taken as part of a strategic vision, rather than simply as ad-hoc reactions to current challenges. It is all the more important to ensure coordination between state bodies that work to improve legislation to protect the rights of persons from the occupied territories.²

6. Although the government does not have the possibility to fully defend the rights and interests of citizens in Crimea, Ukraine still bears the weight of responsibility for ensuring human rights and freedoms on the territories under its control. This duty applies in respect to all of its citizens. Yet, current regulatory frameworks have solidified discriminatory practices with respect to Ukrainian citizens residing in the occupied territories. These citizens are faced with groundless limitations imposed on their fundamental rights and freedoms, as well as socio-economic rights in territories under control of Ukrainian authorities. These discriminatory practices are in no way fostering re-integration of the occupied territories.³

¹ *How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders.* Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

² *How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders.* Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

³ *How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders.* Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

7. Following Russian occupation of Crimea, local residents found themselves in a vulnerable position, not only because of abuses of the de facto authorities, but also as a result of the discriminatory policies imposed by the Ukrainian state. The Ukrainian authorities put in place legislation to adapt to the new reality of the occupation and this has affected directly both the Crimean residents who decided to continue living in the occupied peninsula and those who moved to mainland Ukraine. The laws “On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine”, “On the creation of the free economic zone “Crimea” and on the peculiarities of economic activity in the temporarily occupied territory of Ukraine”, “On ensuring the rights and freedoms for internally displaced persons” include a number of discriminatory provisions.⁴

8. Those Ukrainian citizens who left the territory of Crimea are now included in a separate category of “internally displaced persons” registered as such by relevant state agencies. Those Crimeans who stayed on the occupied territory and travel from time to time to the mainland Ukraine as well as other Crimeans living on the mainland Ukraine who were not registered as IDPs face discrimination using bank services. According to the resolution No. 699 of the national Bank of Ukraine (NBU) “On application of certain norms of currency legislation during the temporary occupation of the territory of the free economic zone of Crimea”, dated 3 November 2014, all Crimeans are considered as non-residents when using banking services.⁵ Applied restrictions include the prohibition to receive payments from residents, the obligation to prove the money’s origin in order to be able to deposit it into a bank account, and the prohibition to purchase foreign currency.⁶ “On 16 December 2014 resolution No. 699 was amended, with a new rule providing that citizens with Crimean residence are not considered as non-residents provided that they provide a certificate of registration as IDPs. This amendment appears to be even more discriminatory when considered in combination with the rules of IDP registration”⁷.

9. On 1 September 2015, the Kyiv Administrative Court of Appeal partially recognised the resolution of the NBU as invalid, but on 24 December 2015 the Supreme Administrative Court overturned all decisions in the case and sent it for retrial.⁸ Thus, the effect of the resolution of the NBU No. 699 and its discriminatory provisions were actually re-established in their entirety.

RECOMMENDATIONS:

- to remove legal provisions characterizing official residents of Crimea as non-residents of Ukraine, thereby hindering their full enjoyment of State services or services from private companies requesting official residency, unless they are formally registered as IDPs with the Ukrainian government.

⁴ Human rights situation on the occupied territory of the Autonomous Republic of Crimea and Sevastopol. Available at: <https://helsinki.org.ua/en/human-rights-situation-on-the-occupied-territory-of-the-autonomous-republic-of-crimea-and-sevastopol/>

⁵ More information available at: <http://www.bank.gov.ua/doccatalog/document?id=11719725> (in Ukrainian)

⁶ “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”, June 2016. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a49d7>

⁷ “Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine”, June 2016. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680697cbc>

⁸ More information available at: <http://legalspace.org.ua/napryamki/zakhist-prav-krimchan/item/6179-vasu-rozhliane-kasatsiiu-natsbanku-narishennia-i-ake-skasovuie-status-nerozydentiv-dlia-krymchan> (in Ukrainian)

OBSTACLES TO THE MOVING OF PROPERTY AND PERSONAL BELONGINGS FROM CRIMEA

10. In December 2015, the Cabinet of Ministers adopted the Decree №1035 “On limiting the supply of specific goods from the temporarily occupied territory to another territory of Ukraine and/or from another territory of Ukraine to the temporarily occupied territories. Following its entry into force on 15 January 2016, thousands of Crimean have faced challenges on a daily basis to move their property through the checkpoints. The Decree was adopted according to the law “On free economic zone of Crimea” and allegedly aimed to cease any economic relations, including the supply of goods to the peninsula. In fact, its consequence was a grave violation of the rights of ordinary people, who were already in a vulnerable situation following the annexation of Crimea. After the adoption of the Decree with violation of the law “On the rights and freedoms of internally displaced persons” Crimeans had almost no right to evacuate their property.⁹ The decree limits the types and quantities of socially important goods that may be transported to and from Crimea. Thus, the total value of such items shall not exceed UAH 10 000 and shall be below 50 kilograms per person.¹⁰ The document prohibits the import and export of anything that is not in the list of personal belongings provided for in Article 370 of the Customs Code and consists of 24 positions. As a matter of fact, inhabitants of Crimea are deprived of their right to transport their belongings to mainland Ukraine.

11. On 26 September 2016, the Odesa district administrative court ruled that Kherson customs department of the State Fiscal Service of Ukraine acted illegally by denying an internally displaced person the entrance to mainland Ukraine from Crimea based on the fact that the person’s personal possessions were not on the list of those allowed in accordance with Decree №1035.¹¹ The court’s decision highlights systemic problems and infringements caused by Decree № 1035. It also gives hope to many citizens who are not allowed to freely cross the checkpoints between the peninsula and mainland Ukraine with their personal belongings. It is essential to distinguish between the belongings that a person needs in his or her everyday life from goods that are meant for business purposes or to be transferred to others. In its judgement, the Court repeatedly referred to the Constitution of Ukraine as the norms of direct action, including the constitutional guarantees of property rights and the equality of rights and duties for all citizens.¹²

RECOMMENDATIONS:

- Simplify the access of Ukrainian citizens to and from Crimea and ensure their property rights by modifying the Decree No 1035 regulating crossing the administrative border:
 - to widen the list of products and personal belongings allowed through the boundary;
 - to regulate the procedure for crossing the boundary by trucks and with domestic animals;
 - refuse to equate in law or practice the administrative boundary with Crimea with an international border.

⁹ The court delivered a precedential judgment about crossing checkpoints with the occupied peninsula by Crimeans. Available at: <http://helsinki.org.ua/en/articles/the-court-delivered-a-precedential-judgment-about-crossing-checkpoints-with-the-occupied-peninsula-by-crimeans/>

¹⁰ How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders. Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

¹¹ How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders. Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

¹² The court delivered a precedential judgment about crossing checkpoints with the occupied peninsula by Crimeans. Available at: <http://helsinki.org.ua/en/articles/the-court-delivered-a-precedential-judgment-about-crossing-checkpoints-with-the-occupied-peninsula-by-crimeans/>

12. The legal regime of the occupation poses considerable problems for the citizens of Ukraine residing in the territory of the Crimean Peninsula with relations to the documentary proof of personal status. The problem originates in the invalidation of documents issued by agencies and/or persons carrying out their activities on the occupied territory in accordance with the legislation of Ukraine (Article 9 of the law “On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine”¹³). Due to the absence of any state agencies of Ukraine on the territory of Crimea, de facto all documents issued on this territory since the beginning of the occupation are invalid. On the territory of Crimea, it is not possible to replace lost valid documents issued by the Ukrainian authorities.

13. The current conditions result in substantial violations of a number of fundamental rights. For instance, the absence or loss of passport makes it difficult or even impossible for a Ukrainian citizen to move to mainland Ukraine. According to Article 10 of the law “On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine”, Ukrainian citizens have the right to a free and safe exit from the temporarily occupied territory through entry and exit control points upon presentation of a document certifying their identity or proving their Ukrainian citizenship. According to the Administration of the State Border Guard Service of Ukraine, during a lapse of 11 months in 2015, 55 people were denied to move to mainland Ukraine because they lacked valid documents.

14. Furthermore, the invalidity of documents is a prerequisite for violations of many personal non-property rights, such as the right to a name, right to representative services, inheritance, etc. There are also difficulties concerning the confirmation certificates of birth, death, family relations, general secondary education, labour relations, etc. Given that most of these rights and circumstances are ensured to a person by nature, are integral and are not derived from the state, this situation puts people residing or staying in the temporarily occupied territory of Ukraine in a particularly vulnerable situation.

15. The position of the Ukrainian government in relation to the documents issued by the Russian Federation in occupied Crimea presents some contradictions. On the one hand, Ukraine recognises that the territory of the Autonomous Republic of Crimea and Sevastopol city is occupied by the Russian Federation, and thus, these territories are subject to the provisions of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Pursuant to Article 50 of this Convention, the occupying power shall take all necessary measures to facilitate the identification of children and registration of their family ties. On the other hand, Ukraine does not fully recognize such documents and develops complicated mechanisms for establishing legal facts, that violate or even completely remove the fundamental rights of citizens residing or staying on the occupied territory of Crimea. The Decree No. 1393-p¹⁴ of the Cabinet of Ministers from 23 November 2015 approved a plan of action to implement the National Human Rights Strategy until 2020. According to this strategy, the State undertakes the commitment to develop an administrative procedure of civil registration of births, deaths and marriages that occurred on the temporarily occupied territory of Ukraine.¹⁵

¹³ Full text of the law available at: <http://zakon3.rada.gov.ua/laws/show/1207-18> (in Ukrainian)

¹⁴ Full text of the decree available at: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679> (in Ukrainian)

¹⁵ Human rights situation on the occupied territory of the Autonomous Republic of Crimea and Sevastopol. Available at: <http://helsinki.org.ua/en/human-rights-situation-on-the-occupied-territory-of-the-autonomous-republic-of-crimea-and-sevastopol/>

RECOMMENDATIONS:

- Establish a system to simplify access to public administrative services for Crimean residents, notably with regard to the procedure for obtaining civil registration of births, deaths and marriages
- Develop and introduce amendments to the regulation for admission to and from temporarily occupied territories to avoid violating the right to freedom of movement for Ukrainian citizens under the age of 18.

OBSTACLES TO ACCESS OF FOREIGN MONITORS TO CRIMEA

16. The *de facto* authorities in Crimea have effectively and systematically denied access to Crimea to nearly all foreign representatives and international institutions responsible for monitoring human rights, including those responsible specifically for monitoring the situation in Crimea such as the the UN Human Rights Monitoring Mission in Ukraine (HRMMU).

17. Measures taken by the Ukrainian authorities further complicate access to Crimea for foreign journalists, human rights monitors and lawyers. On 4 June 2015, the Cabinet of Ministers of Ukraine adopted decree No. 367, regulating the entry and exit from Crimea. The decree contains an exhaustive list of grounds on which foreign nationals may be issued a special entry permit and requires foreigners to enter Crimea only through Ukraine (as opposed to through Russia). The grounds for receiving an entry permit did not initially include human rights monitoring, legal support, or journalist activity, which significantly restricted the work of human right activists, lawyers and journalists who are not citizens of Ukraine. In a September 2015 update, human rights activities and journalism were added to the grounds for receiving a permit (whereas legal support is still not included), making it in theory possible for foreign journalists and human rights monitors to travel to Crimea without breaking Ukrainian law.¹⁶

18. Despite small positive improvements, the current regulation is still excessively plagued by red tape, and includes a number of challenges to the work of foreign journalists, lawyers¹⁷ and human rights defenders in Crimea. In order to receive a special permit, foreign journalists and human rights defenders must go through a bureaucratic procedure. From the start of the procedure they have to be physically present in Ukraine, file documents in Ukrainian language, receive a letter of approval from the Ministry of Information Policy or from the Ministry of Foreign Affairs, bring all documentation to the State Migration Service of Ukraine and then wait for up to five days. There is no mechanism to file the documents from abroad through consular and diplomatic offices of Ukraine, and documents cannot be submitted in English. Instead of reporting on the repression in Crimea, foreign journalists are wearing their patience thin, wasting time and money to cut through this red tape.¹⁸

19. While the Ministry of Information Policy has facilitated the access for foreign journalists within the existing procedure (resulting in 70 foreign journalists receiving a permit since the establishment of the procedure¹⁹) there are significant challenges for human rights defenders from foreign countries who apply for a special permit to visit Crimea. In practice it takes at least a month to receive the approval letter from the Ukrainian Ministry of Foreign Affairs which represents a significant obstacle to carry out human rights work in Crimea, specifically when the mission is of urgent nature. There are also cases of denial from the State Mi-

¹⁶ *Putting a Stop to Impunity – Human Rights Violations in Crimea, Policy Brief*. Available here: <http://humanrightshouse.org/noop/file.php?id=21544>

¹⁷–Russian lawyers are deprived a possibility to receive a special permit in principle as they are not included into the list of the categories of foreign citizens who can obtain a permit.

¹⁸ *How Ukrainian authorities have to stop violate rights of its citizen in Crimea – recommendations of human rights defenders*. Available at: https://humanrights.org.ua/en/material/pravozahisniki_rozpovili_shho_treba_zrobiti_vladi_u_nastupnomu_roci_abi_pripiniti_porushennja_prav_krimchan

¹⁹ According to the data of Emine Dzheppar, Deputy Minister on the Informational Policy

gration Service of Ukraine to issue special permits for human rights defenders to enter Crimea. An example of such refusal is the case of Russian human rights activist Dmitriy Makarov²⁰ who worked for the Crimean Human Rights Field Missions – a joint initiative of the Ukrainian and Russian human rights defenders.

RECOMMENDATIONS:

- Simplify the access of foreign citizens to Crimea, including journalists, lawyers, human rights defenders. Modify Cabinet of Ministers decree No. 367 regulating entry and exit from Crimea, in particular by:
 - transforming the process now requiring prior approval (permits) of travel to Crimea for foreign citizens to one requiring only prior notification
 - enabling foreigners to apply from abroad, online, and submit their documents in Russian and English;
 - expanding the list of allowed purposes of travel to Crimea for foreign citizens to include legal support and defense

UKRAINIAN AUTHORITIES CUTTING TIES WITH CRIMEA

20. In July 2016, a group of Parliamentarians registered draft law № 3593 “On the temporarily occupied territory of Ukraine”. MPs proposed to put together Crimea and parts of Donetsk and Lugansk regions in a single law disregarding the many differences in the nature of the occupations. The general impression is that this draft law tries to shift responsibilities on the occupied territories away from the Ukrainian authorities, de facto assigning them to Russia as the occupying power. An example of this is the proposal to make the Russian authorities responsible for the payment of pensions and social benefits which violates the Constitution and laws of Ukraine.²¹

21. Another practice going in the direction of further cutting links between Ukraine and its occupied peninsula is represented by the decision of the Ukrainian prosecutor office not to open criminal cases nor effectively investigate human rights abuses in Crimea.

RECOMMENDATIONS:

- Refrain from taking measures aiming at further isolating the Crimean population from its legitimate Ukrainian government and lowering the government’s responsibilities towards its population living under occupation.
- Open criminal case and launch investigations in cases of human rights violations on the occupied territory of Crimea.

²⁰ Human rights activists slam procedure for entry to Crimea – https://humanrights.org.ua/en/material/pravozahisniki_rozkritkuvali_sistemu_propusku_do_krimu

²¹ The norms of the bill on the Occupied Territories violate fundamental human rights. Available at: <http://crimeahrg.org/en/the-norms-of-the-bill-on-the-occupied-territories-violate-fundamental-human-rights/>

SUBMISSION

BY THE INSTITUTE FOR RELIGIOUS FREEDOM NGO

**SYSTEMATIC PERSECUTION OF RELIGIOUS MINORITIES
IN THE MILITARY CONFLICT AREA OF EASTERN UKRAINE**

FOR THE 3RD CYCLE OF THE UNIVERSAL PERIODIC REVIEW

28TH SESSION

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INTRODUCTION

Institute for Religious Freedom (IRF) – is human rights NGO, the main goal of which is the assistance in the realization of freedom of religion or beliefs, other related human rights in Ukraine; also the collection, analysis and dissemination of information on the legislative policy and religious life in Ukraine.

The IRF was founded in 2001 in Kyiv (Ukraine), has non-profit status, is an independent NGO, and is not engaged by any political party and religious denomination.

The IRF has 15 years of professional experience on facilitating the interfaith dialogue and Church-State relations in Ukraine, monitoring religious freedom and violations of religious rights.

SYSTEMATIC PERSECUTION OF RELIGIOUS MINORITIES IN THE MILITARY CONFLICT AREA OF EASTERN UKRAINE

1. Continuation of Russian aggression against Ukraine, which includes political, military and information support of the separatists on certain territories of Donetsk and Luhansk regions in Eastern Ukraine (Donbas area), is still accompanied by active use of the religious factor. The religious factor is an artificial ground for mobilizing pro-Russian forces and exacerbating the conflict. Almost all religious minorities, except Ukrainian Orthodox Church (Moscow Patriarchate) and some others, became a target for the illegal armed groups supported by Russia, which proclaimed their desire to eradicate any so called “sects” from Donbas area.

2. As a result, starting from March 2014, religiously motivated persecutions reached till now a terrifying scale and forms in the cities controlled by Russia-backed militants in Eastern Ukraine. These include taking hostages, torture, murders of religious activists and believers, as well as seizing places of worship and other facilities, and some of them were used by separatists as firing positions.

3. Till now dozens of temples and houses of worship have been seized by militants supported by Russia and sometimes used as military objects. For instance, the complex of buildings of Donetsk Christian University, the building of the “Word of Life” Bible Institute in Donetsk, and a number of religious buildings of Mormons and Jehovah Witnesses.

4. Incidents of religious persecution are also happening now. Pro-Russian authorities of Horlivka city in Donetsk region, which is outside of the control of Ukrainian government, confiscated the house of worship of the Seventh Day Adventists Church with all the property belonging to the religious community. In addition to seizing the building, the separatists also confiscated the Church’s property in the house of worship, including household appliances, furniture, and the library. The pastor was only allowed to take his personal belongings.¹ During the past two years, different separatist groups in Horlivka have made several attempts to seize the Adventists’ house of worship.

5. Earlier, in September 2014, when Horlivka was already controlled by the separatists, armed Russia-backed militants kidnapped Serhii Lytovchenko, an Adventist pastor, from the house of worship directly during

¹ RISU. (2016, December 06) *In Horlivka, a Seventh Day Adventist church seized, all property confiscated*. Retrieved from http://risu.org.ua/en/index/all_news/community/terrorism/65370/

Communion service. Then, kidnappers explained their actions by saying that *“it is an Orthodox land, and there is no place for different sects here.”* The pastor was released only after 20 days.²

6. On 29 January 2016, “DPR” representatives organized a protest against so called “sects” next to the Ukrainian Greek Catholic Church in Donetsk. Approximately 500 persons took part in the meeting; some of them had been delivered by buses. Protesters received banners with mottos *“No to sects in the DPR”, “The Greek Catholic Church is a pastor of anti-republican activities”, “Stop persecution of Orthodox Christians”, “Say NO to the faith that blesses the war in Donbas”, “Donbas is a sect-free territory”*. Participants of the protest included minors, schoolchildren who received posters with mottos aimed at inciting religious hatred.³

7. On the same day, the news broke out that Professor Ihor Kozlovskiy, President of the Center of Religion Studies and International Religious Relations and a Ukrainian scholar, was kidnapped in Donetsk by Russia-backed militants. He could not leave the city to avoid such persecution, because he had to take care of his severely ill son. Soon after, his relatives reported that representatives of so called the “Ministry of State Security of the DPR” conducted an arbitrary search in his apartment and accused him of subversive activities. Professor Kozlovskiy has remained a captive of the DPR more than 420 days now.⁴

8. In September 2015, Russia-backed separatists organized a meeting in Shakhtarsk city of Donetsk region against Baptists Church, next to their house of worship. They demanded that the “sect” members be expelled from Donbas. Protesters held banners with mottos aimed to incite hatred against Baptists and other religious minorities.

9. Earlier, in May 2015, Aleksandr Zakharchenko, the head of the self-proclaimed “DPR”, announced in Donetsk recognition of only four denominations – Orthodox Christian faith (only Moscow Patriarchate), Roman Catholicism, Islam, and Judaism. All other believers and religious minorities, including the Greek Catholic and Evangelical Christians were classified as “sect members.” This led to systematic and targeted religious persecution in the conflict zone in the Donetsk region, which is outside of Ukraine’s control.

10. The OHCHR monitoring mission in Ukraine reported that so called the “State Security Ministry” of the self-proclaimed “LPR” in December 2016 publicly called, that the Baptist community in Luhansk a “non-traditional religious organization” and accused the Church of “destructive activities.” These statements led to serious concerns among the Baptist community members who fear discrimination based on religion or belief.⁵

11. In Sverdlovsk city of Luhansk region, Russia-backed militants of the self-proclaimed “LPR” imprisoned Taras Sen, a pastor-missionary of the local Evangelical Christian Church of Pentecostals. He was accused of having ties with the OSCE Special Monitoring Mission in Ukraine. It happened on 27 September 2015. Following an international response, the pastor was released within four days.⁶

² Institute for Religious Freedom. (2014, October 17) Pastor Sergiy Litovchenko was released from captivity of armed separatists in eastern Ukraine. Retrieved from http://www.irf.in.ua/eng/index.php?option=com_content&view=article&id=423:1&catid=34:ua&Itemid=61

³ Institute for Religious Freedom. (2016, February 01) Separatists in Donetsk resumed religious persecution (Video). Retrieved from http://www.irs.in.ua/index.php?option=com_content&view=article&id=1646:1&catid=34:ua&Itemid=61

⁴ Ibid.

⁵ Office of the United Nations High Commissioner for Human Rights. (2017) Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017 (Rep.) Retrieved from http://www.ohchr.org/Documents/Countries/UA/UAReport17th_EN.pdf

⁶ Institute for Religious Freedom, Pro-Russian militants released Pentecostal pastor Taras Sen from captivity in Luhansk region. Retrieved from http://www.irf.in.ua/eng/index.php?option=com_content&view=article&id=440:1&catid=34:ua&Itemid=61

RECOMMENDATIONS:

12. To take additional steps to monitor, document and prevent further persecution of religious minorities and religious hate crimes in the areas of Donetsk and Luhansk regions outside of Ukraine's control. In particular, to facilitate activities of the OHCHR Monitoring Mission in Ukraine and involve other international missions and non-governmental human rights organizations in the monitoring.

13. To prepare a specialized report on the rights of religious minorities in Eastern Ukraine based on the monitoring of the situation related to religion in the areas of Donetsk and Luhansk regions outside of Ukraine's control.

14. To include the issues of ensuring the freedom of conscience, religion and belief, as well as protection of the rights of religious minorities into the Minsk and Normandy formats considering the significant influence of Russia on the actions of the self-proclaimed authorities and illegal armed groups, and their dependence on Russian support.





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