

**MIDTERM EVALUATION**

# **IMPLEMENTATION OF THE RECOMMENDATIONS OF THE UNIVERSAL PERIODIC REVIEW (2017-2020)**

**Stakeholders report to  
midterm reporting  
(third cycle)**

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## REPORT PREPARED



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The organization conducts information campaigns, educational programs, monitors and documents cases of human rights violations, prepares research and analysis, and seeks change through national and international advocacy.

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The Social Action Centre is a human rights organization based in Ukraine. We are a non-profit group working on equality and non-discrimination. Our mission we develop and promote change to achieve equal rights for everyone in Ukraine. What we do:

Awareness-raising about mechanisms for protection and counteraction to discrimination and hate crimes; Education on development and implementation of equality policies; Advocacy for establishment of effective system of protection against discrimination and counteraction to hate crimes.

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The mission of the Educational House is to unite the efforts of civil society to promote human rights education in Ukraine; to protect and promote human rights through the development of a consolidating educational space.

The educational house is a member of the Network of Human Rights Houses (hereinafter - the «Network»), headed by the Foundation of Human Rights Houses, which protects, supports and expands the capabilities of human rights defenders and their organizations. The Educational House, as a member of the Network, respects the Code of Conduct of the Network.

The Educational House was established to promote the values and principles of human rights in Ukraine and abroad, as well as for the cooperation of civil society institutions on the observance of fundamental human rights and freedoms through educational projects and activities.

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The activities of the Center for Civil Liberties are aimed at protecting human rights and promoting democracy in Ukraine and the OSCE region. The organization is known for its work on improving legislation, implementing public control practices, conducting educational activities and protecting persecuted people in the occupied territories of Crimea and Donbas. The organization widely engages ordinary people in human rights work through its human rights campaigns and volunteer initiatives.

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**Details on:** [www.ua.undp.org](http://www.ua.undp.org)

### GENERAL ASSESSMENT OF OBSERVING HUMAN RIGHTS IN 2017-2020

In November 15, 2017 the National Report of Ukraine in the framework of the Universal Periodic Review (UPR) was considered at the session of the UPR working Group of the UN Human Rights Council (HRC). As a result of the review, Ukraine received 190 recommendations from 47 UN member states on problematic issues that needed to be addressed. Ukraine noted 27 of them.

NGOs prepared an overview of the human rights situation in the midterm period of the UPR cycle and assessed the state of implementation of the recommendations provided by Ukraine.

In general, the human rights situation is constantly monitored by the national human rights mechanism, non-governmental organizations, as well as international organizations such as the UN, Council of Europe, and OSCE. However, no significant progress has been made in implementing the UPR recommendations so far. To better understand the reasons for this state of affairs, it is worth stopping by describing the context and its changes during 2017-2020.

After the presidential elections in June 2019, a new President was elected that led to early parliamentary elections and a change of political landscape and of the attitudes to the problems. At the beginning of their terms of office, the Members of Parliament were actively putting the human rights high on their agenda, taking effort to address the problems. Human rights activists have identified 13 steps to protect human rights for the new parliament<sup>1</sup>. At the beginning of their term, parliamentarians tried to overcome certain systemic problems in the field of human rights.

After the election of the new parliament, a new composition of the Cabinet of Ministers of Ukraine was appointed and all the key decision-makers have been replaced, but soon a lot of them were replaced again. As a result, there is no strategic moving forward, and this lack of progress is reflected in the implementation of recommendations.

There have been changes in the structure of the Government. In September, the Ministry of Temporarily Occupied Territories and Internally Displaced Persons of Ukraine was merged with the Ministry of Veterans' Affairs of Ukraine into the Ministry of Veterans' Affairs, Temporarily Occupied Territories and Internally Displaced Persons of Ukraine. This development was not supported by the communities of veterans and the IDPs. Experts have warned that bringing together such different target groups (residents of the occupied territories, internally displaced persons and veterans) under the remit of one Ministry can cause conflicts, as they differ in both needs and ways of meeting them. In 2020, the joint Ministry was divided, and a separate Ministry was set up to take care of reintegration of the temporarily occupied territories<sup>2</sup>.

<sup>1</sup> [https://zmina.info/articles/13\\_krokov\\_na\\_zahist\\_prav\\_ljudini\\_dlja\\_novogo\\_parlamentu/](https://zmina.info/articles/13_krokov_na_zahist_prav_ljudini_dlja_novogo_parlamentu/)

<sup>2</sup> <https://uareforms.org/reforms/human-rights-reintegration>

The activity of the Ukrainian Parliament Commissioner for Human Rights deserves special attention. A new Commissioner was appointed in 2018. However, the procedure for his appointment was not transparent. Immediately during the process of electing and appointing the Commissioner, which lasted 10 months, amendments were made to the relevant Law, which is a violation of the procedure. The UN Monitoring Mission stated that "Parliament has a duty to protect the integrity and independence of the institution of the Commissioner. The current selection procedure risks undermining public confidence in the national human rights institution. It should be reviewed and changed as a precondition for the election of a new Commissioner. " It is necessary to eliminate the conflict in the legislation, as such procedural issues will arise in the next elections of the Ombudsman.

In October 2019, the subcommittee on accreditation of the Global Network of Human Rights Institutions re-accredited the Ukrainian Parliament Commissioner for Human Rights with the status of «A». The Subcommittee notes that a clear, transparent process for participation in elections and appointments to NHRI decision-making bodies should be included in relevant legislation, regulations or mandatory administrative instructions, as appropriate. A process that facilitates merit-based selection and provides the pluralism needed to ensure the independence and public confidence of the NHRI's top management. In 2019, funding for the Secretariat of the Ukrainian Parliament's Commissioner for Human Rights in the state budget was doubled. In addition, a separate item of expenditures of the state budget of Ukraine provided for the financing of the National Preventive Mechanism.

Particular attention should be paid to the improper implementation of the National Strategy for Human Rights. NGOs that monitored its implementation in 2016-2019, the report notes that the state of its implementation is currently 28%<sup>3</sup>.

A number of legal acts promoting human rights have been adopted, including the laws of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" (2018).

In the field of overcoming the consequences of the armed conflict, important legal acts were adopted. Thus, in 2018, the Law of Ukraine "On the Legal Status of Missing Persons" was adopted, which defines "enforced disappearances", establishes the status, social guarantees for relatives of missing persons in connection with the armed conflict. On June 30, 2019, the amendments to Art. 124 of the Constitution of Ukraine, which allow ratification of the Rome Statute. Also, the Criminal Code of Ukraine was supplemented by Art. 146-1 (enforced disappearance), but as of June 2020, there are virtually no proceedings under this article.

In 2019, the Electoral Code of Ukraine has been adopted, allowing the IDPs to vote in local elections, and introducing gender quotas in candidate lists and liability for violations of accessibility of the electoral process for persons with disabilities. But the mechanism for implementing these provisions is still being finalized.

The Verkhovna Rada of Ukraine has registered a draft law on amendments to some legislative acts of Ukraine on the implementation of international criminal and humanitarian law.

The procedure for admission to higher education institutions for children from the occupied territories has been improved, and the list of universities where students from non-Government-controlled territories has been expanded.

The High Anti-Corruption Court of Ukraine has been established and operates. Its performance activities can be evaluated over a certain period of time.

<sup>3</sup> <http://hro.org.ua/index.php?id=1590308681>

Significant progress has been made in combating sexual violence, in particular through making amendments to the Criminal Code to bring Ukrainian legislation in line with international standards. However, many international standards remain unimplemented in Ukrainian law, including existing inconsistencies with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, ratified by Ukraine in 2012. There are no separate provisions establishing liability for sexual harassment and stalking. Allocation of necessary resources, provision of specialized services, and access to justice for victims of sexual violence also remain the issues.

At the same time, it is worth outlining a number of negative trends in the field of human rights. So, for the third time, a draft law to accede to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has been rejected.

The situation with security and impunity for attacks on journalists and human rights activists is constantly deteriorating<sup>4</sup>. In 2019, at least 83 human rights defenders and civil society activists in Ukraine were persecuted, threatened, pressured or attacked<sup>5</sup>. The Office of the United Nations High Commissioner for Human Rights states in its report: “Since early 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has been paying particular attention to the issue of civic space and fundamental freedoms in Ukraine. OHCHR notes a lack of accountability in most of the documented cases of attacks against journalists and other media professionals, civic and political activists, and defence lawyers. As long as such impunity remains unaddressed, space for the promotion and protection of fundamental freedoms is at risk.”<sup>6</sup>

The Constitutional Court of Ukraine has recognized the e-declaration of anti-corruption civic activists non-compliant with the Constitution of Ukraine. However, the Verkhovna Rada registered the draft law on transparency of activities of non-government organizations with foreign support that provides for the creation of a separate register and requesting financial statements for organizations receiving over 50% funding from abroad, obliges the NGOs to indicate the fact of foreign support in full and abbreviated name, as well as to mark information materials in the framework of international projects. Requirements for reporting on sources, amounts of funding and activities also apply to charitable organizations. Leaders of NGOs with foreign support (by agreement) will undergo a polygraph on possible betrayal of state interests of the country.

The State Bureau of Investigation was established on paper in 2015 and was due to start operating in November 2017. The Bureau opened its first proceedings at the end of 2018. Although the SBI was primarily intended as a body to investigate torture and other serious crimes committed by law enforcement agencies, its jurisdiction became broader – it encompasses all the crimes committed by law enforcement and high-ranking officials (even road accidents). The SBI has 7 territorial offices and 1,500 investigators (for comparison, the National Police has about 130,000). For a long time, the SBI did not have its own operational units, so they involved police and SBU operatives in their activities, which created a conflict of interest.

The Istanbul Convention that Ukraine signed back in 2011, has not been ratified yet. Although new legislation on preventing and combating domestic violence was adopted in late 2017, the procedure for cooperation between the stakeholders on prevention of domestic violence has been adopted, many problems remain with practical implementation of the legislation. The responsibility of police and military personnel for committing domestic violence is not

<sup>4</sup> <http://cs-coalition.org/ua/mapa-zahroz>

<sup>5</sup> <https://zmina.info/news/pravozahysnyky-zafiksuvaly-83-vypadky-peresliduvannya-gromadskyh-aktyvistiv-u-2019-roczii/>

<sup>6</sup> <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx>

enshrined at the adequate level, there are difficulties in obtaining restrictive orders and fixed-term restraining orders, and the provision of specialized services to victims.

The problem of prosecuting perpetrators of conflict-related sexual violence remains unresolved. No special legislation has been adopted to establish appropriate liability for such acts. The perpetrators are either not prosecuted at all or are prosecuted for general criminal offenses, which does not correspond to the nature and gravity of the acts committed. The status of victims of conflict-related sexual violence remains legally uncertain. Accordingly, such persons are not provided with specialized services, necessary rehabilitation and cannot receive compensation.

In recent years, there have been no significant changes in the fight against human trafficking. Victims of trafficking still face a number of problems in obtaining the respective status, and they have never been granted the right to receive free secondary legal aid. A mechanism for paying compensation to victims has not yet been established. The administration of justice in this area remains ineffective. The problem of human trafficking with the use of reproductive technologies of surrogacy has become more acute. The authorities have also started recording trafficking in human beings for the use in armed conflict.

## ASSESSMENT OF OBSERVING HUMAN RIGHTS IN AREAS ON WHICH UPR 2020 RECOMMENDATIONS WERE PROVIDED

### ADMINISTRATION OF JUSTICE, BRINGING TO LIABILITY AND THE RULE OF LAW

#### Judicial reform

Judicial reform was meant to be comprehensive – a high-quality stable judiciary, enforcement of decisions, participants in the process, settlement of all parties. It was particularly relevant in the context of an armed conflict and the inability for the authorities to perform their functions on non-Government-controlled territories of Ukraine.

The reform of the judiciary initiated by President Zelenskyi was flawed from the outset. Both civic activists<sup>7</sup> and the Venice Commission noted it<sup>8</sup>, but many remarks were taken into account.

The adopted law still did not prevent the High Council of Justice from distorting its essence and approving such a version of the Regulations on Competition for New Members of the High Qualification Commission of Judges that levelled the participation of international experts.

Eventually, Zelenskyi’s judicial reform failed and was declared partially unconstitutional. Some of conditional positives are the termination of powers of the old High Qualification Commission of Judges.

A prove of real opinion of the citizens on the government’s efforts to implement judicial reform is the progress in the level of public trust in courts as measured by the opinion polls conducted by the Razumkov Centre: in early 2019, 11.8% citizens trusted courts<sup>9</sup>, and in early 2020,

<sup>7</sup> <https://dejure.foundation/news/aktyvisty-nazvaly-nebezpeky-sudovogo-zakonoproektuzelenskogo>

<sup>8</sup> <https://www.pravda.com.ua/news/2019/12/6/7234113/>

<sup>9</sup> <http://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/riven-doviry-do-suspilnykh-institutiv-ta-elektoralni-orientatsii-gromadian-ukrainy-2>

13.2%<sup>10</sup>. Such a meagre growth does not indicate the return of trust and respect for the court under the new government, although it was the goal set in the presidential election program.

The work of the High Anti-Corruption Court has been unblocked. Amendments to the legislation that clarified the jurisdiction of the HACC were approved by the Parliament in September 2019 and really addressed the potential problem of excessive number of cases under the HACC consideration.

In addition, over the year of Volodymyr Zelenskyi's presidency, there are many new court decisions that raise many questions, such as the arrest of suspects in the murder of journalist Pavel Sheremet, the release of riot police (Berkut) officers, Kharkiv terrorists or militant Volodymyr Tsemakh who is an important witness in the case of MH17 plane crash<sup>11</sup>.

Cases of interference in the administration of justice by law enforcement agencies, lawyers, MPs of Ukraine, members of local councils, other representatives of state and local self-government bodies, citizens and their associations, as well as the media, remain frequent.

Since the launch of the register of notifications of interference in the activities of judges in the administration of justice, the High Council of Justice has received 1,220 such appeals, and in 2019, 450 notifications from judges. In 2019, the Council adopted 115 decisions on measures to ensure the independence of judges and the authority of justice<sup>12</sup>.

Creating an effective judicial system would increase trust and address violations of other human rights.

#### RECOMMENDATIONS:

- Ensure the implementation of the ECtHR decisions
- Ensure adequate proper training and staffing of courts according to the standards of 'new justice.'

#### Jury trial

##### *Centre for Civil Liberties*

In 2016, judicial reform was launched in Ukraine. As part of it, the Constitution was amended and a number of legislative acts were adopted. At the same time, judicial reform has focused on achieving pinpoint targets, and legislative changes have not addressed a number of issues, including the establishment of a jury trial.

Article 124 of the Constitution of Ukraine stipulates that the people are directly involved in the administration of justice through juries. But the institution that is now called a jury trial in Ukrainian law is in fact nothing more than a jury of people's assessors inherited from the Soviet era.

It narrows the role of citizens in the judicial process and limits the right of accused persons to a fair trial. In general, it distorts the very idea of creating an institution that will allow regular citizens to participate in the administration of justice.

<sup>10</sup> <http://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-diialnosti-vlady-riven-doviry-do-sotsialnykh-instytutiv-ta-politykiv-elektoralni-oriaientatsii-gromadian-liutyi-2020r>

<sup>11</sup> <https://www.pravda.com.ua/columns/2020/05/11/7251195/>

<sup>12</sup> [https://hcj.gov.ua/sites/default/files/field/file/shchorichna\\_dopovid\\_za\\_2019\\_rik.pdf](https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2019_rik.pdf)

To address this issue, human rights activists and scholars together with the Ministry of Justice of Ukraine developed a draft Law on amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" to improve the procedure for forming a jury list (registration # 2709); as well as the draft law on amendments to certain legislative acts of Ukraine concerning ensuring the participation of jurors in the administration of justice (registration # 2710).

Following the change of the Government in March 2020, the new Cabinet of Ministers withdrew these draft laws in accordance with the Rules of Procedure and has not yet initiated their re-registration as of June 2020.

After the Revolution of Dignity, Ukraine is in a period of transformation that is also affected by the ongoing war with the Russian Federation. Therefore, there is a strong demand in society for the restoration of justice that the ongoing judicial reform is currently unable to ensure. In an environment where a society is highly polarized and the level of tolerance for violence increases due to the ongoing armed conflict, such delays will have fatal consequences. A request for justice can easily turn into a request for revenge.

The introduction of a jury trial is important both for the protection of the human right to a fair trial, as it will improve the quality and efficiency of pre-trial investigation bodies, increase the adversarial process, etc., and to ensure public trust in the judiciary and a new quality of legal culture among the population that remains quite low.

#### RECOMMENDATIONS:

##### *To the Cabinet of Ministers of Ukraine*

- Initiate the submission to the Verkhovna Rada of Ukraine of draft laws on the introduction of a jury trial developed by experts and human rights activists.

##### *To the Verkhovna Rada of Ukraine*

- Register and approve the submitted draft laws on the implementation of a jury trial developed by experts and human rights activists.

#### IMPLEMENTATION OF THE PROVISIONS OF INTERNATIONAL HUMANITARIAN LAW AND PEACE BUILDING

##### *Centre for Civil Liberties*

Ratification of the Rome Statute of the International Criminal Court is an international obligation of Ukraine under the Association Agreement between Ukraine and the EU. Namely, Article 8 of the Association Agreement enshrines that "the Parties shall cooperate in promoting peace and international justice by ratifying and implementing the Rome Statute of the International Criminal Court (ICC) of 1998 and its related instruments."

On 20 January 2000, Ukraine signed the Rome Statute of the International Criminal Court in accordance with President's Decree # 313/99-rp of 11 December 1999. According to the conclusion of the Constitutional Court of 3 July 2001 # 3-v/2001, the Rome Statute of the International Criminal Court does not comply with the Constitution of Ukraine. Therefore, the ratification of the Statute was to be preceded by amendments to Article 124 of the Constitution of Ukraine. Necessary amendments to Article 124 of the Constitution of Ukraine were made in 2016, the Article was supplemented with a new part 6 as follows: "Ukraine may recognize the jurisdic-

tion of the International Criminal Court under the conditions specified by the Rome Statute of the International Criminal Court.” It came into force in June 2019.

While the Rome Statute has not been ratified yet, Ukraine still recognized the jurisdiction of the International Criminal Court. On 17 April 2014, the Government of Ukraine filed a declaration pursuant to Article 12(3) of the Rome Statute recognizing the jurisdiction of the International Criminal Court over alleged crimes committed in Ukraine between 21 November 2013 and 22 February 2014. And on 8 September 2015, the Government of Ukraine filed a second declaration under Article 12(3) of the Rome Statute that recognizes the jurisdiction of the International Criminal Court over alleged crimes committed in Ukraine after February 20, 2014 without a final date.

Currently, there is an extraordinary situation – Ukraine has assumed obligations to the International Criminal Court based on a declaration of recognition of jurisdiction. But it did not acquire the individual rights granted to the Member States of the Rome Statute.

On 30 June 2019, the three-year postponement of the entry into force of the new constitutional provisions that pave the way for the ratification of the Rome Statute expired. Therefore, today it these are only the President and the Parliament who shall decide whether Ukraine will become a full member of the International Criminal Court.

The inconsistency of the national legislation of Ukraine with the provisions of the Rome Statute and the provisions of international law remains yet another issue. On the sixth year of the war with Russia, Ukrainian law still lacks the legal tools to prosecute major crimes under international law. The Criminal Code does not provide for liability for crimes against humanity, and the provisions on war crimes do not fully meet the requirements of international law.

A draft law developed by human rights activists on amendments to certain legislative acts of Ukraine on the implementation of international criminal and humanitarian law was meant (registration # 2689) – the so-called [War Criminals Act](#) – was meant to address this problem. It amends the Criminal Code of Ukraine and provides national investigative and judicial authorities with opportunity to effectively prosecute people who have committed major crimes under international law.

Delays in the adoption of this law already leads to inevitable consequences. Only international crimes have no statute of limitations, so the correct qualification of these actions today will make it possible to prosecute those responsible in the future, even after decades. Moreover, only those convicted of international crimes are not subject to amnesty, as required by Russia in the Minsk process.

The adoption of a law on war criminals is awaited by tens of thousands of people who have fallen victim to Russian armed aggression. It is under this law that Ukraine shall prosecute the representatives of illegal armed groups that detain and torture people in basements in the occupied territories. It is under this law that Ukraine must bring to justice those guilty of gross violations of international law that occurred during the fighting near Ilovaisk and Debaltseve, the shooting of residential areas in Mariupol, the destruction of a bus near Volnovakha, those guilty of war crimes and crimes against humanity in the Autonomous Republic of Crimea and the city of Sevastopol, in particular the persecution of Crimean Tatars and Ukrainian activists, torture and enforced disappearances, the movement of Russian citizens to the temporarily occupied peninsula, etc.

## RECOMMENDATIONS:

*To the President of Ukraine*

- Initiate a submission to the Verkhovna Rada of Ukraine for ratification of the Rome Statute of the International Criminal Court.

*To the Verkhovna Rada of Ukraine*

- Adopt an appropriate resolution ratifying the Rome Statute of the International Criminal Court.
- Adopt a draft law on amendments to certain legislative acts of Ukraine on the implementation of international criminal and humanitarian law (registration # 2689).

## PREVENTION OF TORTURE AND ILL-TREATMENT

*ZMINA Human Rights Centre*

### Places of custody and detention

In Ukraine, the number of places of custody and detention is growing after a significant decrease in 2012–2015. The increase is mainly due to special vehicles for transporting detainees by law enforcement agencies, paddy wagons and military units. At the same time, the number of police units and special boarding schools is somewhat decreasing. As of 2019, there are more than 5,000 official places of custody and detention. The largest number is in the system of the National Police and the National Guard (over 2,000). The key problems identified by the monitoring groups are inadequate detention conditions, lack of medical care, abuse of force, and unlawful isolation. Excessive use of force during detention and inadequate registration of detention are common among police officers. In social and medical institutions, the systemic problem are the violations during the fixation of patients, isolation and failure to provide healthcare. Violations of the right to privacy (unseparated bathrooms, beds in dormitories) are systemic for all places of custody and detention.

According to a report by the UN Special Rapporteur on Torture who visited Ukraine in 2018, “Notwithstanding significant improvements in recent times, the information gathered indicates that torture and ill-treatment are still practiced with impunity throughout the country.” The report also emphasizes that alternatives to detention are used in Ukraine in exceptional cases, and notes that there is a serious problem with access to health care in penitentiary facilities. The medical staff of these institutions does not conduct sufficient interviews with the injured persons to learn the causes of injuries. Torture is documented improperly, i.e., the documenting does not meet the standards of the Istanbul Protocol, which leads to further spread of impunity. During its seventh periodic visit to Ukraine in 2017, the European Committee for the Prevention of Torture also received many complaints of excessive use of force during police detention, as well as allegations of physical violence against persons under police custody. The Committee also noted the practice of *informal* (not properly formalized) detentions and interrogations of suspects.

Number of official places of detention and custody in Ukraine

2015	2016	2017	2018	2019
4461	4528	4738	4738	5044

## National Preventive Mechanism

With the election of the new Ukrainian Parliament Commissioner for Human Rights in March 2018 (Lyudmyla Denisova was elected the new Commissioner), the Department for the Implementation of the National Preventive Mechanism was restructured – instead of thematic division according to types of places of detention, departments were organized by functional division in line with the role of employees. Currently, the NPM has separate departments for monitoring, analytics and law-making, while staff are exempt from considering complaints. The NPM also includes civic monitors (about 150) and regional representatives and coordinators who act on voluntary basis, the Coordinating Council (which includes the Commissioner, her representatives, civic experts and Deputy Ministers).

Since 2019, the NPM is funded through a separate budget programme (about UAH 3 million per year) that covers the operational expenses of the Secretariat of the Commissioner, but does not reimburse the costs of monitors (travel, accommodation, meals). In addition, training activities, drafting and printing of technical materials, reports and other products are still mostly funded by donors. Also, the NPM often faces the logistical problems due to the inability to get to a remote place of detention or find overnight accommodation next to it, as no more than one business day is usually planned for a visit to one place of detention.

Since 2019, the NPM has also started visiting private rehabilitation centres, but this practice remains unsystematic.

Notwithstanding the increase in the number of visits, the NPM still does not have sufficient influence on the situation in places of detention, especially at the regional level. Civic monitors – even the most experienced – do not have the right to visit places of detention on their own (separately from the Secretariat of the Commissioner) and are therefore severely limited in their ability to advocate for improved conditions in places of detention in the communities in which they live. Civic monitors are often not involved in the process of communicating with the authorities, and do not know whether their work has had an impact on certain changes. At the same time, more inclusive and equal involvement of civic monitors in the work of the NPM would contribute to a better use of resources, strengthen the NPM's expertise and cover a significant number of places of detention with visits.

### Number of NPM monitoring visits

2017	2018	2019
232	375	711

## Documentation and investigation of torture

To date, Ukraine has no unified algorithm to document the signs of torture that meets the requirements of the Istanbul Protocol, which could positively contribute to the process of investigating such cases and overcoming impunity.

According to a survey conducted by ZMINA Centre for Human Rights, the Expert Centre for Human Rights and the Secretariat of the Commissioner, even the places of detention of same type and subordination have different practices of documenting bodily injuries. However, most often there are no independent medical examinations of newcomers. In cases where they are conducted, their results are recorded very briefly. This is often done by a nurse or a paramedic without the involvement of a doctor. The police conduct a medical examination only if a police officer sees a threat to a detainee's life and health, even though s/he does not have the appropriate medical training to determine it. Medical information is often entered into non-medical

records (various internal journals and certificates) that then cannot be used during forensic examinations.

It is also common practice for outsiders to be present during the examination and interview of newcomers (in psychiatric hospitals, police officers who deliver a person are often present during the examination, and family members are present in social institutions). Sometimes they are the ones who explain the injuries of newcomers.

Another common practice in the places of detention and custody is not to report injuries to the investigating authorities. Usually, medical staff report such cases to the administration of institutions. The medical staff of places of detention and custody remains organizationally and financially dependent on administrations (even in the penitentiary system where the medical service is transferred to a separate state institution). Also, medical workers do not have a standardized methodology for describing injuries and drawing up a diagram of their location (on a picture of a human body), so they act at their own discretion.

## RECOMMENDATIONS:

- Continue strengthening the guarantees of the independence of the National Preventive Mechanism, provide it with the necessary resources for monitoring and analysis. Provide an opportunity to reimburse the costs incurred by civic monitors and experts involved. Strengthen the participation of civic monitors in the implementation of the NPM.
- Bring the definition of torture in criminal law in full compliance with the definition given in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Strengthen the guarantees of the independence of the State Bureau of Investigation – deprive the persons under the SBI jurisdiction – in particular, the President, MPs, other high-ranking officials – of the possibility to exert direct influence on the SBI Director. Consider expanding the staff of investigative offices and the number of regional offices. Make investigation of torture and related crimes by law enforcement – illegal detention, violation of the right to defence, etc. – a priority for the Bureau.
- Implement the standards of the Istanbul Protocol – introduce a unified procedure for recording and reporting signs of torture in places of detention and custody. Ensure proper registration of such allegations in a unified protected database and consideration of such allegations by an independent investigative body. Introduce the practice of reporting by the investigating authorities on the status of investigation of torture in Ukraine.
- Strengthen security guarantees for whistle-blowers who provide information about torture to investigators (prison staff and detainees). Develop a mechanism for witness protection.
- Make efforts to bring the conditions of detention in line with the international standards. Consider holding a person in a place of detention as a last resort, and expand alternative forms of precautionary measures (in the case of criminal justice) and care and treatment (in the case of social and medical institutions).
- Ensure that people detained in places of detention and custody have access to appropriate healthcare that meets national standards. Strengthen guarantees for the independence and safety of health professionals who conduct medical examinations of such persons.

## PREVENTION OF TORTURE AND ILL-TREATMENT IN THE CONTEXT OF RUSSIA'S POLITICAL PRISONERS IN CRIMEA AND CAPTIVES AND CIVIL HOSTAGES IN DONBAS

*Centre for Civil Liberties*

After the Russian occupation of Crimea and the beginning of the hybrid war in Donbas, human rights activists have been recording the widespread practice of arbitrary detention, abduction, torture and ill-treatment of Ukrainian illegally detained citizens in the Russian Federation and the occupied Ukrainian territories of Crimea and Donbas.

Information on numerous cases of torture is provided in the reports by the Office of the UN High Commissioner for Human Rights<sup>13</sup>, the UN Human Rights Monitoring Mission<sup>14</sup>, other international and Ukrainian human rights organizations, lawyers' statements, and testimonies of already released political prisoners and captives (including Oleh Sentsov<sup>15</sup>, Mykola Karpuk<sup>16</sup>, Stanislav Asieiev<sup>17</sup> and others<sup>18</sup>). The exact number of people who have been tortured and ill-treated cannot be determined, as human rights activists know only of a limited number of documented cases.

According to human rights activists<sup>19</sup>, in the first years of the war in Donbas, 86% captured military servants and every second illegally detained civilian were subjected to torture and ill-treatment, 33% military servants and 16% civilians witnessed death by torture; 12% of all civilians who were tortured and ill-treated were women, and in 44% cases, the interrogation and protection of places of detention was conducted by military personnel and mercenaries from the Russian Federation.

According to persons released in 2019, they suffered beatings, electric shocks, suffocation (wet and dry methods), sexual violence, torture, removal of body parts (nails and teeth), deprivation of water, food, sleep or access to the toilet, mock execution, threats of violence or death, threats of harm to the family.

In addition, they were kept in inhumane unsanitary conditions with no toilets and showers, without access to daylight, medicine and food. In addition to the so-called "official" institutions in the occupied Donbas, there are secret places of imprisonment.

The quality of healthcare in these facilities is clearly illustrated by the evidence provided to the Office of the UN High Commissioner for Human Rights by several persons detained in Isolation Centre in Donetsk that a medical worker was present during their interrogations and torture. He brought those who lost consciousness back to consciousness and showed how to make torture to inflict maximum pain, but not kill a person. He also examined detainees before torture, asked about their illnesses, measured blood pressure or heart rate, and gave injections<sup>20</sup>.

<sup>13</sup> <https://www.unian.ua/war/10934009-yes-vimagaye-rozsliduvan-katuvan-ukrajinskih-zaruchnikiv-v-ordlo.html>

<sup>14</sup> <https://qha.com.ua/po-polochkam-uk/donetski-katuvannya-krymski-deportatsiyi-i-nezakonnyj-pryzov-nova-dopovid-monitoryngovoyi-misiyi-oon-pro-porushennya-prav-lyudyny/>

<sup>15</sup> <https://hromadske.ua/posts/pershe-intervyu-olega-sencova-nazhivo>

<sup>16</sup> [https://zaxid.net/zvilneniy\\_z\\_polonu\\_mikola\\_karpyuk\\_rozpoviv\\_pro\\_katuvannya\\_u\\_rosiyskiy\\_vyaznitsi\\_n1488676](https://zaxid.net/zvilneniy_z_polonu_mikola_karpyuk_rozpoviv_pro_katuvannya_u_rosiyskiy_vyaznitsi_n1488676)

<sup>17</sup> <https://www.radiosvoboda.org/a/30634506.html>

<sup>18</sup> [https://zaxid.net/zvilneniy\\_z\\_polonu\\_ukrayintsi\\_zayavili\\_pro\\_katuvannya\\_u\\_vyaznitsyah\\_ordlo\\_n1501004](https://zaxid.net/zvilneniy_z_polonu_ukrayintsi_zayavili_pro_katuvannya_u_vyaznitsyah_ordlo_n1501004)

<sup>19</sup> <https://ccl.org.ua/reports/zvit-ti-scho-perezhyly-peklo/>

<sup>20</sup> *Ibid.*

As far as the situation in Crimea is concerned, at least 200 cases of torture and inhuman treatment have been recorded in the six years since the occupation, and it only applies to politically motivated cases<sup>21</sup> involving Crimean Tatars and ethnic Ukrainians and Russians. Crimean Tatar Dzhemil Hafarov, accused of a fabricated case of "terrorism," had a fourth-degree disability and chronic kidney disease before his detention. With such a disease, even under Russian law, it is forbidden to keep a person in a pre-trial detention centre. Instead, he has been kept behind bars for more than a year without receiving examination and proper healthcare.

Torture during detention and improper conditions in the pre-trial detention centre were repeatedly reported by Yevhen Panov, a participant in the "Ukrainian saboteurs' case" who has now been released. During his three years in Simferopol pre-trial detention centre, and then in the Russian colonies, his appearance changed beyond recognition due to difficult conditions of detention. The wife of another political prisoner, a participant in the "Ukrainian saboteurs' case," now a prisoner Andrii Zakhitei, told *Prisoner's Voice* in an interview, "Andrii was beaten and tortured during his detention. They abused him not only physically but also morally. They took him out to dig a hole for himself, took him by helicopter and promised that he would fly now. He has scars on his arms, face and back of his head. He was beaten by a gun-butt, he has a big dent in his skull and now he has headaches, his ribs are broken too."<sup>22</sup>

In addition, it is a common practice in Crimea to transfer prisoners in unsanitary conditions without food and in violation of international humanitarian law from the peninsula to colonies in remote areas of the Russian Federation.

### RECOMMENDATIONS:

*To the representatives of Ukraine in the humanitarian group of Minsk Process*

- Demand access for the OSCE SMM, the UN Human Rights Monitoring Mission and the International Committee of the Red Cross to places of detention in the temporarily occupied territories of Crimea and Donbas.

*To the Ministry of Foreign Affairs*

- Respond to cases of torture of Ukrainian citizens imprisoned for political reasons in the Russian Federation.

*To the Verkhovna Rada of Ukraine*

- Adopt a law on amendments to certain legislative acts of Ukraine on the implementation of international criminal and humanitarian law (registration # 2689).

## PREVENTION OF ILL-TREATMENT AGAINST PEOPLE WITH DISABILITIES, ESPECIALLY MINORS

*Non-governmental organization of people with disabilities "Fight for Rights"*

Although the National Strategy for Deinstitutionalization of Child Care and Education Institutions was adopted in 2017, the institutional system of care for people with disabilities, including minors, continues to operate in Ukraine. There are currently 751 boarding schools with

<sup>21</sup> <https://ua.krymr.com/a/pro-tortury-v-krymu-pislya-aneksii/30025932.html>

<sup>22</sup> [https://www.facebook.com/SaveSentsov/posts/2564755700432734?\\_\\_tn\\_\\_=K-R](https://www.facebook.com/SaveSentsov/posts/2564755700432734?__tn__=K-R)

106,000 minors (17% of whom have disabilities<sup>23</sup>) and approximately 50,000 adults with disabilities. Cases of ill-treatment in boarding schools are common and systemic. In her 2019 report, the Ukrainian Parliament Commissioner for Human Rights noted that in education institutions where the orphaned children and children deprived of parental care are housed, the facts of isolation of children indoors, exercises that degrades their dignity, etc. were revealed. In boarding schools, the practice of applying physical restraint to minors continues, including isolation indoors, tying to beds, use of various means of fixation. No single boarding school documents the facts of injuries, their causes and investigates injuries<sup>24</sup>.

In 2019, the news agency 112.ua conducted and published a series of journalist investigations<sup>25</sup> that recorded violations of human and children's rights in six boarding schools<sup>26</sup>. But both the law enforcement and the authorities did not provide adequate response.

Ukraine has not yet implemented a system to prevent abuse of children with disabilities in general and in social protection institutions in particular.

Girls and women with disabilities remain one of the most vulnerable groups. Although the United Nations 2030 Agenda for Sustainable Development Program 2030 recognized women's rights and rights of vulnerable groups cross-cutting components and called on countries to implement national policies accordingly, the problem remains critical in Ukraine. According to statistics from other countries, women with disabilities are on average twice as likely as women without disabilities to be victims of crime<sup>27</sup> and to be much more likely to suffer from physical and sexual violence<sup>28</sup>. As Ukraine does not keep statistics on offenses based on sex, age, disability and other characteristics of victims, it is currently impossible to determine the prevalence of the problem in Ukraine. The problem of ill-treatment and violence against women with disabilities remains invisible to the government.

## RECOMMENDATIONS:

- Implement an effective system for preventing abuse of children with disabilities.
- Review the National Strategy for the Deinstitutionalization of Child Care and Education in order to increase its effectiveness and accelerate the implementation of the provisions.
- Introduce the collection, systematization and analysis of statistics on women and girls affected by violence, including in social protection institutions.

## FREEDOM OF EXPRESSION AND PROTECTION OF JOURNALISTS

### ZMINA Human Rights Centre

Ukraine has taken a lot of effort to better ensure freedom of expression after 2014, and according to international rankings, the situation in Ukraine is much better than in other post-Soviet

<sup>23</sup> [https://www.adm-km.gov.ua/?page\\_id=40310](https://www.adm-km.gov.ua/?page_id=40310)

<sup>24</sup> <https://www.minregion.gov.ua/press/news/shhorichna-dopovid-upovnovazhenogo-verhovnoyi-rady-ukrayiny-z-prav-lyudyny/>

<sup>25</sup> <https://ua.112.ua/statji/yak-v-internatakh-znushchajutsia-nad-ditmy-rozsliduvannia-lihy-koruptsii-478981.html>

<sup>26</sup> Teteriv (Zhytomyr oblast), Verkhniodniprovskiyi (Dnipropetrovsk oblast), Khotyn boarding school (Chernivtsi oblast), Skvyra psychoneurological boarding school (Kyiv oblast), Nizhyn boarding school (Chernihiv oblast), Bilopillia boarding school (Sumy oblast).

<sup>27</sup> [https://ovc.ncjrs.gov/ncvrv2018/info\\_flyers/fact\\_sheets/2018NCVRW\\_VictimsWithDisabilities\\_508\\_QC.pdf](https://ovc.ncjrs.gov/ncvrv2018/info_flyers/fact_sheets/2018NCVRW_VictimsWithDisabilities_508_QC.pdf)

<sup>28</sup> [https://eige.europa.eu/sites/default/files/documents/20175822\\_mh0417775enn\\_pdf.pdf](https://eige.europa.eu/sites/default/files/documents/20175822_mh0417775enn_pdf.pdf)

viet countries. In particular, positive achievements include the launch open media ownership, improved access to information.

One of significant positives was the introduction of public broadcasting in accordance with international standards. However, contrary to the law, the government does not provide adequate funding for the public broadcaster, thus narrowing the space for its development and strengthening, and contributing to criticism of its ineffectiveness.

Notwithstanding the relatively high level of freedom in the media, attacks on journalists and activists, especially those involved in anti-corruption and other investigations or open criticism of the authorities, have continued in recent years.

Since 2015, four journalists have been killed in Ukraine and hundreds have been attacked or threatened. The vast majority of such cases were left without proper investigation. Police often refuse to register crime reports in cases of attacks or threats against journalists or activists. If such reports are registered, only a small number of cases are investigated. Sentences in such cases are an exception.

Here is an example of one crime – *obstruction of journalist activity* (Article 171 of the Criminal Code of Ukraine). According to the Institute of Mass Media<sup>29</sup>, from 2017 to 2019, the police was registering about 200 reports of this crime annually (2017 – 219, 2018 – 195, 2019 – 190), of which less than a half went to court (2017 – 90, 2018 – 76, 2019 – 6). However, judicial statistics<sup>30</sup> show other data – in 2017, there were 20 cases in the courts, in 2018 – 9 more were received, and also 9 in 2019. As a result, in 2018, there were only 5 convictions, and in 2019, 3 convictions for committing this crime. That is, in less than 3% cases of obstruction of journalist activity, the protection mechanism is fully in place.

The situation is similar for crimes of murder, violence or threats against journalists and activists.

High-profile cases are also being improperly investigated, some of which are mentioned below.

### *The case of Pavel Sheremet*

Well-known journalist Pavel Sheremet died on 20 July 2016 as a result of a car explosion in Kyiv downtown. The investigation was not conducted properly for a long time. The mysterious disappearance of CCTV data from the scene was reported<sup>31</sup>, not all witnesses were questioned in the case. Only after public pressure in December 2019, the police announced an investigation into the murder. According to police, the alleged organizer and two perpetrators of the crime were detained. However, the results of the investigation have been repeatedly criticized by the public. The investigation continued and was completed only in May 2020. As a result, the substance of the charges against the former detainees was substantially changed. The investigation has no information about the instigator of the crime and the motives of instigator. One of the detainees had his status changed – from an organizer he became a perpetrator of a crime. As a result, three persons have been charged with Sheremet's murder and are studying the criminal case file. At the same time, the evidence in the case is extremely contradictory, the results of certain examinations contradict each other and raise reasonable doubts about their reliability. The investigation did not establish the motive for the perpetrators. There is also no information about the organizers and instigators of this crime.

<sup>29</sup> <https://imi.org.ua/news/u-2019-rotsi-zmenshylasya-kilkist-sprav-skerovanyh-do-sudu-za-zhurnalistskymy-stattamy-imi-i31332>

<sup>30</sup> See data for 2019: [https://court.gov.ua/userfiles/media/dsa\\_pres\\_slujba\\_2019/dsa\\_pres\\_slujba\\_2020/1k\\_2019.xlsx](https://court.gov.ua/userfiles/media/dsa_pres_slujba_2019/dsa_pres_slujba_2020/1k_2019.xlsx); for 2018: [https://court.gov.ua/userfiles/media/media/1k\\_2018.xlsx](https://court.gov.ua/userfiles/media/media/1k_2018.xlsx)

<sup>31</sup> Data made public in the investigative film made by journalists of Radio Liberty in 2017: <https://www.radiosvoboda.org/a/28478928.html>

Unfortunately, hundreds of other reports of attacks and threats to journalists received in 2017–2019 remain without proper investigation in the vast majority of cases.

The attacks are due to the systematic dissemination of information by journalists and activists about corruption or criticism of the government. The lack of investigation contributes to the increase in violence against media professionals and may force others to cease their activities or not to disseminate socially important information.

#### RECOMMENDATIONS:

- The police should ensure that reports of attacks and threats against journalists and activists in connection with their professional activities are properly investigated. Such reports should be given special priority due to public importance of investigation of such crimes, as impunity contributes to the increase in the number of such attacks.
- National courts should generalize the case law on the prosecution of obstruction of journalist activity.
- The law on media should be adopted taking into account recommendations from international organizations and meet the standards of freedom of speech and information.
- The state must ensure full funding of public broadcasting in the amounts provided by law to guarantee its independence.

#### *Centre for Civil Liberties*

The safety of journalists in Ukraine and the status of investigation of cases of obstruction of professional journalism in recent years is of great concern among Ukrainian and international institutions. The impunity for crimes against journalists is particularly acute, given the murders of journalists Vadym Komarov, Pavel Sheremet, Heorhii Gongadze and other cases of physical aggression.

The Institute of Mass Media recorded 226 violations of media freedom from January to early December 2019. In addition to the murder of Cherkasy journalist Vadym Komarov, these violations included 20 beatings, 16 cyberattacks, 93 cases of interference into their activities, 34 cases of threats and 21 cases of restriction of access to public information<sup>32</sup>.

Human rights activists monitor the status of investigation of cases of harassment by law enforcement agencies through an interactive map<sup>33</sup>. Even a cursory analysis of the cases presented there shows that law enforcement officers do not pay due attention to crimes against media professionals – most of the attacks remain not solved and do not even go to court. For example, on 24 October 2017, during the unblocking of the courtroom of Sviatoshynskiy District Court in Kyiv, police officers in the uniform of a special regiment attacked a journalist Dmytro Replianchuk, knocked the camera out of his hands and kicked him several times in the head and body. Police beat not only a journalist from Hromadske, but also journalists from the UNIAN news agency and Strana.ua. These cases are combined into a single case. The investigation has not yet identified the suspects<sup>34</sup>.

<sup>32</sup> <https://freedomhouse.org/country/ukraine/freedom-world/2020>

<sup>33</sup> *Ibid.*

<sup>34</sup> <https://hromadske.ua/posts/pobittya-zhurnalista-hromadske-2-roki-tomu-zrushen-u-spravi-nemaye>

#### RECOMMENDATIONS:

#### *To the National Police of Ukraine*

- Record reports of crimes committed against journalists through their activities.
- Ensure effective, thorough investigation of crimes against journalists through their activities.
- Issues related to the role, tasks, responsibilities and rights of the media should be included in training curricula for police officers whose responsibilities include ensuring security during mass events.

#### FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

#### *Centre for Civil Liberties*

Although the situation with the protection of freedom of peaceful assembly has changed for the better since the Revolution of Dignity in 2013–2014, there are still many systemic problems. These include discriminatory treatment of certain social groups, poor facilitation on the part of executive authorities and the inability to protect meetings from obstruction by third parties, etc.

There is no special law on peaceful assemblies in Ukraine. Numerous attempts to adopt such a law have been criticized by the opposition, experts and a number of civil society activists, who fear that the adoption of such a law and additional regulations will restrict freedom of assembly.

In April 2020, a draft law banning rallies near court buildings that poses unjustified risks to the freedom of peaceful assembly was tabled with the Verkhovna Rada<sup>35</sup>.

Despite the need to demilitarize the law enforcement agencies, human rights activists still record legislative attempts to expand the powers of military formations to restrict freedom of peaceful assembly. The MPs tried to vote for the necessary changes in 2017 under the previous government, and in 2020, after Volodymyr Zelenskyi was elected the President, and his political force formed a majority in the Parliament. So far, these attempts have been stopped due to the active stand of civil society<sup>36,37</sup>.

A positive development in the field of public order at meetings is the creation of special units for mediation and negotiations. However, there is still no unified vision or approach to maintaining public order at the rallies. Also, instructions on policing during peaceful assemblies – that are meant to simplify the work of police – have not yet been developed, endorsed with the public and approved. The lack of unified training of different units and the lack of special training on action at peaceful assemblies included in the curricula are also the problems.

The state's failure to fulfil its positive duty to protect the assembly by the police, cases of disproportionate use of legal force and violations of the Law of Ukraine "On the National Police of Ukraine" in terms of identification, use physical force and special means remain a challenge for the freedom of peaceful assembly. For example, according to observations, after the Revolution of Dignity, the dispersal of peaceful assemblies ceased to be a common practice of

<sup>35</sup> <https://zmina.info/news/v-ukrayini-hochtu-zaboronyty-mitynguvaty-pid-sudamy/>

<sup>36</sup> <https://ccl.org.ua/statements/zaiava-neprypustymosti-politseys-kykh-funktsiy/>

<sup>37</sup> <https://ccl.org.ua/statements/schodo-proektu-zakonu-ukrajiny-6556-v-konteksti-svobody/>

the police. However, in 2018, there was an illegal dispersal (without a court decision) of a tent camp next to the building of the Verkhovna Rada of Ukraine, during which there were significant violations of the proportionality of the use of force by the police, as well as an attack on journalists. In addition, in the vast majority of cases recorded by OZON civic observers<sup>38</sup>, the police officers involved in the protection of public order have no proper identification signs, there have been numerous violations of the law in relation to wearing a token, marking elements of passive protection (helmets)<sup>39</sup>.

When it comes to discrimination in the context of freedom of peaceful assembly, it should be emphasized that the legislation does not prohibit the exercise of this right by any groups of citizens. Nevertheless, human rights defenders observe selective attitude of the National Police of Ukraine in the regions to the implementation of this freedom, which undermines the possibility of groups that gather to express unpopular views or slogans to enjoy this right<sup>40</sup>.

Ukraine's legal framework still stipulates administrative liability for violation of the established procedure for organizing or holding meetings, rallies, street marches and demonstrations for organizers and participants of meetings. It should be emphasized that the order – which could be violated – does not exist. Moreover, in its judgments in *Vyerentsov v. Ukraine* and *Shmushkovych v. Ukraine*, the ECtHR found that the application of Article 185-1 violated Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms due to the lack of a statutory procedure for organizing and holding meetings. On 25 May 2019, two persons, including a minor girl Daryna Kotsiuruba, came out with posters to the central square of Rivne. The peaceful assembly was forcibly suspended by police, who referred to the lack of notification of the rally. In addition, law enforcement officers drew up an administrative report against the girl under Article 185-1 of the Code of Administrative Offenses<sup>41</sup>. It should be noted that this is not the first case of disproportionate restriction of freedom of peaceful assembly due to the application of the archaic Article 185-1 of the Code of Administrative Offenses in the last year and a half. According to the observations of the OZON group, law enforcement officers drew up reports for violating the order of the meetings against the organizer of the Women's March in Kyiv (8 March 2018)<sup>42</sup>, the organizer of the action "Who commissioned the murder of Katya Handziuk?" (29 January 2019)<sup>43</sup>, organizer of the action against tariff increases in Mariupol (4 March 2019)<sup>44</sup>, etc.

## RECOMMENDATIONS:

To the Verkhovna Rada of Ukraine

- Amend effective legislation of Ukraine on freedom of assembly and repeal Article 185-1 of the Code of Administrative Offenses.

<sup>38</sup> The OZON Civic Monitoring Group was established in January 2013 by the Centre for Civil Liberties to institutionalize the system of civic control in Ukraine. Civic observers are an independent party, they always remain outside the process. E-mail: ozon.monitoring@gmail.com

<sup>39</sup> The reports of the initiative for 2015-2020 can be found at: <http://ccl.org.ua/> and <http://ozon.monitoring.tilda.ws/>

<sup>40</sup> <http://ccl.org.ua/news/tysk-na-hromadyanske-suspilstvo-formy-ta-metody/>

<sup>41</sup> <https://rv.suspilne.media/news/24004?fbclid=IwAR3-ySxpGacXs7Exy7EsMRcyLmIJab5IGb3g8yxwF9YyyYTGdfLFL1FD2U>

<sup>42</sup> <https://ccl.org.ua/reports/marshi-8-bereznia-kyjiv-lviv-harkiv-rezultaty-hromadskoho-sposterezhennya/>

<sup>43</sup> <https://www.pravda.com.ua/news/2019/01/29/7205216/>

<sup>44</sup> [https://www.facebook.com/search/top?q=%D1%96%D1%80%D0%B8%D0%BD%D0%B0%20%D0%BF%D0%B5%D1%80%D0%BA%D0%BE%D0%B2%D0%B0%20185%201&epa=SEARCH\\_BOX](https://www.facebook.com/search/top?q=%D1%96%D1%80%D0%B8%D0%BD%D0%B0%20%D0%BF%D0%B5%D1%80%D0%BA%D0%BE%D0%B2%D0%B0%20185%201&epa=SEARCH_BOX)

- Amend the Law of Ukraine "On the National Police of Ukraine" in the parts concerning the wearing of a special badge and the identification of personal protective equipment of police officers.
- Amend the Law of Ukraine "On the Procedure for Resolving Collective Labour Disputes" and eliminate provisions restricting freedom of assembly during a strike. Namely, to abolish the obligation of the organizer of meetings, rallies, pickets outside the enterprise, who is responsible for the strike, to notify the local executive body or local self-government body of the planned event no later than three days in advance.
- Develop with wide engagement of the public and approve by the Order of the Ministry of Internal Affairs of Ukraine the Guidelines on ensuring public order during peaceful assemblies and mass events. The Guidelines should take into account the provisions of the relevant judgments of the European Court of Human Rights and the OSCE/ODIHR Guidelines on Freedom of Assembly.

## FREEDOM OF ASSOCIATIONS AND PROTECTION OF CIVIL SOCIETY

Centre for Civil Liberties and ZMINA Human Rights Centre

In general, Ukraine has a fairly simple process of registration and establishment of non-governmental organizations, the government does not have broad powers to cancel their registration. The Law "On Public Associations" (*On Non-Governmental Organizations*) which defines the legal and organizational principles for the exercise of the right to freedom of association has changed over the past 5 years to improve the conditions for the establishment and operation of NGOs. In particular, amendments were made that allow the NGOs to run business activities.

In 2016, the National Strategy for Developing Civil Society in Ukraine until 2020 was adopted. Thanks to the Law "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations" and amendments to it, the system of registration of civil society organizations was simplified and the financial burden on them when registering changes to information in the Unified State Register was reduced. The reporting form for non-profit organizations and the procedure for receiving funds from the state and local budgets have also been simplified, and competitive grants been introduced to support the NGOs of veterans and persons with disabilities.

At the same time, in 2017, the authorities resorted to legislative restrictions on freedom of association – the Verkhovna Rada of Ukraine amended the Law of Ukraine "On Prevention of Corruption" that provided for the mandatory filing of electronic declarations by anti-corruption activists. They were equated to other persons subjected to this requirement and were obliged to fill in the declaration on the website of the National Agency for the Prevention of Corruption (NAPC) for the previous year by 1 April each year. In case of violation, activists could be held administratively and criminally liable. In addition, a number of other draft laws were registered in the Parliament that created unjustified obstacles to the work of NGOs (including # 6674 and # 6675 introduced by President Petro Poroshenko), which fortunately were not passed.

On 6 June 2019, the Constitutional Court of Ukraine cancelled the electronic declaration for anti-corruption activists. The Court concluded that it did not pursue a legitimate aim and did not strike a fair balance between the interests of persons exercising their right to freedom of civic activity and the interests of national security and public order, the need to protect the rights and freedoms of others (Article 36 of the Constitution) as it was too burdensome. More-

over, the Court stressed that this measure restricts the freedom of political and public activity guaranteed by the Constitution and can be used for persecutions<sup>45</sup>.

However, after the change of power in Ukraine, in 2020 a number of draft laws were again registered in the Parliament that can restrict the freedom of association and are a threat to civil society. In particular, it is the draft law #3564<sup>46</sup> on the transparency of NGOs with foreign support (authored by an MP Oleksandr Dubinskyi), the draft law #3326<sup>47</sup> on the prevention of external influence on the interests of the state that provides for the lustration of officials coming from the third sector (authored by an MP of the faction Opposition Platform for Life Fedir Khrystenko), as well as four draft laws to regulate lobbying: ##3059, 3059-1, 3059-2, and 3059-3, three of which pose a threat to civil society and activities of the NGOs in general, as the terminology used by the authors of the draft laws is very wide and encompasses the advocacy efforts taken by the NGOs.

Against the background of other human rights violations in recent years, a number of cases of harassment of civil society activists have been recorded in Ukraine, both of illegal nature (killings, beatings of activists and damage to their property, threats, surveillance and discrediting campaigns, etc.) and through the use of legal mechanisms (arbitrary detentions, unauthorized removal of information from communication channels, opening of fabricated criminal and administrative cases, etc.). The groups that have suffered the most from various forms of harassment are human rights defenders advocating for the rights of women and the LGBT community; anti-corruption and anti-organized crime activists; activists advocating for environment and land rights. In the vast majority of cases, attacks on civil society activists were not effectively investigated, and the perpetrators went unpunished.

In 2019, the Centre for Civil Liberties and ZMINA Centre for Human Rights recorded about a hundred cases of various forms of pressure and harassment of civil society activists across the country. As of May 2020, about 20 new episodes were recorded in Ukraine<sup>48</sup>, including cases of destruction of property, physical attacks, etc.

#### *The case of Kateryna Handziuk*

Kateryna Handziuk was an activist in Kherson. She died on 4 November 2018 from injuries sustained in an attack that occurred on 31 July 2018, when an unknown person doused her with sulfuric acid. For a long time, the crime was not properly investigated. Only under public pressure and peaceful demonstrations, an investigation was carried out and soon in August 2018 the perpetrators were detained. A civic investigation into the attack indicated that it was commissioned by high-ranking officials, including Members of Parliament and local self-government officials. Specifically, in 2019, journalists published information that the Chairperson of Kherson Oblast Council Vladyslav Manher was among the instigators of the murder. On 6 June 2019, 4 perpetrators of the crime were convicted and agreed to testify against the instigators of the crime. In April 2020, the case against the instigators was sent to court. However, activists and lawyers of the victim criticized the hasty completion of the investigation due to the loss of important evidence. This case is quite common for Ukraine. Significant progress in the investigation has been prompted by extreme public pressure and mass protests – without it, the case would never have been properly investigated. However, the instigators of the attack on Kateryna Handziuk have not yet been sentenced, and the trial is ongoing. Therefore, even when there is no authoritarian rule and systematic practices of repression against civil

<sup>45</sup> <http://www.ccu.gov.ua/novyna/ksu-vyznav-e-deklaruvannya-antikorupciynyh-gromadskyh-aktyvistiv-takym-shcho-superechyt>

<sup>46</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68977](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68977)

<sup>47</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68576](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68576)

<sup>48</sup> <http://ccl.org.ua/map/> and <https://zmina.ua/publication/stanovyshhe-pravozahysnykiv-ta-gromadskyh-aktyvistiv-v-ukrayini-u-2019-roczni-analitychna-dopovid/>, <https://zmina.ua/publication/aktyvizm-2020-monitoringova-dopovid-shhodo-peresliduvan-aktyvistiv-i-pravozahysnykiv/>

society, the activists are vulnerable due to the government attempts to worsen the legal framework for civil society, as well as due to corruption, inefficiency of law enforcement and the judiciary, and impunity that provokes new crimes.

Key reasons that led to the wave of persecution in the country are – weakness of public institutions that are unable to effectively investigate and punish perpetrators, as well as to prevent such illegal actions, including the lack of effective police and prosecutorial reform; war with Russia that causes an increased tolerance to violence in society; long-standing corruption and organized crime at local level where local authorities, business, law enforcement and the courts work together against civil society activists<sup>49</sup>.

The problem of investigating and punishing hate crimes against the representatives of LGBT initiatives remains unresolved. They are classified solely as hooliganism, long and improperly investigated, and almost never brought to justice, which is a major disincentive for the community to seek redress from law enforcement agencies in general, leading to silence over violence and impunity. Organizations record more than a hundred reports of physical assaults each year. In particular, in 2019, at least 123 such cases were recorded, including crimes against activists defending the rights of LGBT communities<sup>50</sup>.

#### RECOMMENDATIONS:

- Conduct effective, prompt and independent investigation into the persecution of civil society activists that resulted in criminal offenses against them.
- Include the aggravating circumstance of hate crimes “on the grounds of sexual orientation and gender identity” in the Criminal Code of Ukraine, as well as train police officers to properly investigate crimes against representatives of the LGBT community, especially those committed because of their civic activism and advocacy for the rights of LGBT communities.
- Continue further reform of legal framework for non-governmental and charitable organizations, as well as the implementation of effective legal framework, including the launch of online registration of the NGOs, introduce a transparent competitive approach to all the money allocation modalities to NGOs from the state and local budgets, improve legislation for recipients and providers of charitable assistance.

#### PREVENTION OF GENDER-BASED AND DOMESTIC VIOLENCE

##### *Centre for Civil Liberties*

Ukraine signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) back in 2011. After the Revolution of Dignity, Ukraine reaffirmed its intent to ratify the Istanbul Convention when it signed the Association Agreement with the EU. At the same time, ratification is still hampered by both existing stereotypes and a lack of understanding of its basic provisions. In particular, part of society is concerned about the term *gender*, the definition of which is provided in Article 3 of the Convention. In view of this, the mechanisms of protection of a person who has become a victim of domestic violence are still not implemented in the legislation of Ukraine. The restric-

<sup>49</sup> <https://hromadske.ua/posts/sami-proti-vsih-pro-smert-kati-gandyuk-ta-peresliduvannya-aktivistiv-do-i-pislya-majdanu>

<sup>50</sup> Report on Hate Crimes Committed on the Grounds of SOGI in Ukraine in 2019 (for the ODIHR/OSCE Annual Report), <https://gay.org.ua/blog/2020/04/27/zvit-pro-zlochyny-na-grunti-nenavysti-skoieni-za-oznakamy-sohi-v-ukraini-u-2019-r-dlia-shchorichnoho-zvitu-bdipl-obsie/>

tions imposed during the COVID-19 pandemic only exacerbated this problem that requires an immediate solution.

#### *La Strada-Ukraine*

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence has not been ratified as of 1 June 2020. In November 2016, the Verkhovna Rada of Ukraine did not vote in favour of ratifying the Convention, but in the first reading adopted related draft laws aimed at amending national legislation in accordance with the Istanbul Convention. During the consideration of the ratification of the Istanbul Convention, the main problem was that certain MPs demanded to remove from the text the term *gender* and all its derivatives. Unfortunately, manipulations regarding the terminology of the Convention, distortion of its main purpose and certain provisions still occur on the part of some MPs, representatives of religious institutions, anti-gender initiatives that actively resumed their activities in 2016.

At the same time, in June 2020, the draft Law of Ukraine “On Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” was sent for the second time to the relevant central executive authorities for approval.

The Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine for Implementing the Provisions of the Istanbul Convention”<sup>51</sup> provides for criminal punishment for domestic violence (Article 126.1 of the Criminal Code). New versions of certain articles have also been introduced, including Articles 152 of the Criminal Code (rape), 153 (sexual violence), and 154 (coercion into sexual intercourse).

Only in 2019, the provision of Article 25 of the Law “On Prevention and Combatting Domestic Violence” regarding the issuance of an emergency barring orders came into effect. This was due to the long process of drafting regulations for this special measure.

Another problem is that military servants and other persons covered by disciplinary statutes, in particular police officers, avoid administrative liability for domestic violence. Specifically, in 2018-2019, only 3 police officers were brought to disciplinary liability for committing domestic violence. As for the responsibility of military servants, in 2018-2019, such persons were not brought to disciplinary responsibility for committing domestic violence. To address this situation, the Government Commissioner for Gender Policy with the involvement of experts from the National Police of Ukraine, the National Academy of the Prosecutor’s Office of Ukraine, the EU Advisory Mission, NGO La Strada-Ukraine initiated the draft law “On Amendments to the Code of Administrative Offenses on changing the established procedure for bringing to administrative responsibility for committing domestic violence and gender-based violence.”

Moreover, as of now consideration of administrative materials in court without the participation of a perpetrator of domestic violence is impossible. This problem should be addressed, because the perpetrators are systematically absent from the court proceedings and thus avoid administrative liability due to the expiration of the statute of limitations.

The Law of Ukraine “On Prevention and combatting Domestic Violence”<sup>52</sup> came into force in January 2018. This Law does not criminalize domestic violence, but the relevant amendments have been made to the Criminal and Criminal Procedure Codes of Ukraine.

At the same time, the Law contains provisions that carry risks for victims. One of them is creation of a Unified State Register of Cases of Domestic Violence and Gender-Based Violence (Article 16). Confidential information of all persons involved in the case of domestic violence

<sup>51</sup> <https://zakon.rada.gov.ua/laws/show/2227-19>

<sup>52</sup> <https://zakon.rada.gov.ua/laws/show/2229-19>

must be entered in the Register. The law does not specify that failure to obtain consent to the disclosure of personal information may not be an obstacle to the provision of a full list of services to the victim.

These provisions pose a threat, violating the principle of confidentiality and are contrary to the principles of the Istanbul Convention that does not provide for the creation of personal databases of victims. There is also no international experience on keeping such registers. The creation of such a Register can lead to further victimization and stigmatization of victims, pose a danger to those who report such cases, threaten the illegal dissemination of personal data and violate the rights of victims to confidentiality. Entering information about a person who reported domestic violence will contribute to silencing such situations.

In fact, back in 2018, the victims were denied requests for restrictive orders due to the fact that information about the case of violence is not contained in the Register. Such a Register has not been created yet, but the Resolution of the Cabinet of Ministers of Ukraine of #234 of 20.03.2019 approved the Procedure for the Formation, Maintenance and Access to the Unified State Register of Cases of Domestic Violence and Gender-Based Violence<sup>53</sup>. The Unified State Register of Court Decisions contains 4 decisions in which the refusal to satisfy the request for the issuance of a restrictive order is justified precisely by the lack of information about a person in the Register. For example, in case #607/1842/18, Ternopil City District Court of Ternopil oblast ruled, “Having analysed the materials of the application, evaluating and examining the evidence provided to the court, the court considers that the request of PERSON\_1 shall not be satisfied. In particular, the court was not provided with evidence regarding the inclusion of PERSON\_4 in the Unified State Register of Cases of Domestic Violence in relation to PERSON\_1.”

Since 2018, La Strada-Ukraine and Geneva Centre for Security Sector Governance together with the National School of Judges of Ukraine developed a training course “Peculiarities of Consideration of Cases of Domestic Violence.”

In the framework of the EU PRAVO-Justice Project, in 2019, the National Academy of the Prosecutor’s Office of Ukraine prepared and published a research and practical publication “Activities of the prosecutor to prevent and combat domestic violence.”

In 2018-2019, La Strada-Ukraine received support from the UN Population Fund to take action to increase the capacity of the free legal aid system to respond to cases of domestic and gender-based violence. In particular, it conducted a series of trainings on providing assistance to victims of domestic and gender-based violence for specialists of the free legal aid system. This topic is relevant for specialists of the free legal aid system, there is a demand for further training and coverage of a wider range of specialists in the free legal aid system.

With the support of the OSCE Project Co-ordinator in Ukraine and the United Nations Population Fund, La Strada-Ukraine has been delivering trainings for 102 hotline operators on responding to appeals from victims of gender-based violence since 2017.

#### **RECOMMENDATIONS:**

*To the Verkhovna Rada of Ukraine*

- Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

<sup>53</sup> <https://zakon.rada.gov.ua/laws/show/234-2019-%D0%BF>

- Adopt the draft law on amendments to the Code of Ukraine on Administrative Offenses to change the established procedure for bringing to administrative responsibility for committing domestic violence and sex-based violence.
- Adopt amendments to part 2 of Article 268 of the Code of Administrative Offenses of Ukraine to consider cases of administrative offenses under Article 173-2 of the Code of Administrative Offenses of Ukraine without mandatory presence of a prosecuted person (perpetrator) if this person was duly notified, but did not show up to court.

*To the Ministry of Social Policy of Ukraine*

- To initiate the review of the provisions of the Law of Ukraine “On Prevention and Combating Domestic Violence” regarding the Unified State Register of Cases of Domestic Violence and Gender-Based Violence and the Procedure for Establishing, Maintaining and Accessing the Unified State Register of Cases of Domestic Violence and Gender-Based Violence approved by the Resolution of Cabinet of Ministers of Ukraine # 234 of 20.03.2019 regarding the maintenance of confidentiality of information about all persons involved in the case of domestic violence.

### **Prevention and combatting sexual violence**

*Take necessary steps to effectively combat gender-based violence, in particular by amending Article 152 of the Criminal Code to bring the provision on sexual violence in line with international standards*

On 6 December 2017, the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Implement the Provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” #2227-VIII was adopted. Among other things, in order to bring the national legislation in line with the provisions of the Istanbul Convention, this Law provides for new versions of the following provisions of the Criminal Code: 152 (rape), 153 (sexual violence), 154 (coercion into sexual intercourse), 121 (grievous bodily harm; the provision was supplemented by the part on genital mutilation), 134 (illegal abortion or sterilization); as well as the criminalization of domestic violence (Article 126-1 of the Criminal Code) and coercion into marriage (Article 151-2 of the Criminal Code). In particular, the relevant provisions of criminal law introduced the concept of voluntary consent, expanded the definition of sexual violence and coercion into sexual intercourse. At the same time, due to the lack of appropriate by-laws on the procedure for establishing genital mutilation as a grievous bodily harm through forensic examination, practical application of this provision is flawed. Notwithstanding the adopted changes, the legislation of Ukraine still does not directly provide for liability for stalking as defined in Article 34 of the Istanbul Convention. Also, there is no separate provision on sexual harassment, as provided for in Article 40 of the Istanbul Convention. Accordingly, this act can be prosecuted only in accordance with Article 153 of the Criminal code of Ukraine as sexual violence.

For the judges to acquire necessary skills to apply new relevant provisions of criminal law, during 2019-2020, the National School of Judges with the support from Geneva Centre for Security Sector Governance (DCAF) and La Strada-Ukraine within the EU PRAVO-Justice Project developed and implemented a training course on proceedings on crimes committed on the grounds of sex.

There are a number of shortcomings in Ukraine’s legislation on sexual violence that is inconsistent with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Violence, ratified by Ukraine on 20 June 2012. Specif-

ically, to comply with the provisions of Article 33 of this Convention, it is necessary to extend the statutes of limitation for crimes of sexual violence committed against children to a period sufficient for effective commencement of proceedings after the victim has reached the age of majority. To bring the legislation in line with part 3 of Article 18 of the Convention, it is necessary to decriminalize sexual relations between minors as soon as they take place by mutual consent (currently, a child who reached 14 years of age is subject to criminal liability under Articles 152 and 153 of the Criminal Code for sexual relations by mutual consent with a child under 14 years). Accordingly, it is necessary to raise the minimum age of criminal responsibility for sexual intercourse by mutual consent to 16 years.

*Bring the provisions of the Criminal Code on sexual violence in line with international standards, provide victims with necessary support and rehabilitation*

In 2016, the first ten emergency healthcare facilities (offices based on a multidisciplinary hospital) were launched in Ukraine to provide assistance to victims of rape and sexual violence, with the support of the United Nations Population Fund. They were opened along the contact line in Donbas. In 2018, four more facilities started operating in other oblasts (Kharkiv, Vinnytsia, Kryvyi Rih, Mariupol). Unlike conventional medical facilities, such centres are free, anonymous, accessible to people with disabilities, equipped with modern medical equipment and have trained staff. In addition to healthcare (HIV prevention, treatment of sexually transmitted infections, prevention of unwanted pregnancies and emergency care for victims of rape), they also provide psychological assistance and can refer a victim to social and psychological care centres for further support and rehabilitation. However, currently the number of such centres is insufficient and they do not cover all the regions of Ukraine. In addition, according to the standards set out in Article 25 of the Istanbul Convention, centres for the provision of assistance to victims of sexual violence should provide forensic examinations on top of counselling and healthcare, but it is currently impossible not only for technical reasons but also due to the lack of appropriate legal framework.

In general, the procedure for appointing and conducting forensic examinations in Ukraine in the case of rape and other types of sexual violence needs to be improved. Currently, the relevant examinations are arranged under the general procedure, usually they are appointed by the investigator after the initiation of criminal proceedings or the investigating judge in court. However, it can be difficult to comply with the relevant procedure in this category of cases, because firstly, the period from the moment of contacting the police to the appointment of examination takes a long time, and secondly, a victim may decide not to contact the police, but still shall be able to preserve the evidence for the case if s/he decides to report an offense to police later. Accordingly, there is a need to improve the access of victims of rape and other sexual violence to free examinations that would be conducted anonymously (without disclosing the name of a victim to the police) and would allow to preserve evidence (for example, the practice of using the so-called *Jane Doe rape kit*).

Currently, the Law of Ukraine “On Free Legal Aid” considers victims of gender-based violence, including sexual violence, as persons entitled to free secondary legal aid. However, in practice such appeals are not very common, apparently due to low awareness of victims about this possibility.

On 1 February 2019, the Procedure for conducting and documenting the results of medical examinations of victims of domestic violence or persons who are likely to have suffered from domestic violence and providing them with healthcare was adopted. It stipulates a mechanism for health professionals to conduct and document medical examinations of victims of gender-based violence, including sexual violence.

*Amend the Article of the Criminal Code on rape and sexual violence for bringing it in line with international standards and recommendations of the Office of the High Commissioner for*

*Human Rights (OHCHR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to ensure responsibility for conflict-related sexual violence*

As of June 2020, Ukrainian law does not provide for liability for rape and other forms of sexual violence in armed conflict as international crimes. Accordingly, such crimes are prosecuted as ordinary crimes against sexual freedom and sexual integrity (for example, the case of Tornado Battalion). It leads to the fact that the perpetrators do not bear proper and proportionate responsibility for the acts committed. In the context of cases of conflict-related sexual violence, this situation is further aggravated by the fact that under effective law, rape (part 1, Article 152), sexual violence (part 1, Article 153) and coercion into sexual intercourse (Article 154) are cases of private prosecution. It means that the relevant criminal proceedings are initiated only at the request of a victim, and therefore, if a victim is reluctant or unable to report an offense, the offenders are not prosecuted even if law enforcement agencies have the relevant information.

In December 2019, the draft law #2689 on Amendments to Certain Legislative Acts of Ukraine Concerning the Implementation of International Criminal and Humanitarian Law was submitted to the Verkhovna Rada. It *inter alia* criminalizes sexual violence in armed conflict. As of June 2020, this draft law has not been adopted. There is currently no mechanism or legal framework in place to establish appropriate status for victims of conflict-related sexual violence, as well as for providing specialized assistance, rehabilitation and additional guarantees for the protection of this group of victims.

## RECOMMENDATIONS:

To the Verkhovna Rada of Ukraine

- Adopt legislative changes to bring Ukraine's criminal legislation in line with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; criminalize stalking and establish separate liability for sexual harassment, as provided for in the Istanbul Convention.
- Adopt legislation on criminal liability for crimes of conflict-related sexual violence as international crimes, in accordance with international standards.
- Adopt legislation that provides for the status of victims of conflict-related sexual violence, as well as for additional guarantees for the protection, provision of specialized services and rehabilitation of this group of victims.

To the Ministry of Social Policy

- Strengthen the provision of specialized social services to victims of sexual violence, with special focus on victims of conflict-related sexual violence.
- Ensure establishment of a sufficient number of emergency medical services in all regions of Ukraine that specialize in providing assistance to victims of sexual violence.
- Deliver information campaigns explaining the right of victims of all forms of gender-based violence, including victims of sexual violence, to receive free secondary legal aid.

## NATIONAL HUMAN RIGHTS INSTITUTION

*Centre for Civil Liberties*

For many years, human rights organizations and international experts have been emphasizing the shortcomings of the key Law of Ukraine that regulates the activities of the Ukrainian Parliament Commissioner for Human Rights. The problems are the age limit (minimum 40 years of age for candidates to this position), lack of provisions on the Commissioner's offices in the regions, guarantees of independence, as well as the strengths and weaknesses of the Commissioner's authority, including in terms of protection during the war and much more.

Development of the draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Ukrainian Parliament Commissioner for Human Rights" (registration #3312 of 7 April 2020) sends a clear message that the reform of the national human rights institution is a priority for the state. At the same time, the draft law contains a number of controversial provisions that were highlighted in the expert opinion by the Centre for Civil Liberties<sup>54</sup>. In particular, the transitional provisions of the draft law propose to terminate the powers of the current Commissioner for Human Rights. Human rights activists emphasize that special procedure for dismissal of the Commissioner is a guarantee of independence of this institution – therefore, dismissal of the current Commissioner cannot be regulated by the draft law.

## RECOMMENDATIONS:

*To the Verkhovna Rada of Ukraine*

- Approve the draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Ukrainian Parliament Commissioner for Human Rights" (registration #3312 of 7 April 2020).

## COMBATting TRAFFICKING IN HUMAN BEINGS

*La Strada-Ukraine*

### **General features of legislative changes and institutional support in the field of combating trafficking in human beings (recommendation 116.74)**

In September 2018, the Law of Ukraine "On Amendments to Article 149 of the Criminal Code of Ukraine on Alignment with International Standards" was adopted. The provisions of this Article, as well as the responsibilities to be established, have been brought in line with the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In March 2018, the Law "On Amendments to the Criminal Code of Ukraine on Protection of Children from Sexual Abuse and Sexual Exploitation" was adopted to harmonize Ukrainian legislation with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In particular, Article 155 of the Criminal Code was amended to change the criterion for criminalizing sexual intercourse with a child from the vague criterion of *not reaching sexual maturity* to the criterion of *not reaching the age of sixteen*, and increased responsibility for creating or maintaining of disorderly houses with the involvement of minors (Article 302 of the Criminal Code).

<sup>54</sup> <https://ccl.org.ua/position/tsentr-hromadians-kykh-svobod-predstavyyv-ekspertyzu-proektu-reformy-ofisu-ombudsmena/>

On 29 October 2019, the draft law #0940 of 29 August 2019 “On Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening Anti-Trafficking in Human Beings and Protection of Victims” was rejected. The adoption of this law over the past few years has been awaited by both the NGOs and international institutions, including the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). The draft law provided for the transfer of certain powers to combat trafficking in human beings from local state administrations to local self-government bodies, the right of victims of trafficking in human beings to receive secondary free legal aid, as well as the expansion of the rights of foreigners affected by trafficking.

In 2018, the Ministry of Social Policy adopted the Regulation on the Call Centre of the Ministry of Social Policy of Ukraine on Combating Trafficking in Human Beings, Prevention and Combatting Domestic Violence, Sexual Violence and Violence against Children (Order #1852 of 11 December 2018). This provision provided for the establishment of the Call Centre – a non-profit public institution set up to ensure adequate response, in particular, to citizens’ appeals about the facts of human trafficking. As of December 2019, this call centre has not been established. At the same time, on 27 December 2019, the Resolution of the Cabinet of Ministers of Ukraine #1145 “On Up-Scaling the Pilot Project to Create a One-Stop-Shop for Processing Citizens’ Appeals and Requests for Public Information for Processing Appeals and Reports about/from Victims of Trafficking in Human Beings, Domestic Violence, Gender-Based Violence, Violence against Children, or the Threat of Such Violence” was adopted. It entails that the rights and responsibilities of the Call Centre for Prevention and Combatting Domestic Violence, Sexual Violence and Violence against Children shall be entrusted to the Government Contact Centre. In January 2020, the National Hotline for Victims (telephone number 1547) was launched based on the Government Contact Centre, which *inter alia* accepts appeals from victims of human trafficking.

#### **Financing the actions to prevent and combat trafficking in human beings (recommendation 116.76)**

On 26 June 2019, the Resolution of the Cabinet of Ministers #553 “Certain Issues of Providing Services to Victims of Human Trafficking, Domestic Violence, Gender-Based Violence and Violence against Children” was adopted. This Resolution provided for an increase in funding for actions stipulated by the State Social Programme to Combat Trafficking in Human Beings until 2020 by UAH 47.2 million. This money were supposed to be allocated from the state budget for providing “appropriate response to citizens’ complaints about human trafficking, domestic violence, gender-based violence and violence against children” that essentially sets forth the establishment and operation of the National Centre for Victims and Call Centre of the Ministry of Social Policy of Ukraine on Combating Trafficking in Human Beings, Prevention and Combatting Domestic Violence, Gender-Based Violence and Violence against Children and its territorial offices, including inter-regional branches. Funding for all other objectives provided by the State Social Programme to Combat Trafficking in Human Beings until 2020 (adopted in 2016) has not changed.

#### **Training of staff (recommendation 116.72)**

Training of staff in the sector of prevention and combatting human trafficking is actively provided both by public authorities (Ministry of Social Policy, Ministry of Internal Affairs, Ministry of Foreign Affairs, National School of Judges, etc.), non-governmental organizations (International Organization for Migration, OSCE, A21 Campaign, La Strada-Ukraine, etc.). At the same time, in its report, GRETA noted that relevant trainings and seminars usually take place in Kyiv and other large cities and do not cover all the regions evenly. These trainings do not target a sufficient number of staff of the centres of social and psychological rehabilitation of victims,

and also do not target labour inspectors at all<sup>55</sup>. The latter may explain why cases of trafficking in human beings for the purpose of labour exploitation in Ukraine are not sufficiently identified.

#### **Respect for the rights of victims of trafficking (recommendation 116.75)**

Currently, a problem related to non-consolidation and significant discrepancies in statistics on human trafficking is acute in Ukraine – law enforcement agencies collect data on the number of victims of human trafficking registered during criminal investigations, the Ministry of Social Policy keeps records of persons who received the status of victims of trafficking in human beings, and IOM, non-governmental organizations and social service providers keep their own statistics on victims and alleged victims of trafficking in human beings whom they provide assistance to. For example, the Ministry of Social Policy in 2017 granted the status of victims of human trafficking to 198 persons, in 2018, to 221, and in 2019, to 185. Law enforcement agencies in the framework of criminal proceedings in 2017 recorded 340 criminal proceedings under Article 149 of the Criminal Code and identified 367 victims of human trafficking, in 2018, 268 proceedings and 223 persons, and in 2019, 316 proceedings. According to the IOM statistics, the number of alleged victims of trafficking who were identified and benefited from the IOM programmes in 2017 was 1,245 persons, in 2018, 1,192, and in 2019, 1,345<sup>56</sup>.

Bringing to justice those guilty of committing the crime of trafficking in human beings is also an issue. Namely, in 2017, the courts of Ukraine considered 36 proceedings in cases under Article 149 of the Criminal Code (23 persons were convicted, 59 persons were recognized as victims), in 2018, 32 proceedings (15 persons were convicted, 34 persons were victims), in 2019, 44 proceedings were considered (35 persons were convicted, 54 persons were victims). Comparing these figures with the number of criminal proceedings registered by law enforcement agencies for the same period and the number of identified victims, we can see that only one in seven to ten criminal cases is brought to court, and only one in six victims is recognized as a victim in criminal proceedings. Comparing these figures with the statistics of NGOs, we see that only one in 20-30 victims of human trafficking gets access to justice.

Those who are still prosecuted for human trafficking do not receive an appropriate and proportionate punishment. Specifically, in 2017, out of 23 convicts, 16 were released from serving a sentence and put on probation, and only 2 had their property confiscated. In 2018, out of 15 convicts, 10 were released and put on probation, and 1 convict was sentenced to confiscation of property. In 2019, out of 35 convicts, 22 were released and put on probation, and 1 convict was subjected to confiscation of property.

Victims of trafficking also note a number of problems with obtaining the status of a victim of trafficking. Specifically, when submitting documents to the local state administration, such persons are often required to prove that they have applied to the police (although there is no such requirement in the law and it violates the rights of victims who may not wish to apply to the police). There are cases of violation of the confidentiality of victims, when the decision of the Ministry of Social Policy to refuse to grant the status of a victim of human trafficking lists the names of several applicants at the same time, instead of making such decisions individually. There is also a general increase in the number of refusals to grant the status of a victim of trafficking: from 49 in 2018 to 75 in 2019<sup>57</sup>.

Victims of human trafficking in Ukraine currently find it difficult to obtain compensation for

<sup>55</sup> Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine // Second evaluation round, 2018. URL: <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>, para. 45

<sup>56</sup> [http://iom.org.ua/sites/default/files/iom\\_counter\\_trafficking\\_programme\\_2019\\_ukr.pdf](http://iom.org.ua/sites/default/files/iom_counter_trafficking_programme_2019_ukr.pdf)

<sup>57</sup> State report on the status of implementation of national policy in the field of combating trafficking in human beings in 2018 and first half of 2019

moral and material damage. Filing a lawsuit in criminal proceedings or in civil proceedings remains a highly ineffective mechanism. In addition, courts apply the punishment in the form of confiscation of property to traffickers in exceptional cases, while it could serve as a basis for victims to receive compensation for the damage sustained. The one-time financial assistance that victims are entitled to is not a full compensation for damages. In its recommendations, GRETA refers to the need to establish a national mechanism for payment of compensation that all the victims of trafficking in human beings would have access to<sup>58</sup>. As of June 2020, such a mechanism has not yet been established in Ukraine.

Victims of human trafficking lack access to secondary free legal aid, as they are not included in the groups of persons for whom the Law of Ukraine “On Free Legal Aid” enshrines the right to receive such aid<sup>59</sup>. This problem was also mentioned by GRETA in the latest monitoring report on Ukraine in 2018. On 29 October 2019, the Parliament rejected the draft law #0940 that stipulated the solution to this problem.

Recently, cases of human trafficking using the reproductive technologies of surrogacy have become more frequent in Ukraine. The main reason is that on the one hand, surrogacy is not prohibited in Ukraine, and on the other hand, there is no legal regulation of this issue, including any legal guarantees for the protection of surrogate mothers. According to the UN Special Rapporteur on the sale of children, child prostitution and child pornography, Ukraine is currently one of four countries in the world with the biggest number of surrogacy agreements (along with Russia, Georgia and the United States)<sup>60</sup>. The legal uncertainty around surrogacy significantly increases the risk of being trafficked, which includes not only illegal exploitation of women who choose to become a surrogate mother, but also cases of child trafficking. For example, out of 505 cases of human trafficking recorded by law enforcement during the first half of 2019, 7 were related to surrogacy<sup>61</sup>. In April 2020, law enforcement agencies also reported the detection of a criminal group that moved new-borns to China under the guise of a surrogacy programme<sup>62</sup>.

### Providing resources and services to victims (recommendations 116.73, 116.76)

As of 2018, there were 18 centres of social and psychological assistance for victims of human trafficking in Ukraine. These centres provide psychological, social, medical and legal assistance to people in difficult life circumstances, including victims of trafficking. There are also 667 social centres in Ukraine for families, children and young people who can potentially provide assistance to victims of trafficking, although the staff of these institutions have not received special training to provide assistance to this group of persons<sup>63</sup>. Currently, the centres of social and psychological assistance mostly house internally displaced persons. The staff of these centres do not always have necessary professional training to work with victims of trafficking. There is also a lack of funding for the centres from local budgets and lack of necessary specialists (doctors, psychologists, etc.), age limits for persons eligible to receive service of the centres, as well as requirements to have the place of residence registered in the region where

<sup>58</sup> Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine // Second evaluation round, 2018. URL: <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>, paras 167, 173

<sup>59</sup> Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine // Second evaluation round, 2018. URL: <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>, paras.167, 173

<sup>60</sup> Report of the Special Rapporteur of the Human Rights Council on the sale of children, child prostitution and child pornography, Thematic report on surrogacy, A/HRC/37/60 (2018), paras 14-15

<sup>61</sup> State report on the status of implementation of national policy in the field of combating trafficking in human beings in 2018 and first half of 2019

<sup>62</sup> In Kyiv, a large-scale scheme of transporting babies abroad under the guise of surrogacy is detected. [https://kyiv.gp.gov.ua/ua/news.html?\\_m=publications&\\_c=view&\\_t=rec&id=271685](https://kyiv.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=271685)

<sup>63</sup> State report on the status of implementation of national policy in the field of combating trafficking in human beings in 2018 and first half of 2019

the centre is located, non-acceptance of persons without IDs and medical certificates. Rehabilitation of such persons in Ukraine is mainly provided by specialized international organizations and NGOs, such as IOM. In particular, IOM supports the work of the Medical Rehabilitation Centre in Kyiv. From 2002 to 2019, the Centre provided assistance to 3,800 victims of human trafficking. Other organizations, such as La Strada-Ukraine, maintain special anti-trafficking hotlines. As the NGOs have necessary knowledge and experience and currently provide specialized services to victims of trafficking, GRETA recommended that Ukraine support their activities and procure services from specialized NGOs<sup>64</sup>.

### TRAFFICKING IN HUMAN BEINGS IN UKRAINE DURING THE LOCKDOWN WITH REGARD TO COVID-19 PANDEMIC

The situation with the COVID-19 pandemic has had a particularly negative impact on victims of human trafficking. To assess the impact on the needs of the victims, the NGOs members of the All-Ukrainian Coalition against Trafficking in Human Beings conducted a survey of beneficiaries who received assistance from the IOM from December 2019 to March 2020. A total of 306 victims (104 women, 202 men) took part in the survey. In general, 59.5% of all interviewed victims lost their jobs, of which 70.9% were men and 29.1% were women. Women were mainly employed in nail salons, preparation of semi-finished products, baking, etc. The vast majority of men worked on construction sites or provided repair services. The reasons for job loss are inability to get to the workplace without their private vehicle (most cities have restricted the operation of public and intercity transportation in the country) and inability of customers to pay for work. Another group (13%, of which 32.5% are women and 67.5% are men) are employees who finalize their contracts but are not sure whether they will receive new orders in the future. At the time of the survey, only 12% of the interviewed victims were still employed<sup>65</sup>. During the lockdown restrictions and border closures, law enforcement agencies recorded 40% fewer trafficking-related offenses, but at the same time, there was an increase in domestic trafficking and an increase in sexual exploitation through the Internet<sup>66</sup>.

### RECOMMENDATIONS:

#### *To the Verkhovna Rada of Ukraine*

- Adopt legislation providing for the right to free secondary legal aid to victims of trafficking
- Align Ukrainian legislation with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings and the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Human Beings, in particular the establishment of compensation mechanisms for victims of trafficking.

#### *To the Cabinet of Ministers of Ukraine*

- Develop and implement an integrated and gender-sensitive approach to the collection and maintenance of statistics on victims of trafficking; take action to improve identification of victims of trafficking.

<sup>64</sup> Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine // Second evaluation round, 2018. URL: <https://rm.coe.int/greta-2018-20-fgr-ukr-en/16808f0b82>, para 139

<sup>65</sup> The COVID-19 pandemic and the problem of human trafficking: impact, risks, challenges // Digest №3 (January-March 2020). [http://la-strada.org.ua/ucp\\_mod\\_library\\_view\\_334.html?fbclid=IwAR-3jSXFAG0g1xXtcW7rvEw9bu8PtR2mJ3VCskc1XDnFcfZ8gXhUbTk3r0Eic](http://la-strada.org.ua/ucp_mod_library_view_334.html?fbclid=IwAR-3jSXFAG0g1xXtcW7rvEw9bu8PtR2mJ3VCskc1XDnFcfZ8gXhUbTk3r0Eic)

<sup>66</sup> Discussion Club: Impact of the COVID-19 pandemic and increased vulnerability to human trafficking. [https://www.youtube.com/watch?v=nuEh\\_whORKM](https://www.youtube.com/watch?v=nuEh_whORKM)

- Take action to address the negative impact of the coronavirus pandemic on victims of trafficking and persons vulnerable to involvement in trafficking.

*To the Ministry of Social Policy*

- Continue to provide specialized training to professionals who render social services to victims of trafficking; provide centres of social and psychological assistance with appropriate staff in sufficient numbers.
- Improve the provision of victims of trafficking with specialized social services, including rehabilitation and reintegration services.

## THE PROBLEM OF DISCRIMINATION IN UKRAINE

*NGO Social Action Centre*

### Legal framework

Ukraine has not made any changes, including those recommended in the previous UPR cycle, to its anti-discrimination legislation since 2015 (when only the list of grounds prohibited for discrimination in the Labour Code was amended<sup>67</sup>). In 2019, the amendment to the Law “On Education” came into force that established the definition of bullying and defined the procedure for bringing to liability for bullying in the education context. But it is important to note that Ukrainian law interprets bullying as harassment without taking into account the characteristics of the victim – that is, bullying is a much broader concept than discrimination<sup>68</sup>.

Notwithstanding the recommendations of UN Member States, international organizations and the objectives included in the Action Plan on implementation of the National Human Rights Strategy regarding necessary amendments to the legislation, the Verkhovna Rada has never voted for several draft laws developed in this regard. Apart from the hypothetical lack of political will, it is due to several other problems. First, despite setting appropriate goals in the national action plans, the government lacks coordination and discussion of the necessary legislative changes. The position of the Commissioner for Human Rights who is responsible for overseeing the prevention of discrimination is ignored by both members of the government and Members of Parliament. The vast majority of necessary legislative changes were not the products of the government or ministerial action. Almost all the draft laws were initiated by individual MPs, poorly formulated and inconsistent with other legislation. No single draft law was passed by the Verkhovna Rada. Secondly, there is no public discussion about the need for change and their quality. Currently, the only public debate is the religious community being unhappy with the fact that they are ‘forbidden to discriminate’ and the voices of the human rights community that religious views cannot be an excuse for discrimination. This discussion starts when any draft law is tabled with the Verkhovna Rada and subsides the day after its consideration.

The key problems are failure of the authorities to work systematically and jointly, ignoring the position of civil society and the lack of public discussion on necessary changes to the legislation.

<sup>67</sup> Article 2 of the Labor Code was supplemented by the grounds such as sexual orientation and gender equality.

<sup>68</sup> Full text of the Law “On Education” in Ukrainian is available at <https://zakon.rada.gov.ua/laws/show/2145-19>. Definition of bullying is – action or omission of participants in the education process that entail psychological, physical, economic, sexual violence, including through the use of electronic means of communication committed against a minor or by such a person in relation to other participants in the education process that may cause harm to mental or physical health of a victim.

### RECOMMENDATIONS:

- Introduction of administrative liability for discrimination, including increase of fines for discriminatory advertising;
- Amendments to the legislation to include additional forms of discrimination, such as multiple discrimination, victimization, associative discrimination;
- Expansion of the list of protected grounds in anti-discrimination legislation, in particular inclusion of SOGI and health status;
- Amendments to the Criminal Code to expand the list of prohibited grounds and strengthen protection against hate crimes, including on the grounds of SOGI;
- Strengthening capacity of the national equality institution, including through the expansion and training of staff and the involvement of external experts;
- Improving of anti-discrimination expert assessment of all regulations of the government and Parliament and making such assessment mandatory.

### Sexual orientation and gender identity

A significant progress on empowering the LGBT community to exercise their right to freedom of peaceful assembly and freedom of speech in major cities of Ukraine is worth noting, exemplified by the annual Pride in Kyiv and the trend to hold individual Prides in other major cities. A few years ago, regional capitals tended to ban local Prides, there were a number of court decisions in this regard. But this trend is gradually being replaced by the dialogue between the local government and the activists. Specifically, peaceful rallies were held in Kharkiv<sup>69</sup> and Odesa<sup>70</sup> in 2018 and 2019, and there were plans and an agreement to add Zaporizhia to this list before the 2020 lockdown. But in other regional capitals, the opposite trend is observed, when local authorities try to go beyond their powers and make illegal decisions to ban the so-called propaganda<sup>71</sup> or to prevent and illegally ban<sup>72</sup> all peaceful assemblies for LGBT people. These trends emphasize the need for a broad public debate on LGBT rights and a broader campaign to ban discrimination on various grounds, which is currently lacking.

During the reporting period, there were no legislative changes to strengthen protection against discrimination on the grounds of SOGI – they were not included in the draft law that aimed to improve law enforcement practices and establish administrative liability for discrimination<sup>73</sup>, no amendments to the Family Code or other proposals were developed and discussed to regulate the protection of the right of LGBT persons to private and family life.

The problem of investigating and punishing hate crimes on the grounds of SOGI remains unresolved – they are classified solely as hooliganism, long and improperly investigated and almost never brought to justice, which is the main disincentive for the community to turn to law enforcement for the protection of their rights, which leads silencing the problem of violence and impunity of criminals<sup>74</sup>.

<sup>69</sup> <https://www.dw.com/uk/y-харкові-на-марш-рівності-вийшло-близько-двох-тисяч-осіб/a-50439824>

<sup>70</sup> <https://www.pravda.com.ua/news/2019/08/31/7224954/> та <https://www.bbc.com/ukrainian/news-49534926>

<sup>71</sup> [https://zaxid.net/u\\_kalushi\\_deputati\\_vistupili\\_z\\_initsiativoyu\\_zaboroniti\\_propagandu\\_gomoseksualizmu\\_n1449984](https://zaxid.net/u_kalushi_deputati_vistupili_z_initsiativoyu_zaboroniti_propagandu_gomoseksualizmu_n1449984)

<sup>72</sup> <https://www.radiosvoboda.org/a/news-lgbt-parad-rivne-amnesty/30342707.html>

<sup>73</sup> Draft law #0931, previous # 3501

<sup>74</sup> According to NGO Insight, during the reporting period, only 3 cases were known to have been referred to court (classified as hooliganism) in which hate crimes were committed on the grounds of SOGI.

## RECOMMENDATIONS:

- Inclusion of SOGI as a protected ground in the Criminal Code of Ukraine;
- Providing training to law enforcement officers in the initial training and during in-service professional development
- Quality control of hate crime investigations and reporting on the results of investigations into this category of crimes;
- Legal recognition of same-sex partnerships and/or marriages to enable LGBT people to fully exercise their right to private and family life;
- Extensive public information campaign on LGBT rights and the prohibition of public manifestations of homophobia, including by officials.

### Law enforcement practices

It is important to note the increase in the number of complaints of discrimination over the past few years, as evidenced by the statistics of the Commissioner for Human Rights<sup>75</sup> and open data from court registers. It proves that people know more about their rights and notice their violations, ready to use protection tools. It also shows that the problem of discrimination is no longer hidden in Ukraine, as evidenced by survey data<sup>76</sup>.

There are no statistics from other public authorities on complaints of discrimination, including a lack of open data from the Public Employment Service on complaints of discrimination at workplace. There is also no obligation for other public authorities to systematically collect and analyse information on cases of discrimination – therefore, this data is not taken into account in the development of national programmes and reforms.

Analysis of lawsuits and court decisions in discrimination cases also reveals several problems:

- Low quality of lawsuits and the number of unfounded allegations of discrimination indicate the lack of awareness-raising campaigns and the lack of legal aid;
- Low quality of judicial analysis of allegations of discrimination and low number of reasoned judgments on discrimination, as well as lack of a coordinated approach to the consideration of such cases using international standards, indicate suboptimal level of training of judges on this matter;
- Failure to apply or improper refusal of courts to shift the burden of proof on the accused;
- Improper reference to and use of the arguments of the decisions of the ECtHR indicate that certain judges do not understand the meaning and rules of using such references.

<sup>75</sup> The Commissioner's annual reports contain information on the number of complaints, disaggregated by various factors. But unfortunately, this data does not contain the number of successfully resolved complaints. The Commissioner also does not pay enough attention to the analysis of typical complaints and coverage of successful cases of restoration of rights in case of discrimination.

<sup>76</sup> Survey on gender discrimination <https://tns-ua.com/news/tretina-opitanih-zhi-nok-vvazhaye-shho-v-ukrayini-isnuye-genderna-diskriminatsiya>, National human rights survey [https://zaxid.net/tretina\\_meshkantsiv\\_zahidnoyi\\_ukrayini\\_zaznali\\_proyaviv\\_diskriminatsiyi\\_\\_opituvannya\\_n1460049](https://zaxid.net/tretina_meshkantsiv_zahidnoyi_ukrayini_zaznali_proyaviv_diskriminatsiyi__opituvannya_n1460049), Discrimination of ATO veterans <https://www.unian.ua/society/10842449-mayzhe-polovina-veteraniv-ato-ooz-stikayutsya-z-diskriminaciyeyu-opituvannya.html>

## RECOMMENDATIONS:

- Systemic changes in the quality of training of judges, practice-oriented training of judges to work on the cases of discrimination;
- Introduction of mandatory collection of segregated statistics and administrative data on discrimination cases and data exchange between stakeholders for policy analysis and development;
- Systematic training of lawyers to deal with complaints of discrimination (at least in the system of free legal aid).

### Ensuring equal rights and opportunities for women and men

Systemic changes are noted in ensuring equal rights and opportunities for women and men. However, despite the existing regulatory framework on gender equality and women empowerment, Ukraine still faces challenges that affect equal rights and opportunities. Thus, the available statistics still show a large gender gap in employment, wages, women's leadership, etc.

The Ministry of Social Policy is actively working to ensure equal rights and opportunities, their achievements and reporting can be found on the website.

An important role is played by the Government Commissioner for Gender Policy who is responsible for organizing the exercise of powers by the Cabinet of Ministers of Ukraine in the field of equal rights and opportunities for women and men in all sectors of society.

According to international rankings, Ukraine has been slowly improving its position over the past four years. In 2018 UNDP Gender Development Index, Ukraine ranked 88<sup>th</sup> (0.750).

The Ordinance of the Cabinet of Ministers of Ukraine #229 of 5 April 2017 adopted the Concept of the State Social Programme for Ensuring Equal Rights and Opportunities for Women and Men until 2021. The Concept partially duplicates the measures of the Action Plan, and the responsible authorities used this fact as a reason not to implement these measures within the deadlines set by the Action Plan.

Gender advisers have been introduced in public authorities and the Model Regulations on the Adviser on Equal Rights and Opportunities for Women and Men have been approved. The Ministry of Social Policy has also approved Guidelines for gender mainstreaming in labour relations and collective agreements.

Gender policy has now become cross-cutting, it is pursued in all sectors and areas. It is exemplified *inter alia* by the Government's Program of Activities. Gender legal examination of draft legal acts submitted to the Cabinet of Ministers of Ukraine is one of the tools for shaping a unified policy.

After the new Parliament was elected, the draft Law on Amendments to Certain Legislative Acts of Ukraine Concerning the Provision of Additional Guarantees Related to the Reconciliation of Family and Work Responsibilities (registration #9045 of 5 September 2018) was revoked and still not tabled with the new Parliament.

Recommendations on priority areas for the development of gender statistics in Ukraine have been developed on the basis of the manual Developing Gender Statistics: A Practical Tool of the United Nations Economic Commission for Europe (UNECE). Today, the national system of gender statistics indicators contains 115 absolute and derivative indicators that meet Euro-

pean and international statistical standards in terms of the methodology of their definition or calculation.

An important step to increase political participation of women is the 40% quota provided by the new Electoral Code of Ukraine: during the formation of national and regional electoral party lists of candidates for members of councils, the party must ensure that at least two of every five candidates (places from the first to the fifth, from the sixth to the tenth, etc.) of each electoral list are either men or women (not less two candidates of each sex).

#### RECOMMENDATIONS:

- Stable and continuous functioning of the institution of the Government Commissioner for Gender Equality;
- Programme (National Action Plan) on ensuring equal rights and opportunities, its periodic review and adjustment.

ZMINA Human Rights Centre

#### Protection of the rights of national minorities

In 2019, the Law of Ukraine “On Ensuring the Functioning of Ukrainian Language as the State Language” was adopted in Ukraine. Although this Law can be considered the best law on language adopted in Ukraine, it has many significant shortcomings in terms of compliance with international human rights standards and the Constitution of Ukraine. In particular, the Venice Commission in its opinion referred<sup>77</sup> to contradictory and discriminatory provisions of the law.

According to the analysis conducted by ZMINA<sup>78</sup>, the provisions of this law are discriminatory, as they give certain preferences to the languages of EU countries compared to other languages of national minorities. In fact, the scope of possible human rights that a person can enjoy depends on a specific language, which is a form of discrimination on the basis of language.

Also, the law on national minorities in Ukraine does not meet international standards. It contains many significant shortcomings, but in the sense of the law on language, the law on national minorities does not provide any individual additional rights at all. These problems are greatly complicated by the language law. In certain cases, it refers to the particularities of language regulation for national minorities, which should be determined by a separate law. However, in fact the law on national minorities does not define anything. That is, such a referral does not actually guarantee national minorities any additional rights to use their languages.

An exception is the Crimean Tatar language that is interpreted by the law as the language of the indigenous people, although there is no law in Ukraine that defines indigenous peoples and their rights, as well as the languages of indigenous peoples.

Therefore, the language law provides virtually no rights to members of national and linguistic minorities, with some minor exceptions for the Crimean Tatar language and – to even lesser extent – for the languages of the EU countries. Exceptions are only cases when these rights are explicitly stated in other laws of Ukraine. For example, such exceptions are set forth by the

<sup>77</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e&fbclid=IwAR0KN-8f28KLeWP8AudeWfKVAjcairgZ2TNqqsMEzg8tKW8fxF76TTiZwpU](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e&fbclid=IwAR0KN-8f28KLeWP8AudeWfKVAjcairgZ2TNqqsMEzg8tKW8fxF76TTiZwpU)

<sup>78</sup> <https://zmina.info/articles/lozhka-dogtyu-v-dizhcz-i-medu-analiz-movnogo-zakonu-na-vidpovidnist-standartam-prav-lyudyny/>

law on education. But usually, the law on language only refers to the law on national minorities, which does not guarantee anything.

In the field of education, notwithstanding the requirements of international law, the language law prohibits private education institutions from teaching in the languages of national minorities. Although the Constitution of Ukraine regulates the use of the state language in education only for state and municipal education facilities, the law on language extended these requirements to private ones as well.

No special rights are provided for national minorities in the field of audio-visual and print media and in the regulation of culture, in particular in the regulation of cultural and entertainment events, film screenings, the activities of theatres, museums, etc.

The Law on language generally ignores Ukraine’s obligations in terms of compliance with and implementation of the European Charter for Regional or Minority Languages.

Unfortunately, the law – contrary to European practice – does not give any powers to local self-government bodies in regulating the language policy. Even the language of municipal companies, institutions and organizations is fully determined at the level of law.

#### RECOMMENDATIONS:

- Amend the Law of Ukraine “On Ensuring the Functioning of Ukrainian Language as the State Language” by revising in particular those articles that contradict international human rights standards.

#### Protection of the rights of the child

*Continue its efforts to ensure access to education for all children*

At the national level, the reasons why individual children do not attend school are not sufficiently analysed. The problem of the lack of collection and analysis of properly disaggregated data on out-of-school children has been highlighted by inter-governmental human rights institutions over the last ten years. The state statistical reporting distinguishes the following categories of reasons: health status, professions without complete general secondary education, students in special secondary education institutions, other reasons. The number of children who do not attend school “for other reasons” is usually almost half of the total number of out-of-school children.

According to statistics, the coverage of complete general secondary education for children aged 6-18 is growing (in the 2018/2019 school year, an increase is about 5% compared to the 2016/2017 school year), while the number of schools is declining (in the same years, by about 8.3%). In addition, the public authorities themselves note problems in the organization of transportation of children to schools caused by poor quality of roads and lack of buses of appropriate quality. It significantly complicates access to education, especially for children living in rural areas. Instead, in large schools in cities there is a problem of overcrowded classes and lack of proper sanitation of premises, ventilation, lighting, etc. In this context, organization of schooling during the pandemic caused by COVID-19 – when the requirements to social distance are becoming more stringent – are of great concern.

While inclusive education in Ukraine is generally developing, it also has a lot of problems. Most schools are architecturally inaccessible. There is no data on the evaluation of performance of the teacher assistants. Properly organized large-scale state information and

education campaign aimed at accepting children with special educational needs to schools are also lacking.

#### RECOMMENDATIONS:

- Introduce an effective system for collecting and analyzing disaggregated data on children who do not complete general secondary education with identification of reasons. Based on this analysis, provide adapted forms of access to education for each child, taking into account the special educational needs, not limited to age, if a person needs access to basic education and after reaching 18 years of age.
- Provide a system for monitoring and evaluating the results and the process of implementing inclusive education, and timely address gaps that arise in the process of its formation.

*Consider adopting special legislation on the rights of the child that ensures the protection of all children without any discrimination*

The legislation of Ukraine has some positive changes, but there is a lack of a systemic approach to the adoption of special legislation on the rights of the child. Availability of the Law of Ukraine “On Protection of Children” does not address this problem. It has been repeatedly pointed out by the NGOs working in the field of protection of the rights of the child. In particular, the Alternative Report to the UN Committee on the Rights of the Child for the period from 2011 to 2018 states that “... systemic problems noted by the NGOs in the previous Alternative Report<sup>79</sup> remained unchanged – a number of children’s rights were not ensured (protection from discrimination, freedom of conscience and religion, right to privacy, fair trial, etc.)

It should be noted that the Ministry of Justice has established an Inter-Agency Coordination Council for Juvenile Justice that is developing the draft law of Ukraine on child-friendly justice. This process is currently being delayed, and the draft law itself needs to be improved. Some positives in the current version of the draft law is that it focuses on prevention and restorative justice. At the same time, first of all, it lacks systemic coverage of all stages and areas related to juvenile justice – prevention, justice, re-socialization, post-resocialization measures. Therefore, it does not perform the function of a framework law that is necessary to outline how the system will work.

#### RECOMMENDATIONS:

- Legislation of Ukraine in the field of protection of children’s rights, in matters of justice and re-socialization of children in conflict with the law needs to be assessed for compliance with international standards in this area. It is necessary to develop and adopt a law that will have a framework (organizational) nature and will determine the basic principles on which to build legislation in the field of protection of children’s rights.

*Take further steps to align national legislation with the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*

The ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure is a positive development.

<sup>79</sup> Alternative report on Ukraine’s implementation of the provisions of the UN Convention on the Rights of the Child 2002–2008: <https://www.unicef.org/ukraine/report-ukr.pdf>

At present, there is no clear and accessible procedure in Ukraine for reviewing the decisions of the national competent authorities in connection with the opinions of the UN Treaty Bodies based on the results of their consideration of communications. This is also true for implementation of the results of review of communications under the Third Optional Protocol to the UN Convention on the Rights of the Child.

The State does not provide extensive information on the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure, as provided for in Article 17 of this Protocol.

As regards the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, amendments were made to the Criminal Code of Ukraine to increase the age of sexual consent (to 16 years) and criminalize sexual intercourse with a person under that age. At the same time, the Alternative Report on Ukraine’s Compliance with the UN Convention on the Rights of the Child for the period 2011–2018 draws attention to the contradiction with the definition of sexual violence in the Criminal Code and the Law of Ukraine “On Domestic Violence.” In the latter, sexual violence is defined as certain actions “regardless of the child’s consent.” Also, this Report mentions that in fact, the courts tend to “release offenders from responsibility due to various mitigating circumstances, such as a good conduct certificate at the workplace, residence, commission of a crime for the first time, stay in the anti-terrorist operation area, raising minor children, etc.” There are gaps in the procedural powers of juvenile prevention police officers, and the procedure of medical examination and assistance to injured children is not properly regulated. Procedural actions to investigate cases of sexual violence do not take into account psychological condition of a child and lead to repeated trauma, in particular due to the need to participate in investigative actions.

#### RECOMMENDATIONS:

- Develop an accessible mechanism for reviewing the decisions of national competent authorities based on the results of consideration of individual communications by international treaty bodies of the UN, in particular, the Committee on the Rights of the Child.
- Bring Ukraine’s legislation on the protection of children from sexual exploitation and social violence in line with international standards set out in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. In particular, to harmonize the norms of the Criminal Code of Ukraine and the Law of Ukraine “On Domestic Violence”, to analyze and eliminate gaps in the procedural powers of juvenile prevention police, unresolved issues of medical examination and assistance to injured children.

## FULFILLMENT OF THE NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

*Non-governmental organization of people with disabilities “Fight for Rights”*

Human rights activists and experts note poor effectiveness of the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities of 2012 (hereinafter – the Acton Plan) and the lack of a human rights approach to promoting the rights of persons with disabilities.

The main reasons are outlined below:

- There is no information on the involvement of civil society, international organizations and people with disabilities in the development of Action Plan and, thus, the implementation of a participatory approach to the national policy development on the rights of people with disabilities.
- The objectives and measures envisaged in most items of the Action Plan are insufficient or do not contribute to the implementation of the provisions of the Convention. For example, with regard to such comprehensive Articles as Article 6 “Women with Disabilities” and Article 7 “Children with Disabilities,” the only measures stipulated in the Action Plan are to take into account the provisions of the CRPD when drafting anti-discrimination law. In a published report on the implementation of the provisions of the Action Plan in 2015, the Ministry of Social Policy described this objective as completed. In fact, the state has not taken and is not taking any action to ensure full development, empowerment of women with disabilities and ensuring participation in decision-making or discussion of issues directly affecting a child with disabilities.
- There is no approved methodology and guidelines for monitoring the Action Plan.
- Monitoring of the implementation of the Action Plan by the Ministry of Social Policy is not carried out on a regular basis and/or reporting is not publicly available. Annual reports on the implementation of the Action Plan were published on the website of the Ministry of Social Policy from 2012 to 2015. The last report for uncompleted or partially completed objectives of previous years was published in 2017<sup>80</sup>. There is no information on conducting public discussions of the reports.

In 2016, the Action Plan for the implementation of the recommendations set out in the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities was approved<sup>81</sup>. As of 2019, more than half of the objectives of the Action Plan have not been completed or are still pending.

## RECOMMENDATIONS

- Review the existing or approve a new comprehensive Action Plan for the implementation of the Convention with the active participation of experts, activists with disabilities and representatives of civil society.
- Develop a methodology and guidelines for monitoring the Action Plan for the implementation of the CRPD.
- Conduct periodic public discussions of reports on the implementation of the CRPD with participation of people with disabilities.

### **Training of judicial staff on the rights of people with disabilities, taking into account their needs and special skills**

*Non-governmental organization of people with disabilities “Fight for Rights”*

The Action Plan on the National Human Strategy approved in 2015 provided for the need to introduce training curricula and training courses for judges and court staff in order to raise

<sup>80</sup> <http://mtu.gov.ua/news/28711.html>

<sup>81</sup> <https://zakon2.rada.gov.ua/laws/show/1073-2016-%D1%80>

awareness of disability issues. The objective is marked as completed, as some higher education institutions have introduced training modules for law students on the rights and interests of persons with disabilities. Also, representatives of civil society sometimes conduct trainings on this topic. But a systemic approach to addressing this issue has not been implemented. Training is not conducted on a permanent basis. In the curriculum of the National School of Judges<sup>82</sup>, the modules for a limited number of professionals include 2 to 4 hours of lectures on communication between court employees and persons with disabilities, and the procedure for accompanying them<sup>83</sup>. This is not enough to radically change the situation at the national level. Currently, the judiciary is quite low-skilled both in direct communication with people with disabilities in the process and in the existing practice of judicial proceedings, where applicants or defendants may be people with disabilities.

## RECOMMENDATIONS:

- Provide systemic training to all professionals of the judiciary on disability, on the aspects of litigation involving people with different types of disabilities, the provisions of the UN Convention on the Rights of Persons with Disabilities in terms of access to justice.

### **IMPROVING ACCESS TO QUALITY EDUCATION FOR INTERNALLY DISPLACED CHILDREN, ESPECIALLY CHILDREN WITH DISABILITIES**

*Non-governmental organization of people with disabilities “Fight for Rights”*

In 2016, amendments to the Law “On Education” were adopted to introduce a system of inclusive education in Ukraine. Its development in Ukraine is still ongoing. Parents of students with disabilities and teachers of inclusive classes note that the problems of architectural inaccessibility of general secondary education institutions, lack of employees in the field of inclusive education, including teacher assistants and student assistants for inclusive classes (especially in small settlements) remain unsolved. In large settlements, there is a problem of overcrowded classes that negatively affects the quality of education.

While the school does not have the right to deny education to a child with a disability, there are still many cases of actual refusal of admission, pressure on parents by teachers and parents of other students.

As for the architectural accessibility of vocational education institutions, only a third of them are equipped with ramps, sound alarms, information boards<sup>84</sup>.

## RECOMMENDATIONS

The Ministry of Education of Ukraine and other authorities shall accelerate the implementation of inclusive education in accordance with the provisions of the UN Convention on the Rights of Persons with Disabilities, namely, to ensure architectural accessibility of education institutions, provide training on inclusive education and further opportunities for continuing professional development, implement individual approach to curriculum development, focusing on the child’s identity and taking into account his/her ability to develop.

<sup>82</sup> The National School of Judges is a public authority that provides training to personnel of the justice system.

<sup>83</sup> <http://nsj.gov.ua/pidgotovka-pratsivnikiv-aporativ-sudiv/tipovi-plani-2019-rik/>

<sup>84</sup> <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>

## PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS AND RESIDENTS OF THE TEMPORARILY OCCUPIED TERRITORIES OF UKRAINE<sup>85</sup>

ZMINA Human Rights Centre

The armed conflict on the territory of Ukraine continues to significantly affect the life of the entire country. However, the situation of civilians who were forced to leave their permanent residence due to the armed aggression of the Russian Federation, as well as those who stay on the occupied territories, requires special attention from the state.

As of 10 June 2020, 1,447,537 internally displaced persons from the temporarily occupied territories of Donetsk and Luhansk oblasts and the Autonomous Republic of Crimea have been registered in Ukraine<sup>86</sup>. The number of people who reside on the occupied territories of Crimea and Donbas is difficult to estimate due to the lack of control of the Government of Ukraine over part of the state border with Russia. According to experts, at least 3.6 million people live in the occupied territories of Ukraine<sup>87</sup>.

*Protection of the rights of residents of the occupied territories (6.60, 6.61, 6.63).* One of the recommendations was to simplify access to the provision of public administrative services for Crimean residents and to allow Ukrainian citizens to move freely between Crimea and Ukraine's mainland (6.60). It is difficult to talk about any significant progress in this area, however, during 2019-2020, the situation at the checkpoints with the occupied territory of Crimea has significantly improved. Two of the three checkpoints (Chonhar and Kalanchak) were repaired and equipped with administrative service centres for residents of the occupied Crimea. Up to 160 administrative services are provided at Chonhar checkpoint, and up to 100, at Kalanchak checkpoint. According to NGO CrimeaSOS, most often Crimean residents apply for passport services, in particular, registration of a passport of a citizen of Ukraine and a foreign passport of a citizen of Ukraine<sup>88</sup>. At the same time, the checkpoints do not provide banking services, healthcare, and provide limited postal service.

It is worth noting that in order to access administrative services in the Government-controlled territory, the TOT residents often have to register as the IDPs. For example, in the field of tax and customs formalities in the Government-controlled territory, residents of the TOT of Crimea have the status of non-residents. Until recently, the residents of the Crimean TOT were able to open a bank account and use banking services without restrictions only after having been registered as the IDPs.

Notwithstanding the development of administrative service centres on the border with the temporarily occupied territory, the service of state registration of births and deaths that occurred in the occupied territories remains inaccessible to residents of the occupied territories of Crimea and Donbas. At present, there is only a judicial procedure for establishing these facts, which – although simplified compared to other court procedures – is still not simple enough to be available to the TOT residents. It requires significant financial and time costs for travel, accommodation, going to court. Such a procedure put a significant burden on the judicial system – only in 2019, at least 31,000 court decisions were issued to establish the facts of birth or death at the TOT. At the same time, no more than 37% children born at the TOT of Donetsk and Luhansk oblasts, and only 13.5% children born at the TOT of Crimea after 2014,

<sup>85</sup> In accordance with Ukrainian law, temporarily occupied territories of Ukraine are the territories of the Autonomous Republic of Crimea, Sevastopol, certain parts of Donetsk and Luhansk oblasts.

<sup>86</sup> According to the Ministry of Social Policy, <https://www.msp.gov.ua/news/18756.html>

<sup>87</sup> According to the Ministry of Reintegration of the Occupied Territories, at least 1.6 million people live in the occupied territories of Donetsk and Luhansk oblasts. Another 2 million people live in the temporarily occupied Crimea.

<sup>88</sup> <https://zmina.info/articles/minreintegracziyi-obiczayye-cherez-pivroku-povnoczinnu-robotu-ha-bu-dlya-krymchan-ta-pereselencziv-na-kpvv-chongar/>

have birth certificates issued by the competent authorities of Ukraine. The unavailability of an out-of-court (administrative) procedure for recognizing the facts of birth on the TOT puts children at risk of statelessness.

As for the unimpeded crossing of the checkpoints, in contrast to the contact line in Donetsk and Luhansk oblasts, Ukrainian citizens do not need a permit to cross the administrative border with the Crimean TOT. At the same time, there are significant restrictions on the transportation of goods from/to the TOT of Crimea, as the legislation provides for a rather limited and outdated list of things allowed for transportation (the same list is used when crossing the state border of Ukraine).

It is still difficult for foreign citizens to enter the Crimean TOT. Currently, a special permit is required to enter Crimea. To obtain it, a foreigner must apply in person to an authorized public authority in Ukraine. According to the law, the decision to grant a permit may take up to 5 days. This situation significantly complicates the work of foreign journalists, human rights activists, lawyers in Crimea and forces them to enter the occupied territory of Crimea from the territory of the Russian Federation in case of urgent need, in violation of the laws of Ukraine.

One of the most pressing issues is the payment of pensions to residents of the occupied territories. Currently, in order to receive their pension, they are forced to obtain a certificate of an IDPs. The pensioners from the TOTs who do not have IDP certificates are deprived of the opportunity to receive their own pensions. Therefore, pensioners who permanently reside on the TOT and have a certificate of IDPs must travel to the Government-controlled territory every two months so that their certificates are not revoked. It increases overcrowding of the checkpoints (on average, checkpoints are crossed 1.3 million times a month, up to 60% travellers are pensioners). At the same time, the arrears of the state to pensioners from the TOT who do not receive a pension reaches UAH 80 billion<sup>89</sup>.

*Protection of the rights of internally displaced persons (6.34, 6.133, 6.135, 6.188, 6.189).* In general, there are positive trends in ensuring the implementation of the rights of IDPs. It should be noted that since 2017, the IDPs are guaranteed the right to free secondary legal aid which includes such types of legal services as protection, representation of the IDPs in courts, other authorities, drafting procedural documents<sup>90</sup>. In 2019, the Electoral Code of Ukraine was adopted enabling the IDPs to participate in local elections<sup>91</sup>. The number of IDPs in the community is also taken into account when planning the budgets for education and health (calculation of the subvention), which in practice means that the IDPs have access to education and health care on a par with other citizens of Ukraine residing in the community.

At the same time, long-term solutions are lacking to meet the needs of IDPs in host communities, especially housing and employment needs that are key for the IDP integration. In September 2019, the share of IDPs who reported being integrated into the local community was 54%, while 34% reported their partial integration. The main conditions for successful integration are having housing, permanent income and employment. At the same time, the majority of IDPs who returned to the occupied territories (76%) cited the availability of housing and no need to pay rent as the main reason for the return<sup>92</sup>.

<sup>89</sup> <https://r2p.org.ua/pensiyi-vs-minfin/>

<sup>90</sup> Law of Ukraine "On Free Legal Aid"

<sup>91</sup> <https://www.vplyv.org.ua/archives/4428>

<sup>92</sup> Report of the National Monitoring System for the Situation of Internally Displaced Persons (September 2019), [http://iom.org.ua/sites/default/files/nms\\_round\\_15\\_ukr\\_screen.pdf](http://iom.org.ua/sites/default/files/nms_round_15_ukr_screen.pdf)

In 2015, the National Human Rights Strategy was adopted<sup>93</sup>. One of the directions of the Strategy is to protect the rights of internally displaced persons. According to the NGOs<sup>94</sup>, as of the beginning of 2020, more than a half (52%) of the planned results have been achieved, which is one of the highest performance indicators among all areas of the Strategy.

## RECOMMENDATIONS

- Provide access to administrative services for residents of the temporarily occupied territories of Ukraine;
- Introduce an extrajudicial (administrative) procedure for establishing the facts of birth and death on the TOT;
- Ensure access to banking services for the TOT residents without discrimination;
- Simplify the mechanism for obtaining a special permit to enter the TOT of Crimea for foreign citizens (lawyers, journalists, human rights activists);
- Introduce a list of things prohibited for transportation when crossing the checkpoints with the TOT of Crimea (instead of the list of eligible things);
- Create a mechanism for receiving pensions for residents of the occupied territories without the need to obtain a certificate of an IDP;
- Implement long-term solutions for the integration of IDPs (housing programmes, effective employment promotion programmes, etc.);
- Ensure implementation of the National Human Rights Strategy.

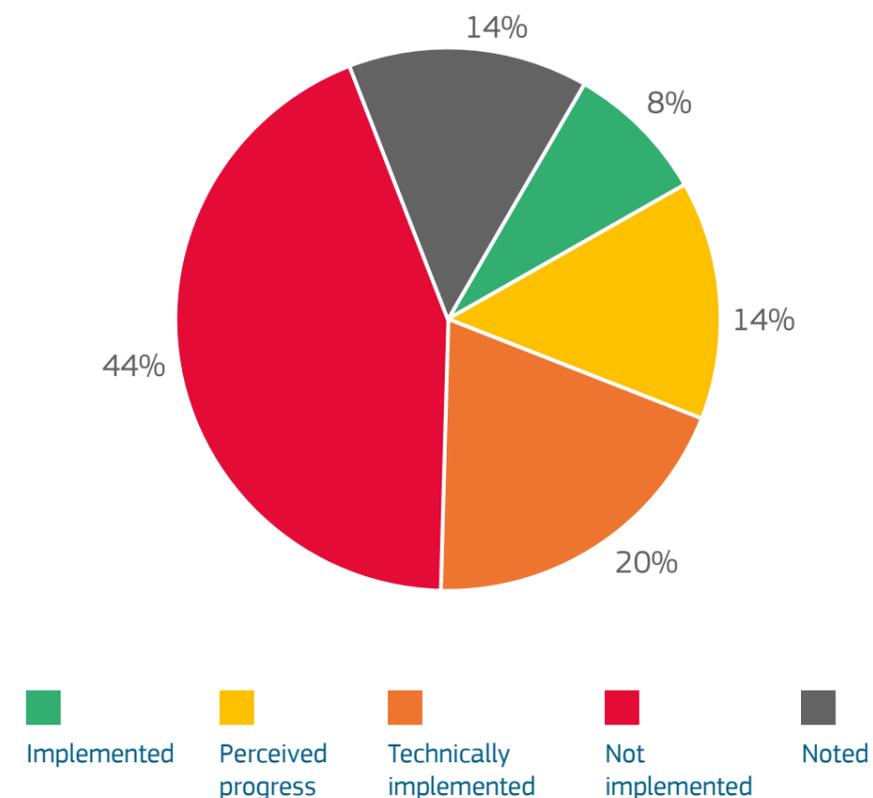
## EVALUATION OF STATUS OF IMPLEMENTATION OF THE RECOMMENDATIONS OF THE UNIVERSAL PERIODIC REVIEW

### Evaluation methodology:

IMPLEMENTED	PERCEIVED PROGRESS	TECHNICALLY IMPLEMENTED	NOT IMPLEMENTED
full execution	measures are being taken, but they are insufficient, the recommendation has just started to be implemented and time is needed for further implementation	measures are taken, but they do not contribute to the implementation of the recommendation, the measures taken do not apply to the recommendation	not performed at all

Of the 190 recommendations

### GENERAL ASSESSMENT OF THE IMPLEMENTATION OF RECOMMENDATIONS



<sup>93</sup> Decree of the President of Ukraine #501/2015 of 25.08.2015

<sup>94</sup> Evaluation of the implementation of the National Human Rights Strategy (2016-2019) / Scientific publication. Under general ed. of Svitlana Kolyshko, Olena Kryvko, Kseniia Semiorkina, Oleksandr Pavlichenko, Kyiv, 2020, 307 p., <http://hro.org.ua/files/docs/1590308435.pdf>

№	Content	Comments
<b>JUSTICE AND THE RULE OF LAW</b>		
6.94	Ensure that judges, lawyers and other justice professionals are fully protected from threats, intimidation and other external pressures that seek to challenge and threaten their independence and impartiality	<p>Cases of interference in the administration of justice by law enforcement agencies, lawyers, MPs of Ukraine, members of local councils, other representatives of state and local self-government bodies, citizens and their associations, as well as the media, remain frequent.</p> <p>Since the launch of the register of notifications of interference in the activities of judges in the administration of justice, the High Council of Justice has received 1,220 such appeals, and in 2019, 450 notifications from judges. In 2019, the Council adopted 115 decisions on measures to ensure the independence of judges and the authority of justice.</p>
6.110	Ensure that the justice sector reform strategy for 2015–2020 is further implemented to improve access to justice, strengthen independence and eliminate corruption	<p>Under the new legislation, political institutions have been deprived of influence over the appointment and dismissal of judges, tools for ensuring the independence of judges have been introduced, and both the requirements for judges and the remuneration of judges have been increased.</p> <p>On the other hand, the system of disciplinary liability of judges has been improved. For the first time in history, failure to confirm the legality of income is a constitutional ground for dismissing a judge. The new system of sanctions allows to adequately respond to violations in the activities of judges.</p> <p>The new Supreme Court started operations on 15 December 2017.</p> <p>New specialized courts on intellectual property and anti-corruption have been set up.</p> <p>However, judicial reform is incomplete. The courts are not adequately staffed with judges that causes many problems.</p>
6.118	Establish an impartial judicial system, including by: establishing an anti-corruption court; empowering anti-corruption institutions (such as the national anti-corruption bureau of Ukraine); and eliminating the potential for political use of the judiciary and prosecutor general's office	
6.122	Complete the judicial reform and the anti-corruption policy by reforming the Prosecutor General's Office, reforming the State Security Service according to international standards, as drawn up with the support of Euro-Atlantic institutions, and introduce, as provided for in the relevant legislation, specialized anti-corruption courts	

6.125	Fully implement the reforms necessary to establish an independent, effective and transparent judicial system that would not only strengthen Ukraine's capacity to fight corruption, but would also establish an overarching framework for upholding the rule of law and protecting fundamental rights and freedoms	
6.8.-6.12	Expedite the ratification of the Rome Statute of the International Criminal Court	Amendments to the Constitution of Ukraine on the possibility of recognizing the jurisdiction of the International Criminal Court under the conditions set out in the Rome Statute of the International Criminal Court have entered into force.
6.25	Ratify the European Convention on the Compensation of Victims of Violent Crimes	The Verkhovna Rada registered a draft law "On compensation for victims of violent criminal offenses" №3892 from 17.07.2020
6.65-6.67	Fully integrate provisions on the criminalization of enforced disappearance into its national legislation	In 2018, the Law "On the Legal Status of Missing Persons" was adopted and supplemented the Criminal Code of Ukraine with Article 146-1 "Forced Disappearance."
6.101	Finalize the establishment of the State bureau of investigations and accord it the resources and independence needed to investigate crimes committed by public officials, judges and law enforcement officers, thereby addressing impunity	The State Bureau of Investigation was established on paper in 2015 and was due to start operating in November 2017. The Bureau opened its first proceedings at the end of 2018 under the leadership of its Director Roman Truba. Although the SBI was primarily intended as a body to investigate torture and other serious crimes committed by law enforcement agencies, its jurisdiction became broader – it encompasses all the crimes committed by law enforcement and high-ranking officials (even road accidents). The SBI has 7 territorial offices and 1,500 investigators (for comparison, the National Police has about 130,000). For a long time, the SBI did not have its own operational units, so they involved police and SBU operatives in their activities, which created a conflict of interest. In the first full year of its operation, the SBI investigated 5,794 cases, of which 22 concerned torture and 442, abuse of power by law enforcement officials. In 2019, a Department of Procedural Guidance on Torture was established in the Prosecutor-General's Office. According to the report of the Ministry of Internal Affairs, in 2019 and 5 months of 2020, the investigative bodies opened 4 proceedings on torture by law enforcement officers based on the materials of internal inspections.
6.104	Ensure progress in the investigations into the murders committed during the Maidan revolution in Odessa in May 2014, and into the murder of journalist Pavel Sheremet on 20 July 2016	In six years since the Euromaidan crimes, only a small fraction of more than 4,000 episodes have been transferred to court, with 59 persons convicted. While the cases against 55 perpetrators of the Maidan shootings were submitted to court, their consideration is being delayed. The trial of five riot police (Berkut) officers – where the most progress was observed – has been suspended due to the extradition of suspects as part of their "exchange" for civilian and military hostages held on non-Government-controlled territory in Donbas.

	<p>Six years after the events of 2 May 2014 in Odesa, no one was found guilty of the deaths of 48 persons.</p> <p>In the case of Pavel Sheremet, the investigation has no information about the instigator of the crime and the motives of the perpetrators. As for the three alleged perpetrators of the crime are concerned, they are charged and study the materials of the criminal case. The evidence in the case is extremely doubtful, the results of certain examinations contradict each other and raise reasonable doubts about their authenticity. The investigation did not establish the motive for the perpetrators.</p>
<b>6.109</b>	<p>Ensure that human rights violations, including extrajudicial killings, illegal detentions, torture and gender-based violence, committed by all sides in the Russian-instigated conflict in eastern Ukraine are recorded, investigated and the perpetrators brought to justice</p>
<b>6.61</b>	<p>Support efforts to prevent human rights abuses in Crimea and Donbas by facilitating access for monitors, human rights defenders, journalists, and lawyers, and investigate thoroughly any credible allegations of abuses by Ukrainian forces, and use all appropriate methods to promote accountability for abuses</p> <p>So far, the government has not supported recommendations of human rights activists to simplify the procedure for foreign journalists, human rights activists and lawyers to enter Crimea. It is necessary to change the nature of the procedure (from receiving permits to notification), to introduce a remote/online format for submission of documents for registration of entry (including multiple), as well as allow to submit supporting documents for registration through consulates of Ukraine in the country of residence of a foreigner in the language of his/her nationality.</p>
<b>6.169</b>	<p>Step up efforts to prevent ill-treatment of minors deprived of liberty and guarantee their effective rehabilitation</p>

#### PREVENTION OF TORTURE AND ILL-TREATMENT

<b>6.68</b>	<p>Include a definition of torture in the Criminal Code in full compliance with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and investigate all allegations of torture and ill-treatment in an impartial, thorough, transparent, efficient and effective manner so as to bring perpetrators to justice and fight impunity</p> <p>In 2017, the NGOs and the Ministry of Justice of Ukraine developed a draft law on the harmonization of Ukrainian legislation with international humanitarian law. In particular, it meant to bring the definition of Article 127 of the Criminal Code of Ukraine (Torture) in line with the UN Convention against Torture. Although the draft was introduced by the Prime Minister, it has not been considered by the Verkhovna Rada.</p>
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<b>6.69</b>	<p>Grant the national preventive mechanism the legal authority and the practical means, including financial, to access all places where the mechanism suspects that persons are deprived or may be deprived of liberty, in accordance with article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p> <p>With the election of the new Ukrainian Parliament Commissioner for Human Rights in 2018, the National Preventive Mechanism was restructured and released exempt from considering individual complaints that used to block the monitoring activities. As of 2020, the Department for the Implementation of the National Preventive Mechanism consists of units for monitoring, analysis and law-making, and has about 150 independent volunteer monitors. The National Preventive Mechanism is funded by a separate budget programme that covers the costs of the staff of the Commissioner's Secretariat, while not covering the costs of civic monitors (travel, accommodation, meals, etc.). Also, training programmes, drafting technical materials and reports, creation of additional products (website, database, etc.) are still largely funded by international donors.</p>
<b>6.106</b>	<p>Investigate all allegations of torture and ill-treatment, including against persons detained for reasons linked to the conflict, in accordance with its international obligations</p> <p>According to the Unified State Register of Court Decisions, in 2018 (the first year of full-fledged work of the State Bureau of Investigation), two criminal cases of torture committed by law enforcement officers came to court (and 0 cases in 2019). It is in line with general trend that exist in Ukraine in recent years: since 2013 (after the adoption of the new Criminal Procedure Code that strengthened the protection of detainees from abuse by law enforcement) the courts receive no more than 6 cases of torture annually. However, according to official data alone, in 2017, almost 2,500 persons applied to hospitals with complaints of beatings by police, while law enforcement agencies investigated only 22 cases of torture in 2017. A bit more indictments are filed with the courts under Article "Abuse of power through violence:" up to 50 cases annually. In 2020, the Prosecutor-General's Office announced the priorities of criminal policy for the year that included investigations of human rights violations by law enforcement officers.</p> <p>In 2020, after a series of high-profile scandals involving killings and torture in the police, the Minister for Internal Affairs Arsen Avakov announced the installation of Custody Records – a system of automatic recording of actions with detainees in all the police units. Currently, it operates as a pilot in several detention centres and one police department.</p>
<b>6.107</b>	<p>Further improve the investigation of allegations of torture and ill-treatment, as well as of disproportionate use of force by security personnel, and ensure the prosecution of perpetrators</p> <p>In 2019, the Prosecutor-General's Office set up a Department of Procedural Guidance on Torture. The cases of torture will be handled by selected investigators from the State Bureau of Investigation. In 2020, the Prosecutor-General's Office also announced that uniform templates and procedures for recording injuries caused by law enforcement officers will be introduced.</p> <p>According to a survey conducted by the NGOs and the Secretariat of the Commissioner in 2019, Ukraine does not have a unified system for recording signs of torture in places of detention and notifying investigators. Injuries are often recorded by non-medical staff in unforeseen templates and with incorrect terminology.</p>

<b>6.70</b>	Increase resources to protect the rights and living conditions of people in detention and prisoners	
<b>6.71</b>	Continue efforts to improve the situation of prisoners, in particular in pre-trial detention, by, inter alia, increasing the minimum space attributed to each prisoner, allocating necessary financial means, increasing custodial staff and ensuring necessary medical treatment	<p>Inadequate detention conditions are a systemic problem in most places of detention in Ukraine. Monitoring groups record the most problems in penitentiary institutions (prisons, pre-trial detention centres). Key violations are non-compliance with living space standards (less than 4 square meters per person, and in some cases less than 1 square meter), failure to provide adequate healthcare, violation of the right to privacy, culture of violence among prisoners, involvement of prisoners in maintaining security in the institution. The Ministry of Justice separated the medical service into a separate state institution, but did not move this department to the Ministry of Health. The condition of healthcare system in the penitentiary system still does not meet the standards. According to the Ministry of Justice, about 3,500 prisoners in prisons have tuberculosis and 1,600 have HIV/AIDS (about 10% and 5% of the total number of prisoners, respectively). Prisoners continue to be held in sleeping for several dozen people which contributes to violence and the consolidation of violent subculture.</p> <p>In 2020, the Minister for Justice launched a project to create paid cells in pre-trial detention centres, where detention conditions meet international standards, which human rights activists see as increasing inequality in prisons. The Verkhovna Rada Committee on Human Rights summoned the Minister for a meeting to provide explanations.</p>

#### FUNDAMENTAL FREEDOMS

<b>6.83</b>	Coordinate with international experts to conduct a review of recent legislation and decrees concerning the media and civil society, to determine whether these measures are consistent with Ukraine's international obligations	In general, the new draft laws take into account the recommendations of international organizations. In 2019, a new draft law on media was presented, as well as amendments to numerous laws to combat disinformation. As a result of criticism from international and domestic organizations, consideration of disinformation draft law was postponed, and the draft law on media was sent for revision.
<b>6.85, 6.86</b>	Further strengthen the protection of journalists, human rights defenders and individuals to ensure their rights to freedom of opinion and expression. It is crucial that crimes against media professionals do not go unpunished	Ukraine has not demonstrated any systematic steps to improve the situation. In the vast majority of cases, attacks on activists and journalists because of their statements and activities are not properly investigated. In some high-profile cases, it was only the large-scale public protest that caused progress in the investigation, but as soon as public attention to such cases declines, law enforcement or courts often try to change the course of the investigation – in particular, defendants may be subjected to lighter measures of restraint and may flee, may be charged with lesser offenses, or other actions may be taken that significantly weaken the charge.

<b>6.87</b>	Ensure respect for freedom of expression, in particular with regard to journalists, associations and non-governmental organizations defending fundamental rights, including the rights of lesbian, gay, bisexual, transgender and intersex persons	No significant progress has been made in this regard, and attacks on journalists and human rights activists (including those defending LGBT rights) in Ukraine are not being investigated effectively. Hate crimes against LGBT people are classified exclusively as hooliganism, are long and improperly investigated, and almost never go to court, which is a major disincentive for the community to seek redress from law enforcement agencies. As a result, the problem of violence and impunity for criminals is silenced.
<b>6.88</b>	Strengthen the protection of journalists and investigate those responsible for spreading personal data of journalists and inciting attacks against them. Investigate and prosecute as a matter of priority killings of journalists, such as that of Pavel Sheremet	The state has not taken any significant steps to investigate the attacks on journalists. In fact, proper investigation takes place in no more than 5% cases. In the case of Pavel Sheremet, the alleged perpetrators of the crime were detained, but no direct evidence of their guilt was shown, and many pieces of evidence contradict each other. At the same time, there is evidence of improper investigation – in particular, the disappearance of video footage from cameras at the crime scene, not all witnesses to the crime were interviewed. The investigation has no information about the instigators and organizers, as well as the motives of the perpetrators. In view of this, the results of the investigation provoke well-founded criticism, and the case of accusations of alleged perpetrators in court has little prospects due to shortcomings in the investigation.
<b>6.92</b>	Ensure that legislation on the declaration of assets by non-governmental organizations does not weaken civil society and does not unnecessarily compel the disclosure of intrusive information	On 6 June 2019, the Constitutional Court of Ukraine in its decision #3-r/2019 recognized the electronic declaration of anti-corruption public activists as contrary to the Constitution of Ukraine.
<b>6.123</b>	Revoke the amendments of March 2017 to the Law on prevention of corruption, which compel members of anti-corruption non-governmental organizations to release financial declarations	On 6 June 2019, the Constitutional Court of Ukraine in its decision #3-r/2019 recognized the electronic declaration of anti-corruption public activists as contrary to the Constitution of Ukraine.
<b>6.84</b>	Adopt legislation that is conducive to the development and safeguarding of today's strong and vibrant NGO community in Ukraine	Over the last five years, the conditions for establishment and operations of the NGOs have been simplified. Thanks to the amendments to the Laws "On Non-Government Organizations" and "On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations," the non-profit NGOs were allowed to run entrepreneurship activities, and the financial burden on them when registering changes to information in the Unified State Register was reduced. The reporting form for non-profit organizations and the procedure for receiving funds from the state and local budgets have also been simplified (CMU Resolution # 1049), and competitive grants been introduced to support the NGOs of veterans and persons with disabilities.

		At the same time, it is important to continue further reforming the legislation on non-governmental and charitable organizations. There are still problems such as significant tax burden on charitable and volunteer activities; lack of involvement of CSOs in the provision of social services at the expense of state and local budgets; impossibility of online registration for all CSOs; underdeveloped procedures for involving citizens in decision-making of local self-government bodies; unavailability of state financial support for administrative costs, institutional development and volunteer projects; complicated and non-transparent system of registration of humanitarian aid; mass persecution of civil society activists continues and the investigation of crimes against them is hampered.
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<b>6.78</b>	Uphold and respect the rights of all religious communities to their institutional autonomy, their property and their procedures at all times	Recent changes in the legislation on religious organizations have significantly narrowed the institutional autonomy of religious organizations. Many religious organizations cannot register in such a way so that their structure be based on their religious beliefs.
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#### **RIGHT TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

<b>6.130</b>	Take measures to improve access to health care, in particular with regard to combating infant and maternal mortality	
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<b>6.132</b>	Implement systems to extend vaccination coverage and monitoring with a view to countering outbreaks of polio, measles and other predictable diseases	On 27 November 2019, the Strategy for the development of immunoprophylaxis and protection of the population from preventable infectious diseases until and the Action Plan for its implementation were approved.
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<b>6.131</b>	Continue to prioritize health care in the national budget	The State Budget for 2019 has allocated UAH 95.08 billion for healthcare. It is 10% more than in 2018.  In 2020, a total of UAH 113 billion is planned for healthcare, which is 13% more than the 2019 budget.
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#### **PREVENTION OF GENDER-BASED AND DOMESTIC VIOLENCE**

<b>6.19-6.24</b>	Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence	Laws of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" and "On Preventing and Combating Domestic Violence" were adopted.
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<b>6.146</b>	Amend the articles of the Criminal Code dealing with rape and sexual violence, in line with international standards and the recommendations of OHCHR and the Committee on the Elimination of Discrimination against Women, to ensure accountability for conflict-related sexual violence	The problem of prosecuting perpetrators of conflict-related sexual violence remains unresolved. No special legislation has been adopted to establish appropriate liability for such acts. Status of victims of conflict-related sexual violence remains legally uncertain.
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<b>6.153</b>	Implement further legislation, law enforcement reform and practical efforts to combat violence against women and to advance gender equality	Allocation of necessary resources, provision of specialized services, and access to justice for victims of sexual violence also remain the problems.
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<b>6.156</b>	Provide adequate capacity-building programmes for judges, prosecutors and law enforcement officials to better implement laws criminalizing violence against women and better assist and protect women victims of violence	For the judges to acquire necessary skills to apply new relevant provisions of criminal law, during 2019-2020, the National School of Judges with the support from Geneva Centre for Security Sector Management (DCAF) and La Strada-Ukraine within the EU PRAVO-Justice Project developed and implemented a training course on proceedings on crimes committed on the grounds of sex
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<b>6.157</b>	Review legislation and its application, and commit resources to training for police and prosecutors in order to eliminate the widespread impunity for domestic violence	
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<b>6.160</b>	Improve the prosecution and prevention of domestic violence and ensure that victims of domestic violence have access to shelters and other support services	In 2016, the first ten emergency healthcare facilities (offices based on a multidisciplinary hospital) were launched in Ukraine to provide assistance to victims of rape and sexual violence, with the support of the United Nations Population Fund. They were opened along the contact line in Donbas. In 2018, four more facilities started operating in other oblasts (Kharkiv, Vinnytsia, Kryvyi Rih, Mariupol).
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#### **COMBATING HUMAN TRAFFICKING**

<b>6.73</b>	Intensify efforts to combat human trafficking and provide adequate resources to increase the quality of services provided for victims of trafficking	
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<b>6.74</b>	Strengthen existing law and practice to counter trafficking in human beings for sexual and labour exploitation, particularly of young women, focusing also on the situation in conflict-affected areas where the risk of being exposed to sexual violence or trafficking is higher	
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<b>6.72</b>	Continue its efforts in combating human trafficking, including through training for law enforcement officials and cooperation with countries of transit and destination	
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<b>6.75</b>	Continue efforts to prevent human trafficking and protect the rights of victims, and provide them with necessary assistance	
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<b>6.76</b>	Consider allocating adequate funding to anti-trafficking initiatives in order to ensure the successful implementation of the national action plan for the period 2016-2020	
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## EQUALITY AND NON-DISCRIMINATION

6.40	Amend the legal definition of discrimination so that it includes a comprehensive list of banned reasons for discrimination	Attempts to adopt draft laws #0931 (3501) and others are not a full-fledged implementation of this objective. The same is true for other similar recommendations.
6.41	Continue efforts to fight discrimination in all spheres of life, also taking measures against all expressions and manifestations of prejudices, such as hate speech, racism and xenophobia	During the reporting period, there was no systematic work in this direction, some initiatives of individual central executive authorities are not an example of coordinated work to eradicate the problem. Given the xenophobic discussions and in the context of the lack of effective work and leadership of the institution of equality, this recommendation remains relevant. It is important that the different authorities are involved in a coordinated manner.
6.44-6.46	Conduct public campaigns to promote cultural diversity and tolerance towards minorities and victims of hate crimes	There were no systemic campaigns on cultural diversity, nor was there any work on hate crimes.
6.47	Strongly condemn hate speech, adequately investigate racist hate speech and racially motivated violence and prosecute the perpetrators	Apart from the lack of “strong condemnation of hate speech” by any public actor (with the exception of the statements of the Ukrainian Parliament Commissioner for Human Rights), there is no improvement in the investigation of hate crimes. Bringing the perpetrators to justice is impossible due to ineffective investigations and inadequate qualification of offences. Until now, hate crimes are being investigated and brought to justice as hooliganism, with very few exceptions.
6.48	Enforce the strictest standards on banning political declarations and programmes encouraging racism, xenophobia and hate speech or inciting to hatred or intolerance, including of an ethnic or religious nature	Moreover, a number of developments – political causes such as “Values, Dignity, Family” (in support of the so-called “traditional values”) in the Verkhovna Rada, some draft laws against increasing liability for discrimination and hate crimes or criminalizing calls for “destruction of the institute of family,” discussions at the level of officials, statements of some government officials that Ukraine cannot fulfil its human rights obligations because “the society is not ready” – indicate that Ukraine moves in direction of increased xenophobia rather than promotion of human rights discourse. Outbreaks of ethnic violence (at least attacks on Roma settlements) in 2018-2020 that were not properly investigated also indicate a lack of adequate response to this problem.
6.49	Continue its efforts to address discrimination based on race, national identity or religious belief and to promote cultural diversity and tolerance, including through the implementation of article 161 of the Criminal Code	Similar to the comment on amendments to the anti-discrimination law, the availability of draft law #3501 is not an indicator of implementation, as neither this draft law nor the others are good examples of quality legislation and necessary systemic changes. Moreover, they were not adopted by the Verkhovna Rada and have no impact on improving the situation now. The investigation of hate crimes is also extremely unsatisfactory.
6.142	Fully implement the Law on ensuring equality of the rights and opportunities for women and men, in order to eliminate the gender equality gaps in all spheres of the society	

6.143	Continue efforts to ensure equality of rights and opportunities between women and men in all spheres of society, through legal recognition, the implementation of special measures and the elimination of disparities in opportunities between women and men	
6.144	Provide the commission on gender equality with the necessary infrastructure and budget to carry out its important work, in particular to reduce the pay gap between women and men	
6.163	Strengthen women’s rights, in particular with respect to representation in public life, as well as the fight against domestic violence and the wage gap between women and men	
6.35	Carry out awareness programmes and sensitivity training on violence and discrimination for law enforcement, judicial and other authorities to prevent discrimination in society based on sexual orientation or gender	There was no systematic work in this direction with an emphasis on SOGI. The work done by civil society does not meet the scale of the need for such training. Despite numerous discussions, the Ministry of the Internal Affairs and the National Police have not developed changes to the police training system to adequately include non-discrimination in the training of all police officers, nor have they developed re-training and advanced training curricula on responding to discrimination and hate crimes for the police that should be permanent and mandatory.
6.52	Continue to work on effective measures to ensure legal and judicial advances in the fight against hate crime, including hate crime related to racial discrimination or sexual orientation and gender identity	There is a lack of adequate and effective investigation and qualification of such crimes, and most cases go to court as hooliganism (according to both the register of court cases and human rights organizations and lawyers who provide support to victims). Most victims choose not to report such incidents to the police.
6.179	Further strengthen the protection of the rights of minorities, including lesbian, gay, bisexual, transgender and intersex persons and the Roma community, by effective implementation of existing legislation and effective law enforcement	There have been no systemic changes, and the implementation of the Roma integration strategy is unsatisfactory. A new strategy is still being developed. In the last few years, due to constant changes and the lack of both effective strategy and of staff, the Department for the Rights of National Minorities in the Ministry of Culture did not work. Now it is a separate department, but it still does not work due to poorly conducted competition – for example, the department has no head for six months.
6.180	Continue working to eliminate all forms of stigmatization or discrimination based on sexual orientation or gender identity	There is no systematic work in this direction and no information campaign. Instead, there is a lot of public discourse about the need to exclude the SOGI as prohibited ground for discrimination from both from the law and from the discussion because of the “harm to family values.” Many attempts by local authorities are recorded to adopt absurd and illegal documents denying LGBT rights, which are condemned only by the Commissioner for Human Rights and civil society.

<b>6.185</b>	Review relevant legislation and its application in order to eliminate impunity for hate crimes based on sexual orientation and gender identity	It has already been mentioned that the draft laws (including those that have not been considered for years) are not an indicator of implementation. There have been no changes in law enforcement practice, as evidenced by data of civic monitoring, OSCE/ODIHR reports and data from the Ministry of the Internal Affairs, the National Police and the State Register of Court Cases.
<b>6.34</b>	Fully implement its 2015 national human rights strategy, including with respect to protecting the rights of internally displaced persons; ending discrimination based on gender and sexual orientation through the ratification of the Istanbul Convention; and addressing hate crimes through a strengthened criminal justice framework	<p>Assessment of the implementation of the National Human Rights Strategy proved that the implementation of the anti-discrimination area is the poorest compared to other areas.</p> <p>Similarly, the Istanbul Convention has not been ratified.</p> <p>No changes were made to either the anti-discrimination legislation or the Criminal Code of Ukraine.</p>

### PROTECTION OF CHILDREN'S RIGHTS

<b>6.17</b>	Take further necessary measures and accede to The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, as previously recommended	
<b>6.135</b>	Continue its efforts to ensure access to education for all children	<p>At the national level, the reasons why individual children do not attend school are not sufficiently analysed. The problem of the lack of collection and analysis of properly disaggregated data on out-of-school children has been highlighted by inter-governmental human rights institutions over the last ten years. The state statistical reporting distinguishes the following categories of reasons: health status, professions without complete general secondary education, students in special secondary education institutions, other reasons. The number of children who do not attend school "for other reasons" is usually almost half of the total number of out-of-school children.</p> <p>While inclusive education in Ukraine is generally developing, it also has a lot of problems. Most schools are architecturally inaccessible. There is no data on the evaluation of performance of the teacher assistants. Properly organized large-scale state information and education campaign aimed at accepting children with special educational needs to schools are also lacking.</p>
<b>6.164</b>	Consider adopting specific legislation on child rights to ensure the protection of all children without any discrimination	The legislation of Ukraine has some positive changes, but there is a lack of a systemic approach to the adoption of special legislation on the rights of the child. Availability of the Law of Ukraine "On Protection of Children" does not address this problem. It has been repeatedly pointed out by the NGOs working in the field of protection of the rights of the child. In particular, the Alternative Report to the UN Committee on the Rights of the Child for the period from 2011 to 2018 states that "... systemic problems noted by the NGOs in the previous Alternative Report remained unchanged – a number of children's rights were not ensured (protection from discrimination, freedom of conscience and religion, right to privacy, fair trial, etc.)

<b>6.165</b>	Take all necessary steps towards effective implementation of the national action plan on the implementation of the Convention on the Rights of the Child for the period 2017–2022	
<b>6.166</b>	Take further steps to harmonize national legislation with the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	<p>The ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure is a positive development.</p> <p>At present, there is no clear and accessible procedure in Ukraine for reviewing the decisions of the national competent authorities in connection with the opinions of the UN Treaty Bodies based on the results of their consideration of communications. This is also true for implementation of the results of review of communications under the Third Optional Protocol to the UN Convention on the Rights of the Child.</p> <p>The State does not provide extensive information on the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure, as provided for in Article 17 of this Protocol.</p>
<b>6.168</b>	Introduce a clear definition of child pornography into national legislation	
<b>6.189</b>	Take further steps to improve access to quality education for internally displaced children, in particular children with disabilities, as a follow-up to the recommendations contained in paragraphs 97.42 and 97.126 of the outcome report (A/HRC/22/7) from the second cycle	From the Alternative Report on Ukraine's compliance with the provisions of the UN Convention on the Rights of the Child for the period 2011-2018: "In June 2016, the Ministry of Social Policy registered 235,000 IDP children. At the same time, according to the Ministry of Education and Science of Ukraine, as of May 2016, 17,982 children from uncontrolled territories were enrolled in preschool educational institutions of the controlled territory of Ukraine, 48,411 children were enrolled in secondary schools, 1,777 children were students of vocational schools. . Thus, 68,170 people studied and were enrolled in educational institutions in the summer of 2016. Of course, this does not include newborns, children who do not attend preschool; graduates of schools who do not continue their studies and students of higher educational institutions who have not reached the age of majority (such statistics are not kept by the Ministry of Education and Science). However, it is obvious that even taking into account these categories, the number of children will not reach 235 thousand. According to the Ministry of Social Policy, as of February 25, 2019, the number of internally displaced children is 195,050. "

### PROTECTION OF PEOPLE WITH DISABILITIES

<b>6.170</b>	Take necessary measures to prevent degrading and cruel treatment of persons with disabilities, especially minors	
<b>6.171</b>	Continue efforts to implement the national action plan for the implementation of the Convention on the Rights of Persons with Disabilities	

6.172	Train the judiciary on the rights of persons with disabilities, taking into account their needs and special skills
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### PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES

6.137	Ensure that the new education law, with its emphasis on the Ukrainian language, does not lead to discrimination against minorities	The Law of Ukraine “On Ensuring the Functioning of Ukrainian Language as the State Language” adopted in 2019 contains discriminatory provisions regarding the languages of national minorities due to preferences given to the languages of the EU countries and indigenous peoples. In fact, the scope of possible human rights that a person can enjoy depends on a specific language, which is a form of discrimination on the basis of language.
6.138	Maintain the level of education in one’s mother tongue for the persons belonging to national minorities, as per paragraph 167 of its national report regarding education in mother tongue, with due attention paid to the content and the number of hours	
6.175	Fully ensure the protection of cultural, educational, religious and linguistic rights of all the communities and minorities living in Ukraine, welcoming in this regard the submission of the recent Law on education to the Venice Commission for an expert opinion, which should be fully taken into account	

### ROMA MINORITY

6.174	Strengthen initiatives to combat exclusion, marginalization and poverty, including that of the Roma population, among other groups
6.177	Enhance efforts to better integrate the Roma community into society
6.178	Adopt a progressive strategy aimed at increasing educational opportunities and improving the housing and living conditions of the Roma community (

### PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS

6.128	Provide all eligible citizens with the benefits to which they are entitled, including pensions and social payments, regardless of their status as displaced persons or their place of residence in their own country	At present, pensions are paid to residents of the occupied territories of Ukraine and all those who have a registered place of residence in these territories only after they receive a certificate of an internally displaced person. Therefore, low-mobility pensioners who cannot periodically cross the contact line to complete all necessary identification procedures do not have access to their pension.
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6.133, 135, 6.188, 6.189	Make efforts to improve the availability, accessibility and quality of health care and education, in the case of internally displaced people	Due to the medical reform, the IDPs who signed a declaration with a doctor have access to primary health care regardless of their place of residence. According to the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons,” the IDP children have the right to attend pre-schools and general schools regardless of their place of residence. Since May 2020, the IDP children have the right to free meals in pre-schools, general and vocational schools. From 2017, the IDP children have the right to receive state targeted support for education (social scholarships, benefits for living in dormitories, etc.).
6.28, 6.29	Increase the human and financial resources of the Ministry for Temporarily Occupied Territories and Internationally Displaced Persons in order to fulfil its mandate fully.	In 2019, the Ministry of Temporarily Occupied Territories and Internally Displaced Persons was first transformed into the Ministry of Veterans, Temporarily Occupied Territories and Internally Displaced Persons, which in turn was replaced in 2020 by the Ministry of Reintegration of Temporarily Occupied Territories. Structural changes have twice weakened the Ministry’s institutional capacity, although the Ministry now has broader powers and is headed by the Deputy Prime Minister for Reintegration. The territorial representation of the Ministry in the regions remains an issue.
6.34	Fully implement its 2015 national human rights strategy, including with respect to protecting the rights of internally displaced persons; ending discrimination based on gender and sexual orientation through the ratification of the Istanbul Convention; and addressing hate crimes through a strengthened criminal justice framework	According to the NGOs, general status of implementation of the National Human Rights Strategy is about 33% (the area of IDP rights has somewhat better progress, 52%).

### PROTECTING THE RIGHTS OF PEOPLE AFFECTED BY THE CONFLICT

6.61	Support efforts to prevent human rights abuses in Crimea and Donbas by facilitating access for monitors, human rights defenders, journalists, and lawyers, and investigate thoroughly any credible allegations of abuses by Ukrainian forces, and use all appropriate methods to promote accountability for abuses	So far, the government has not supported recommendations of the human rights activists to simplify the procedure for foreign journalists, human rights activists and lawyers to enter Crimea. It is necessary to change the nature of the procedure (from receiving permits to notification), to introduce a remote/online format for submission of documents for registration of entry (including multiple), as well as allow to submit supporting documents for registration through consulates of Ukraine in the country of residence of a foreigner in the language of his/her nationality.  Assessing the state’s efforts to conduct a thorough investigation into reports of violations committed by the Ukrainian military is a challenge.
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<b>6.63</b>	Use all existing instruments and mechanisms to protect the human rights and freedoms of Ukrainian citizens living on the temporarily occupied territories of Ukraine while taking political and diplomatic steps aimed at restoring Ukraine's territorial integrity within its internationally recognized borders	Ukraine uses various international platforms – judicial and extrajudicial – to protect the rights of Ukrainian citizens who stay in the temporarily occupied territories. Ukraine regularly submits notifications to the International Criminal Court regarding violations committed in the framework of the armed conflict on the territory of Ukraine. In particular, at least 7 submissions were prepared and sent to the ICC with regard to violations committed by the Russian Federation in the occupied Crimea. Ukraine also has interstate disputes with Russia in the UN International Court of Justice and the European Court of Human Rights. As for as the negotiating platforms are concerned, the Normandy format continues to function today, the Minsk Tripartite Contact Group keeps holding meetings. Unfortunately, no negotiating platform on Crimea has been set up.
<b>6.102</b>	Implement the recommendations contained in the latest report by the human rights monitoring mission in Ukraine of September 2017, notably to develop a national mechanism to make available to civilian victims of the conflict adequate, effective, prompt and appropriate remedies, including reparation	At present, there is no effective mechanism in Ukraine to compensate for victims of armed conflict. There is no unified state system for recording civilians killed and injured in an armed conflict, so it is difficult to introduce a universal approach to compensation for damage to health or damage caused by the death of family members. Moreover, there is no definition of which persons are considered to have sustained damage as a result of an armed conflict. As for the mechanism of compensation for the destroyed property, the existing mechanism is considered ineffective and does not work in practice. Therefore, the main way for people whose homes are destroyed or damaged is to go to court.
<b>6.60</b>	Simplify access to public administrative services for Crimean residents and enable Ukrainian citizens to move smoothly between Crimea and the rest of Ukraine, recognizing General Assembly resolutions 68/262 and 71/205 and Ukraine's sovereignty over Crimea	Access to administrative services for residents of the occupied territory of Crimea has been simplified, as the centres for administrative services have been set up at the checkpoints on the administrative with Crimea. The Crimea residents can apply for a passport of a citizen of Ukraine, a foreign passport of a citizen of Ukraine and receive other services (more than 100 services available) there. At the same time, obtaining a birth or death certificate for Crimea residents is still a problem. In Ukraine, a judicial mechanism has been introduced to establish these legal facts, which requires time and material costs. The effective procedure is not convenient for the residents of the TOT in Crimea to receive such documents and has to be changed.
<b>6.56</b>	Ensure the observance of the principles of international humanitarian law by all parties in conflict	

## IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW AND PEACEBUILDING

<b>6.27</b>	Intensify cooperation with the international community in order to ensure access of international human rights and humanitarian actors and monitoring mechanisms to the whole territory of Ukraine within its internationally recognized borders with the aim to monitor, report on and address the human rights situation	A number of monitoring missions operate on the territory of Ukraine. In addition, public human rights organizations organize their own monitoring missions together with partners, consisting of journalists, representatives of international non-governmental organizations and others. Independent monitoring is significantly complicated in the temporarily occupied territories.
<b>6.57</b>	Abstain from any practice that could endanger the lives of civilians	
<b>NATIONAL HUMAN RIGHTS INSTITUTION</b>		
<b>6.30</b>	Review the procedure for the selection of the ombudsman and, more broadly, the selection, training and status of judges, taking into account the recommendations of the Venice Commission	
<b>6.31, 6.32</b>	Secure sufficient resources for the ombudsperson's office so that it can fully carry out its functions	

