

**UKRAINE**  
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**This submission was prepared by the informal coalition of the following NGOs:**



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The above mentioned informal coalition of the NGOs got together to prepare the following submission. All member participants have a long history of cooperation in past and are expert on the topic of the discrimination in Ukraine [1]. Main goal of this coalition submission is to draw attention the UN Human Rights Council to the problem of discrimination in Ukraine. Despite many previous recommendations from treaty bodies, including recommendations received and accepted by Ukraine within first cycle of the Universal Periodic Review, no changes were introduced into Ukrainian legal system to effectively ban discrimination and provide protection to victims of discriminatory acts and practices. Instead Ukrainian authorities continue to refuse to acknowledge existing problems and in some case even implore discriminatory practices themselves. In the light of existing lack of improvement, the Coalition is presenting its findings and views to draw attention of the UN Human Rights Council to the issues of discrimination in Ukraine and provides suggestive recommendations, which if taken into account by the State, can improve the situation.

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## **PROHIBITION OF THE DISCRIMINATION AND LACK OF LEGISLATIVE FRAMEWORK**

1. Ukraine lacks both comprehensive framework legislation to prohibit discrimination and effective anti-discrimination policy. Despite many recommendations by various actors[2] to adopt anti-discrimination legislation, Ukraine just recently (summer 2011) started to draft state policy which is not yet fully adopted and did not led to the draft of the law. Draft policy does not include comprehensive catalog of discriminatory characteristics and cannot be foreseen as affective tool to protect all discriminated groups.

2. Today as it was in 2008 legal mechanisms for protection against all forms of discrimination for the most part are confined to the Constitution and the Criminal Code. Certain provisions are included in normative acts pertaining to areas of law, including Code on Administrative Legal Proceedings[3], Labor Code [4], the Law “On Police [militia]” [5], the Law on the Status of Foreigners and Stateless Persons”[6], etc., but many other are not covered at all (i.e. Criminal Procedural Code, Family Code, Commercial Code, etc.).

3. Despite that in theory provisions of Ukraine's Constitution are supposed to have a direct effect and application, Constitutional guarantees remain primarily declaratory [7]. Legislation doesn't provide a definition of the concept of discrimination, of direct and indirect discrimination, nor does it set out standards and criteria for proving discrimination. This entirely explains the virtually total lack of court practice. The only law where direct and indirect discrimination is mentioned is the Law “On Equal Opportunities for Men and Women” however this doesn't pertain to racial or other discrimination. Another problem with legislation is the incomplete list of spheres where discrimination is banned, as well as the presence of other restrictions [8].

4. Currently, the Criminal Code of Ukraine remains a primary locus of the prohibition of discrimination in Ukraine' legal system. In comparison with the state of affairs at the time when first UPR was as submitted, the inadequate form in which prohibition of discrimination was articulated in the Criminal Code was slightly altered through the adoption of the Law “On Amendments to the Criminal Code of Ukraine concerning the Liability for Crimes Motivated by Racial, National [inter-ethnic] or religious Intolerance” [9]. Relevant amendments enhanced the punishment provided for by the Article 161 and slightly changed its disposition. These amendments left unaffected the content of Article 67(1)(3) that identifies racial, national and religious enmity as aggravating circumstances to every crime defined by the Criminal Code and has previously attracted substantial amount of criticism from international and local experts for its lack of usability.

5. This Law introduced a range novel points into some provisions of the Criminal Code that have a potential of providing better, though still insufficient, protection against racially motivated violence. The amendments recognized a “motive of racial, inter-ethnic or religious bigotry” as a specific aggravating circumstance for the number of offenses [10].

6. But despite this slight positive changes Ukrainian legislation still fails to implement international human rights standard of the prohibition of discrimination and fails to offer adequate protection to its victims.

7. There is also a problem in the virtually total lack of punishment for discriminatory behaviour. Criminal liability is stipulated for certain actions, yet through the flawed legislation it's never applied. There is also neither administrative, nor civil-legal liability for discrimination. As the results it's impossible to bring claim for discriminatory treatment which explains the lack of the relevant court practice in any legal sphere. A person cannot therefore seek to have discriminatory acts stopped or receive compensation. For example, this legal cap is the reason that a victim cannot punish an individual or media for circulating material calling for discriminatory behaviour.

8. Ukrainian authorities failed to protect minorities from racist violence and bring perpetrators to liability. In its interim periodic review the Government of Ukraine indicated that a number of crimes were prosecuted under Article 161 of the Criminal Code. Most of these cases concerned hate speech and hate crimes thus these cases did not concern anti-discrimination component of these Article. However, at least 3 of them were cases of racist violence [11].

9. These were first cases since 1992 in which Article 161 was used to punish racist

motivation behind violent crimes. Its use was justified since at that point (prior to November 2009) racist motives were not considered to be specific aggravating circumstances to any of the violent crimes. These cases, however, were rather exceptional and due recognition of the racist motive behind those incidents was only due to either substantial public outcry or international pressure on Ukrainian authorities.

10. Majority of violent crimes motivated by racism, however, have continued to be classified with no regard to the possible racist motivation. According to the results of the hate crime monitoring by civil society organizations the actual number of incidents of racist violence may not even be put in comparison with the alarmingly small number of violent attacks that were classified under Article 161. It is also noted that in majority of such cases racist motivation was dismissed from the outset and not even investigated by law enforcement authorities [12].

11. Most of the victims were originating from Africa, Central and South Eastern Asia, Middle East and Caucasus Region, as well as those whose appearance is not typical for Ukrainian society. NGOs believe that the number of incidents documented by them is only a tip of the iceberg and in fact most of the incidents are not reported by victims. However, available data demonstrates the dynamics and trends in the field for the period.

12. The response to the majority of the violent incidents that clearly appear to be racially motivated to both victims and civil society experts by law enforcement authorities demonstrates their reluctance to classify racist incidents as such and investigate bias motivation behind them duly.

13. Institutional framework charged with elimination of racial discrimination in Ukraine remains inefficient. As mentioned in the interim report by the State, an Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance was set up under the Cabinet of Ministers led by the State Committee in Nationalities and Religion (SCNR). The Report indicates that “information on the activities of the Interdepartmental Working Group and materials considered at its meetings are posted regularly on the web page of the SCNR. In 2009, the Interdepartmental Group held 7 sessions. In 2010 the Group had stopped its activities de facto, as no sessions were held during the year. In 2011 due to the state reform and abolishment of the SCNR as an institution, the Group stopped its work.

14. At the beginning of 2012 the Ministry of Culture were handed the responsibility of the Group in part of counteraction of xenophobia and racism. So far no initiative came from the Ministry.

15. Similarly departments within the Ministry of Internal at central and local levels charged with investigating and overseeing cases involving suspected racist motivations, created in 2008 no longer exists after the reform the MOI underwent in 2010 with the appointment of the new Minister. Plan to counteract racism with activities up to 2009 and later prolonged up to 2012 approved at the MOI in 2007 was implemented only in parts. Plan contained actions like – creation of database of extreme-rights activists and groups, prevention work, educational work with police officers, etc. After structural and staff changes at the Ministry in 2010, relevant work was stopped.

#### **RIGHTS OF FOREIGN NATIONALS, REFUGEES AND STATELESS PERSONS AND DISCRIMINATION OF 'VISIBLE MINORITIES' IN COURSE OF MIGRATION MANAGEMENT**

16. The NGOs putting together this report believe that it is impossible to clearly picture racism that exists in Ukraine without analysing the situation of non-nationals, including the laws that govern their status and the practice of their implementation. Majority of victims of racist crimes documented by the civil society are people originate from Africa, Central- and South-East Asia, and Middle East as well Caucasus region. Prevailing majority of them are non-citizens. As reports of the attacks illustrate, perpetrators targeted their victims because, on the ground of a victim's phenotype, they assumed that he was an 'illegal migrant' or a 'foreigner' originating from 'a less developed country', hence a 'potential illegal migrant'.

17. Apart from the Constitution, the main normative acts that define the specifics of the non-citizens' position in Ukraine are: Law “On the Status of Foreigners and Stateless Persons” of 04.02.1994 [13]; “The State Migration Policy”, “The Rules of Entry of Foreign Nationals and

Stateless Persons to Ukraine, Their Exit from Ukraine and Transit through Its Territory” [14] and some others.

18. Ukrainian legislation on non-citizens is a developing area of law that is subject to frequent modifications. Its dynamic character has been particularly evident during the 2010-2011, when Ukraine undertook an obligation to improve its migration laws as a condition for liberalization of EU visa regime for Ukrainian citizens.

19. This legal framework is characterized by many gaps, contradictions and inconsistencies and falls short of meeting international human rights standards, including prohibition of racial discrimination. The deficiencies of the current legislation have led to a vast number of serious human rights violations of foreigners, refugees and stateless persons.

20. NGOs putting together this report welcome the political will demonstrated by the Ukrainian authorities to reform relevant laws and regulations. However, they note that legal reforms currently underway fail to address existing shortcomings and pay no regard to the human rights of non-nationals under Ukraine's jurisdiction.

21. Stereotyping of non-citizens on the basis of their national origin and ethnic profiling by Ukrainian police is often a 'tool' of enforcement of migration rules despite some anti-discrimination provisions are contained in most of the framework normative acts that govern the work of authorities. For example Article 5(2) of the Law of Ukraine “On Militia(Police)” [15] provides that “police shall respect a dignity of a person and treat one humanely, protect a person's human rights regardless of one's social origin, financial or other status, race or ethnicity or citizenship, age, language, level of education, religion, sex, political or other beliefs”. In practice, however, Ukrainian authorities are often guided by stereotypes and sometimes even overtly racist convictions particularly when dealing with non-citizen population.

22. Among other the popular beliefs that non-citizens are actual or potential undocumented migrants and that they are prone to criminality and bring atypical diseases often are actively endorsed and promoted by Ukrainian authorities. Many universities place foreign students in separate dormitories thus segregating them from Ukrainian students [16]. There were cases reported when university administrations deliberately instructed local students not to interact with international students.

23. Another widespread manifestation of discriminatory practices is a practice of racial (ethnic) profiling systematically employed by Ukrainian law enforcement authorities. According to the testimonies of non-citizens the most frequent perpetrator of harassment and discrimination on the ground of phenotype that they have experienced in Ukraine is the police.

24. According to NGOs data, Roma often are victims of police profiling, which results in illegal fingerprinting, unlawful arrests and ill-treatment [17].

25. Since after 2001 when “combating illegal migration” has been defined as one of the top priorities in the work of MOI, police has started actively targeting people of non-European appearance on everyday basis. As noted by the NGOs 'migrantophobia' in law enforcement authorities, like among the population at large, has a 'selective character': non-citizens that look European enjoy neutral and even positive attitude, whereas “members of other ethnic groups” are perceived as a threat. Darker skin color, different shape of eyes, accent or other purely biological characteristics that are perceived to characterize a non-European would definitely attract attention of police. Such attention often results in unlawful and arbitrary detention or forced finger printing, racist harassment, brutality and even physical abuse.

26. In order to justify such high priority of measures aimed at 'countering illegal migration' and motivate their staff to demonstrate higher performance MOI also unwittingly facilitated the spread of migrantophobia through disseminating negative stereotypes about non-citizens originating from countries perceived to be the places of origin of 'risk migration'.

27. Measures of Ukrainian law enforcement authorities aimed at enforcement of migration rules specifically target certain groups of non-citizens on the ground of their 'race' (color, national or ethnic origin). The arsenal of such measures, however, is not limited to the documents' checks or verification if a person has sufficient funds for the period of her stay in Ukraine. Internal regulations of MOI demonstrate that the indicators that police strives to achieve by means of ID checks are a number of 'identified illegal migrants' and a number of deportations. In practice,

however, the criteria used by police for regarding that or another person as an 'illegal migrant' are far from clarity. Ukrainian legislation does not provide for due regard to any personal circumstances of a person subject to deportation, including private and family life and one's right not to be returned to a country where he/she faces a real risk of torture, inhuman and degrading treatment.

28. It is also worth noting that there is no legislation currently in force that would regulate detention in transit zones of the airports. No effective legal mechanism is available for those non-citizens who wish to challenge the decision of border-guards to refuse him/her entry to Ukraine. Such conditions create a fertile soil for abuse of authority by border-guard officials. It may not be excluded that in such circumstances persons who declare to the border-guards that they arrived to Ukraine to seek asylum, would be subjected to immediate *refoulement* without having their asylum claims considered.

29. These conditions, if taken together and in light of the lack of effective procedural guarantees of non-citizens, had a potential of putting virtually every non-citizen at risk of expulsion upon the discretion of relevant law enforcement authorities, particularly MOI. According to the official statistics 56.3 thousand non-citizens were brought to administrative liability under this article in 2009, 60.1 thousand – in 2010. All of these people by virtue of Article 32 of the Law "On the Status of Foreigners and Stateless Persons" were liable to deportation. The magnitude of this figure in Ukrainian context may better be comprehended in the context of the total number of foreign nationals registered by authorities that as of 1 April 2011 constituted 278.5 thousand people, including 199.3 permanent residents.

30. The NGOs putting together this report believe that that figure is a result of the combination of deficiencies of Ukraine's legislation related to the status of non-citizens and bureaucratization and lack of clarity of related procedures.

31. The discriminatory effect the practice of implementation of migration laws has at certain groups of non-citizen population on prohibited grounds may be illustrated even juxtaposing the official data related to the national composition of foreign nationals brought to administrative liability and those who were subject to removal directions. This situation like ethnic profiling appears to be a consequence of high priority of 'countering illegal migration' on the agenda of Ukrainian Government and stereotyping of persons of Caucasus, African, Central and South-East Asian and Middle Eastern countries as 'actual or potential illegal migrants' promoted by authorities even in normative documents.

32. The amendments to the Law "On the Status of Foreigners and Stateless Persons" that were adopted in April 2011 while adding to the list of grounds for expulsion and whole range of other dubious positions had at least attempted to rectify that lack of clarity by removing violation of migration laws from the list as a ground for removal separate from when the person was found guilty in committing the administrative offense.

33. The new draft law "On the Status of Foreigners and Stateless Persons", however, intends to bring it back again. In fact the grounds for removal of foreign nationals and stateless persons are so widely formulated that should the authorities wish to find reasons for removing any foreign national they would be able to do so easily.

34. According to the same Law the fact that the person has been subjected to an enforced removal order is considered a sufficient ground for detaining that person in view of removal for up to 12 month in temporary holding facility for undocumented migrants. That legislative act somewhat contradictory to other pieces of Ukraine's legislation does not provide for such detention to be 'necessary' in view of personal circumstances of the individual subject to deportation. Administrative courts that are in charge of ordering detention do not apply detention in every case and exercise substantial discretion in this matter. For example in 2009 out of 2299 persons subject to enforced removal order less than a half (923 persons) were also subjected to detention in view of expulsion.

35. The fact that the Law does not provide clear criteria against which the courts identify the necessity of detention as well as the fact that temporarily holding facilities are clearly 'visibly' filled by persons of African and South and South-East Asian origin, gives grounds to fear that this form of enforcement of migration laws might have had a disproportionate effect on certain groups

of non-citizens depending on their 'race' (skin color, ethnic and national origin in combination with their language capacity).

36. This hypothesis is particularly worrying because current conditions of detention in those facilities may still not be characterized as humane and satisfactory as well as because detention of migrants in those facilities effectively prevents them from accessing remedies available to challenge the deportation order taken against them.

37. Due to the financial support from the EU Ukraine has extended the infrastructure of the detention facilities for undocumented migrants. However, despite certain progress conditions of such detention may still be regarded as amounting to degrading treatment. Moreover, NGOs are concerned about the practice of routine detention of non-citizens whose removal may not be practically affected. The most illustrative example of such practice are multiple cases when person whose removal was not enforceable, like asylum seekers from Somalia, had to spend 12 month in detention (the maximum term established by the law) only to be detained again shortly after release.

38. The Law "On the Status of Foreigners and Stateless Persons" of 04.02.1994 since 05.04.2011 contains a *non-refoulement* provision (Article 32-1) that prescribes that *a foreigner or a stateless person may not be expelled or in other form returned to a country where she may be subjected to torture, inhuman or degrading treatment or punishment*. The Law "On Refugees" also contains a non-refoulement provision (Article 3): *A refugee may not be expelled or forcefully returned to countries where his life or freedom would be in danger because of his race, religion, ethnicity or nationality (citizenship), membership in a social group or political beliefs*. These provisions, however, fail to ensure sufficient protection of non-citizens from *refoulement* to where they are at risk of being subject to serious human rights abuses, including torture.

39. The relevant provision of the Law "On the Status of Foreigners and Stateless Persons" remains purely declaratory until relevant framework for its full implementation is introduced in Ukrainian legislation. The new Law "On refugees and persons in need of subsidiary and temporary protection" makes an attempt to bridge this gap by introduction of the additional subsidiary status. However, it itself entails substantial deficiencies that may in that prohibition of *refoulement* both for refugees and persons in need of complimentary and temporary protection purely declaratory.

40. First of all, the new law conditions *non-refoulement* of persons who may face torture, inhuman and degrading treatment upon their health condition, behavior [18]. This approach is in clear contradiction with Ukraine's obligations under Article 3 of the UN Convention against Torture as well as Article 3 of European Convention on Human Rights that prohibit to the state-parties to expel, extradite or otherwise remove foreign nationals to countries where they face a real risk to be subject to such treatment regardless of how undesirable such individuals might be to the hosting state.

41. Another obstacle to the full implementation of *non-refoulement* principle is a lack of clear procedural standards of refugee claims assessment. Furthermore, effective procedural guarantees against expulsions that may affect their human rights are not available to foreign nationals and stateless persons subject to expulsion. Currently, appeal against the denial of entry or deportation decision, do not have suspensive effect, which basically refuses defendant a right to fair trial, as one might be deported before court procedures are over.

42. Until 2011 the authorities were not even formally informing persons subject to deportation orders about the reasons behind their decision. Today a person subject to deportation order is served with a written statement containing justification of such decision. However, such a statement is served in Ukrainian language which prevents many non-citizens from being able to understand and effectively challenge it.

## **RIGHTS OF REFUGEES AND ASYLUM SEEKERS**

43. Over recent years many Ukrainian and international NGOs [19] dedicated their reports to the condition of refugees and asylum seekers in Ukraine. These documents include detailed description of examination procedure of application for a refugee status, many flaws of legislation and detailed analysis of migrants' rights violations. For that reason in this submission only most serious issues will be mentioned.

44. The Law “On Refugees” from 2005 had several flaws that did not help fully protect refugees and asylum seekers rights and left platform for violations. The new version of the Law was adopted on July 8, 2011; this new Law does provide several changes and can improve the situation in future if duly implemented in practice.

45. Comparing to the previous Law of 2005 year, the new Law defines the order of social relations regulation, not only in sphere of recognition an individual as a refugee, but also as a person who is needed of subsidiary or temporary protection, loss and deprivation of such status, as well as establishing the legal status of refugees and individuals in need of subsidiary protection and those who have been granted temporary protection in Ukraine.

46. Particularly adding to the list of individuals who need protection, the following category “individuals, in need of subsidiary and temporary protection” is the main positive outcome of the Law. Besides this, it is very important to note the establishment of one unified identification document for applicants which is valid throughout whole procedure that will ensure proper documentation of applicants and reduce bureaucracy.

47. Unfortunately, the Law has provisions that cause reservations and can be used not to the benefit of refugees and asylum seekers [20].

48. In addition, the Law “On Citizenship” states that for persons who have been granted refugee status or asylum in Ukraine, a condition for obtaining citizenship is that they must have resided legally in Ukraine for three consecutive years, and persons who entered Ukraine as stateless persons must have resided legally in Ukraine for 3 years from the moment they received a residence permit. Everyone to be granted a citizenship should pass an exam on Ukrainian language. However the State does not provide for a free Ukrainian language classes or any other integration courses.

49. At the contrary rights of asylum seekers are very limited in comparison to rights of recognized refugees.

50. There has been a grave problem with the State Migration Service (SMS is structural part of MOI) and many attempts to restructure it during 2009-2011. From August 2009 through August 2010 it was impossible to be granted asylum in Ukraine because there was no authority with power to do so.

51. The situation seemed to be finally resolved when in November 2010 the President made a decree to close SCNR and to forward all its responsibilities concerning refugees and asylum seekers to the State Migration Service which should be created under the MOI.

52. Unfortunately through 2011, newly created SMS existed only on paper, which resulted in denying many people in need of protection, a due and careful examination of their claims and decisions on their claims [21].

53. Another problem is non-transparency of decision-making system on affording a status. Some denials elude analyzing neither from the perspective of the law, nor from the perspective of the reason. The automatic refusal and the need to appeal it seem to become a binding part of procedure.

54. Among other violations the most routine is violation of the right to liberty and security of person. Refugees and asylum seekers of so-called “non-Slavic appearance” often suffer unmotivated stops by police for document checks or unlawful detentions. Also they are frequent victims of extortion. These incidents are instances of ethnic profiling widely practiced by Ukrainian police, and culture of institutional racism. It had especially intensified when declared “fight against illegal migration” became one of priority activities of MOI, supported by EU.

55. A person who has been granted refugee status in Ukraine has the same rights as Ukrainian citizens, but many obstacles come on that way, particularly with regard to marriage and family relations, there is nothing in Ukrainian legislation to provide refugees with a possibility to prove their unmarried status other than send request to the authorities of the country of origin which can cause a serious danger to some of them.

56. A refugee has the right to receive financial assistance, a pension, and other types of social security following the procedure established by legislation, and to the use of housing. However it never worked in practice, no refugee has been granted housing from the State, or receiving a pension.



## **RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS AND DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY**

57. Ukrainian law does not explicitly position sexual orientation or gender identity among the protected grounds contained therein. Currently, there is no official LGBT-inclusive interpretation of relevant laws (i.e. the Constitution of Ukraine, Labor Code of Ukraine, etc.) containing anti-discrimination provisions and open-ended lists of protected grounds by either the Constitutional Court of Ukraine or the Supreme Court of Ukraine. Judicial practice in this regard has been inconsistent and even discriminatory [22].

58. Recent reports from LGBT organizations demonstrate high levels of discrimination, both direct and indirect, faced by LGBT persons in employment, access to goods and services, education, housing access to health care, police treatment and access to justice [23].

59. According to NGO data, LGBT persons are often victims of police profiling, illegal arrests and fingerprinting [24].

60. In employment and education most common violations include termination of employment contract/contract to receive education services or forced voluntary resignation due to harassment on the part of colleagues/other students once the victim's non-heterosexual orientation or transgender status becomes known or assumed with any degree of certainty.

61. In housing and access to goods and services and health care LGBT persons commonly face refusal to rent premises, termination of (sub-)lease contracts, refusal to provide requested services and harassment on the part of personnel.

62. According to annual monitoring reports there is high incidence of bias- (homophobia- and transphobia-) motivated crimes directed at both LGBT individuals and LGBT organizations. In 2010-2011 recorded were as many as 83 such cases, which included, alongside threats of and instances of physical violence, corrective rape. Several attempts at using violence to disrupt public and cultural events, organized by Ukrainian LGBT organizations, were made by groups of masked young men who called themselves "patriots of Ukraine" and "the Christian youth".

### **RECOMMENDATIONS:**

63. Reform relevant legislation to ensure access to redress for victims of all kinds of discrimination. In particular in consultations with civil society organizations and relevant experts:

- develop a comprehensive anti-discrimination legislation that would contain precise definition of discrimination, its clear interpretation and standards of identification;
- define basic concepts needed: "discrimination", "direct discrimination", "indirect discrimination", "positive anti-discrimination measures", "victimization", "persecution", etc.;
- include comprehensive list of discriminatory characteristics into the law, including sexual orientation and gender identity as explicitly defined protected grounds;
- stipulate basic standards and principles for proving discrimination;
- review criminal, civil and administrative law remedies to ensure that victims have enforceable right to redress of pecuniary and moral damage.

64. Such law should fulfil the state's duty to undertake positive measures on prevention of discrimination, compensation for damages linked with discrimination, as well as impose proportionate sanctions for infringements of anti-discrimination norms. These sanctions should allow for compensation to victims of discrimination.

65. Establish institutional framework necessary for effective implementation of anti-discrimination legislation and policy with the functions to:

- state policy implementation;
- monitoring and public reporting
- coordination of other state actors work
- investigation participation
- victims' assistance and redress.

66. The State must ensure access to the courts for all victims of discrimination, including legal assistance, for example, with it being the duty of a special body to provide consultations on

these issues, with civic organizations having the right to provide such assistance or represent individuals or groups before state bodies, as well as in the courts.

67. Provide human rights training for the police, prosecutors, border-guards, staff of temporary detention facilities and judiciary as well as facilitate the reporting of cases of police abuse of Roma, other persons of different ethnic origin, and LGBT persons, effectively investigate complaints and bring those found guilty of such acts to justice.

68. Take measures to effectively ban illegal profiling practices within law enforcement authorities and establish independent mechanism of complaints on human rights abuses committed by police.

69. Take measures to eliminate hate speech particularly by government officials and politicians including in the context of measures aimed at migration management.

70. Take measures to effectively ban activities of organisations propagating and inciting racial, homophobic and transphobic violence and discrimination even in those cases when such organizations are not officially registered, including ban of public manifestations of discriminatory beliefs and peaceful assembly of such groups.

71. Ensure that detention of non-citizens in temporary detention facilities for undocumented migrants is an exceptional measure of restraint and that non-citizens are detained in temporary facilities for undocumented migrants solely on the grounds of necessity and is only possible if expulsion of such a person is imminent.

72. Develop clear standards for assessment of refugee claims as well as claims for the status of persons in need of subsidiary and international protection and provide UNHCR an opportunity to effectively monitor and support national refugee status determination procedure in Ukraine.

73. Ensure that refugees and asylum seekers in Ukraine are not forced into destitution through ensuring that they have adequate means of subsistence for themselves and their families including prior to determination of their status, if impossible, enforce the right of asylum seekers to seek employment without additional procedural obstacles like the work permit.

## NOTES

1. More information about each Coalition member:

**Social Action Centre (SAC)** – human rights NGOs working in the field of refugees and migrants rights protection and racism and xenophobia counteraction. SAC is providing assistance to persons in need, using national and international mechanisms of legal protection, social support and civic pressure. SAC is working for the benefit of systematic legislative and practice changes in Ukraine to ensure rights of its target groups according to international human rights standards. SAC is Ukrainian recognized expert in its field.

**Association of Ukrainian Human Rights Monitors on Law-enforcement (UMDPL)** – is Ukrainian NGO working to monitor law-enforcement authorities' work and their human rights obligations. Having branches in 16 regions, UMDPL conducts activities such as monitoring of the Human Rights' observance by Ukrainian police officers; analyses of the Ukrainian legislation related to maintenance of human rights in law-enforcement activities; preparing analytical and informational materials related to the Human Rights observance's problems; popularization of knowledge on human rights among government institutions; carrying out public opinion surveys aimed at evaluation of police effectiveness; developing and implementing forms of public involvement in fulfilling oversight functions over human rights observance in law-enforcement activities; establishing special network of police activities' monitors, preparing periodical analytical reports on human rights observance by Ukrainian police.

**Euro-Asian Jewish Congress (EAJC)** – is a community based NGO created to defend the rights and legitimate interests of the Jewish people, to aid in satisfying community interests and demands, and also to represent Jewish communities of countries in the Euro-Asian region in the governments of their respective countries and international organizations. For these purposes, the Euro-Asian Jewish Congress works with organizations and unions which represent the Jewish communities of countries in the region. EAJC has “Monitoring Anti-Semitism and Xenophobia”

Program, lead by Vyacheslav Lykhachev, analyzing information on xenophobia and hate incidents in Ukraine.

**The Gay Forum of Ukraine (GFU)** – is an all-Ukrainian public organization legalized by the Ministry of Justice of Ukraine on September 22, 2004. Among its main goals – achievement of full equality of rights and opportunities and social comfort for LGBT persons by advocating for legal prohibition of discrimination on the grounds of sexual orientation and gender identity and legalization of same-sex civil partnerships in Ukraine, and development of the Ukrainian LGBT community into a social and politically active civil society actor.

2. See first Universal Periodic review recommendations, CERD recommendations 2006 and 2011, ECRI recommendations 2012, etc.

3. Кодекс Адміністративного судочинства України від 06.07.2005 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, CERD/C/UKR/18, of 8 February 2007, para. 7, p. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/77/PDF/G0740377.pdf?OpenElement>

4. The Code of Administrative Procedure of Ukraine from July 6, 2005: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2747-15>

5. The Labor Code of Ukraine from December 10, 1971: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=322-08>

6. The Law of Ukraine “On Militia (police)” from December 20, 1990: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=565-12>

7. The Law of Ukraine “On legal status of foreigners and stateless persons” from April 4, 1994: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3929-12>

8. For example, Article 24 of the Constitution speaks of equality before the law and prohibition of discrimination only for the citizens of Ukraine and do not apply to foreigners.

9. The Law of Ukraine “On changes into the Criminal Code of Ukraine on responsibility for the crimes committed on bias motivation (racial, national or religious intolerance)” from November 5, 2009: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1707-17>

10. List of offences change in 2009: manslaughter (Art. 115), intentional grave bodily harm (Art. 121), intentional bodily harm of medium gravity (Art. 122), battery and tormenting (Art. 126), torture (Art. 127) and threat of homicide (Art. 129). As opposed to Article 67, if it ever was applied, these amendments allow an adjudicator to choose of the set of stricter punishments than those provided for the same crime unaccompanied by specific aggravating circumstances.

11. On 17 April 2008, the Darnitsky District Court of Kyiv convicted four suspects of murdering Kunon Mievi Godi in October 2006. The 44-year-old Nigerian citizen, who spent many years in Ukraine, was killed on the evening of 25 October 2006, near a metro station. Eyewitnesses reported that the attackers shouted racist slogans. Mievi Godi, who is survived by a Ukrainian wife and a son, died of knife wounds before police arrived. Oleksandr Shepitko was found guilty of first degree murder and incitement of ethnic hatred (article 115, part 2, and article 161) and was sentenced to eleven years in prison, while Yana Komlyuk was convicted solely of incitement of ethnic hatred, receiving a four and a half year sentence. The other two defendants avoided prosecution: one of them was a minor, and the other testified as a witness. On May 6, 2008, four youths were convicted of premeditated murder of a 31-year-old Korean citizen Kang Jong Von, which occurred on April 23, 2007. The murder was described in the police report as exceptionally cruel, as the attackers beat the victim while screaming racial slurs and profanities at him. Each defendant was sentenced to thirteen years of imprisonment under Articles 115 and 161 combined, and the four of them together were ordered to pay one million hryvnas (\$220,000) to Von’s family in compensation for moral damage. On April 17, 2008, the Podolsky District Court of Kyiv sentenced 18-year-old skinhead Vyacheslav Dmitruk to three years in prison for attacking a Japanese tourist on October 27, 2007. Dmitruk was found guilty of incitement of ethnic hatred (article 161, part 2). However, the other perpetrators were never charged or investigated by the police.

12. According to the Diversity Initiative (<http://diversipedia.org.ua/eng/>) and V. Likhachev of Eurasian Jewish Congress (<http://ejc.org/page452>), the number of racist crimes, recorded by NGO monitors during the period of 2008-2011 was the following:

- 2008, 86 people were attacked, 4 of them were murdered.

- 2009, reportedly, there were 37 hate crime victims, none of the incidents resulted in the victim's death.
  - 2010, there were 14 incidents identified, none of them had fatal consequences.
  - 2011, 46 incidents were identified.
13. The Law of Ukraine "On legal status of foreigners and stateless persons" from April 4, 1994: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3929-12>
14. The "Concept of the state migration policy" approved by the President decree №622/2011 from May 30, 2011: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=622%2F2011>
15. The Rules of entry to Ukraine for foreigners and stateless person, their departure from Ukraine and transit, the Rules adopted (and approved) by the Cabinet by Ministers of Ukraine, from December 29, 1995, N 1074 <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1074-95-%EF>
16. The Law of Ukraine "On Militia (police)" from December 20, 1990: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=565-12>
17. See more here <http://noborders.org.ua/en/fields-of-work/other/international-students-in-ukraine-education-or-exploitation/>
18. See <http://umdp1.info/index.php?id=1319605807> and <http://umdp1.info/index.php?id=1328702333>
19. See Article 6 of the Law "On the Status of Refugees and Persons in Need of International and Subsidiary Protection" which provides that *non-refoulement* principle does not extend to for example persons who have committed serious non-political crimes outside of Ukraine, even if they will face a real risk of torture upon removal from Ukraine.
20. Such as Ukrainian Helsinki Human Rights Union, Social Action Centre, European Council on Refugees and Exiles, Human Rights Watch, etc.
21. Particularly:
- Non inclusion of the principle of the "benefit of the doubt" in refugee status determination adjudication;
  - Providing temporary protection only to individuals arriving en masse from the countries that share a border with Ukraine;
  - Article 3 of the Law prohibits the refoulement or forcible return of refugees or individuals who need complementary or temporary protection in cases when their life or health is threatened, does not mention the prohibition of refoulement of individuals until the end of their recognition procedure as a refugee or as an individual in need of complementary or temporary protection.
- Also, neither this article nor the other provisions of this Law, do not prohibit the detention of refugees or an individual in need of complementary or temporary protection in custody at the time of extradition check and do not offer alternative detention preventive measures;
  - Establishment of 5 days term for an individual to apply for a refugee status or complementary or temporary protection to the State Migration Service; limit of refusal appeal term to five days as well;
  - The possibility to apply for recognition as refugee or as a person who needs complementary protection in Ukraine only through State Border Guards Services (SBGS) bodies but impossible through MOI and the State Criminal Executive Service (SIZO) bodies;
  - The Law lacks provision about the right to demand interview by SMS body staff of the same sex as the applicant due to religious or other reasons;
  - Compulsory fingerprinting of applicants (without reservation how and in which databases fingerprints will be secured, and which state bodies will have an access to them, and in the lack of adequate legal regulation of privacy of personal data in Ukraine);
  - Vague check procedures by the Security Service of Ukraine of circumstances when refugee status cannot be grant, and not clear formulation of the procedure of deprivation the individual of the refugee status or temporary protection according to the submission of the Security Service of Ukraine or other state agency of Ukraine, without specifying the grounds for such submission, which leave an opportunity of applying double standards and corruption.
22. More information see here [http://noborders.org.ua/en/about-us/news/osce\\_refugees\\_2011/](http://noborders.org.ua/en/about-us/news/osce_refugees_2011/) and <http://noborders.org.ua/ru/o-nas/novosti/bezhentsyi-v-ukrayne-%E2%80%93-bez-prava-na-ubezhysche-obzor-narushenyj-prav-bezhentsev-y-y-skatelej-ubezhyscha-v-ukrayne/>

23. The Supreme Court of Ukraine thus commented the anti-discrimination article (Art. 4) in the 2007 draft Labor Code of Ukraine (adopted by the Verkhovna Rada (Parliament) of Ukraine without it in 2008):

24. “Inclusion of protections from discrimination on the ground of sexual orientation in employment is, in our opinion, unreasonable and cannot be justified. First, this [anti-discrimination] article of the Labor Code of Ukraine confuses natural rights and unnatural actions such as, in fact, sexual orientation. Second, use of the term ‘sexual orientation’ in this clause in our opinion provides the so-called ‘sexual minorities’ with additional privileges, which leads to the undermining of public morals and contributes to the disruption of employment relations.

25. Today, protection of morality, establishment of universal humanitarian values in society, healthy lifestyle, and improvement of the system of spiritual and moral and ethical education of the youth and children [...] are the priorities of all governmental institutions. In this light, the issue [of including ‘sexual orientation’ in the law] does not just contradict the State’s policy, but also leads to development of artificially created social conflicts and increase in the number of court cases.

26. Besides, public morals are not only protected by Ukrainian law, but also by international law. For instance, Articles 19 and 21 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, stipulate the need to limit one’s rights for freedom of expression [...] and freedom of assembly for the purpose of protecting public health and morality.

27. Therefore, the international community has ensured proper legal protection from licentiousness that disguises as human rights” (Letter of the Supreme Court of Ukraine No. 11/13-145, August 28, 2007).

28. “Monitoring of human rights violations in the context of access of MSM (men practicing sex with men) to main services of HIV/AIDS prevention, treatment and support” – O.O. Zinchenkov, M.G. Kasyanchuk, S.Y. Ponomarev, O.V. Trofimenko, S.P. Sheremet; edited by S.P. Sheremet. – K.: Center for social expertise NAS Ukraine, 2011. “Step forward, two steps backwards: the situation of LGBT in Ukraine in 2010 – 2011” - O.O. Zinchenkov, M.G. Kasyanchuk, A.B. Kravchuk, A.Y. Mayamulakhin, O.I. Stepanenko, S.P. Sheremet (the Council of LGBT NGOs in Ukraine, the Center “Our World”, LGBT-Center, Donbas-Soc Proekt). – K.: the Center “Our World”, 2011.

29. Ibid.