

## **UNICEF Ukraine Inputs to the UPR**

### **I. Background and framework**

#### **A. Scope of international obligations**

The Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption (1993) has not been signed and ratified by Ukraine – this poses risks for the protection of the rights of Ukrainian children related to inter-country adoption. Attempts have been made by the Government of Ukraine to become a party to this Convention, but resistance from Parliament and particularly, the Parliamentary Ombudsman for Human Rights prevented this from happening.

#### **B. Constitutional and legislative framework**

Some progress was achieved in harmonising Ukraine's national legislation with the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as recommended by the UN Committee on the Rights of the Child in 2007 and 2011. A draft law to combat child prostitution and criminalize the use of sex services provided by children is in the process of registration in the Parliament of Ukraine. Also, in November 2011 the President introduced to the Parliament for ratification the CoE Convention #201 on Protection of Children from Sexual Exploitation and Sexual Abuse. The draft Law was scheduled for consideration in the plenary session in late February 2012.

#### **C. Institutional and human rights infrastructure and policy measures**

In 2011 the 'National Plan of Action for Children to Implement the UN Convention on the Rights of the Child till 2016' received better financing than in 2010. USD 20 mln. were allocated to fund implementation of the 2011 Annual State Programme to implement the NPA in 2011 (in 2010 only USD 2.1 mln. were allocated). A major portion of this funding was allocated to finance programmes for children with disabilities.

In August 2010, the position of Ombudsman for Children was established within the structure of the Parliamentary Ombudsman for Human Rights and has become a function of one of her Deputies. However, there is no evidence that the child rights monitoring and protection function has strengthened with this measure.

To strengthen the independent child rights monitoring function, the position of the Presidential Commissioner for Child Rights was introduced on 11 August 2011 within the Presidential Administration by the President's Decree #811/2011. The tasks of the Commissioner are to ensure the on-going monitoring of child rights situation in Ukraine and implementation of respective international commitments; combat and prevent child rights violations; develop legislative proposals and President's Decrees in the area of child rights; and raise public awareness of child rights issues.

During 2010-2011 benefits for children were increased – this is expected to have a positive effect on reduction of poverty in families with children. Particularly, benefits to low-income families with children and birth grants were increased. In January 2012 birth grants were increased again. The approximate size of birth grant<sup>1</sup> is: USD 3,250 for the first child, USD 6,875 for the second child, and USD 13,375 for the third and each subsequent child. However, the criticism of the birth grant is that it is paid over a six year period.

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<sup>1</sup> Since the size of the benefit is linked to subsistence minimum, its value changes with the changes in the value of subsistence minimum.

As a result of the Public Administration Reform launched on 9 December 2010, the Ministry of Family, Youth and Sport (MoFYS) was abolished. The responsibility for family and child policy were transferred to the Ministry of Social Policy (MSP), but did not assume these responsibilities until November 2011, when the Department for Adoption and Protection of Child Rights and Department for Family and Gender Policy from the former MoFYS were integrated into the MSP. As a result of this, for almost a year policy making for children remained stagnant. However, work on strategic policy documents for children, including the one on the Child Care Reform, is currently underway.

## **II. Cooperation with human rights mechanisms**

The most recent Universal Periodic Review of the status of implementation of human rights in Ukraine took place on 13 May 2008.

On 28 January 2011 Government of Ukraine delegation officially presented its 3<sup>rd</sup> and 4<sup>th</sup> Combined Periodic Report on the implementation of the UN Convention on the Rights of the Child and the Optional Protocol on Involvement of Children in Armed Conflict in Ukraine to the UN Committee on the Rights of the Child. On 3 February 2011 the UN CRC issued its Concluding Observations and Recommendations 2011. The Committee welcomed the progress achieved, but noted that much still needs to be done to ensure implementation of child rights in Ukraine. Among others, the following issues require priority attention:

- ensure effective delegation of the functions for children within the new structures resulting from the Public Administration Reform;
- allocate sufficient resources to finance implementation of the NPA for Children and its effective monitoring;
- with the aim to establish a separate independent national mechanism to ensure comprehensive and systematic monitoring of children's rights, consider adopting the Law on the Introduction of the Ombudsman for Children;
- ensure that poverty reduction reforms focus on social assistance and benefits to low income families and child protection;
- implement child care reform and introduce alternative forms of care;
- ensure implementation of rights of children with disabilities;
- strengthen response to the HIV/AIDS epidemic with particular emphasis on adolescent health;
- ensure full implementation of the juvenile justice standards;
- combat economic and sexual exploitation of children as well as other forms of violence against children including provision of quality prevention, rehabilitation and reintegration services.

## **III. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

### **A. Equality and non-discrimination**

Although the poverty incidence (based on the national relative poverty line) has reduced from 26.4% in 2009 to 24.1% in 2010, poverty in families with children is still much higher than in childless families. In 2010 poverty rate of childless families was 15.7% whereas of families with children 31.3%. Poverty incidence in families with 4 and more children is still the highest -71.0% in 2010.

Children with HIV or a disability are at high risk of abandonment, social stigma and discrimination, and they seldom have the opportunity to learn with other children in a regular school. The lack of community-based supportive services and an inclusive education system for children with special needs means that institutional placement is often the only realistic option for them. Insufficient knowledge about HIV/AIDS among the general population and care providers produces fear and stigmatisation of HIV-infected people and leads to

the infringement of their rights. Most HIV-infected children are not allowed to attend kindergartens or schools, are treated negligently, and are kept isolated from other children.

## **B. Right to life, liberty and security of the person**

There is low in-country capacity to detect and refer cases of violence against children and domestic violence, which mainly affects women. Consequently, the real extent of violence is unknown. Preventive services remain underfunded and underdeveloped. NGO data for 2010 reports more than 11,000 children living in families committing violence against children, and more than 91,500 adults registered for committing domestic violence.

## **C. Administration of justice, including impunity, and the rule of law**

During 2010, there were a total of 13,950 juveniles suspected of committing a crime - 10,883 of which resulted in a conviction. Juveniles accused of a crime are confined in pre-trial/trial detention facilities for up to a year or more, sometimes mixed with adults. While detained, they have little opportunity to access education, hampering their reintegration into society.

In Ukraine, there is no Juvenile Justice System with separate courts or with a specific law for juveniles.<sup>2</sup> The judiciary system lacks special expertise to work with minors and the whole process and approach is punitive rather than supportive. There is no systematic diversion or probation scheme, and few programmes focusing on the prevention of offending or re-offending. Therefore, the system offers only all or nothing: detention during the whole process or being sent home in case the offence is minor without any follow up support. The judicial system has very little to offer in the form of rehabilitation of juveniles and even when a juvenile is given a non-custodial sentence, supportive social services are often lacking.

A misperception about juvenile justice continues to be a growing concern. Aggressive negative propaganda by few civil society and religious organizations continues to negatively influence the understanding of children's rights among the general population. In debates, information is distorted and manipulated to protest any juvenile justice related measures implemented in western European countries, which also challenges the Government's political will for the European integration agenda.

A Concept on the Development of a Criminal Justice for Minors was endorsed by the President of Ukraine on 23 May 2011. In October 2011 the Cabinet of Ministers of Ukraine approved the State Action Plan for the Implementation of the Concept- major steps forward in the process of juvenile justice reform.

## **H. Right to social security and to an adequate standard of living**

The child care system in Ukraine has been relying heavily on long term residential care for children at social risk or deprived of parental care. In 2009, 101,819 children lived in institutions, including 42,668 children with disabilities<sup>3</sup> and 17,827 children in shelters and centres of social rehabilitation. This reliance results in a system-based threat to the rights of a child to grow up in a family environment. The child care system does not adequately address the prevention of abandonment, or the reintegration of children with their biological families. A very cumbersome court process is required for parents to restore their parental custody rights once removed, and little support is available to undertake such a process. There is a need to strengthen the linkage

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<sup>2</sup> Assessment of Juvenile Justice Reform Achievements in Ukraine, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, July 2009 [http://www.unicef.org/ceecis/UNICEF\\_JJUkraine08.pdf](http://www.unicef.org/ceecis/UNICEF_JJUkraine08.pdf)

<sup>3</sup> State Statistics Committee, 2010.

between social services and social protection benefits to protect vulnerable families more effectively to prevent children to be deprived of parental care.

There is a growing understanding that the child protection system needs to be reformed to better respond to a range of different vulnerabilities, and a few positive policy actions have taken place in recent years: 2008 was the year of national adoption, and the National Plan of Action for Children till 2016 was adopted in 2009. An increasing number of alternative care options such as adoption, foster care and family type child care facilities are a positive trend. However, a structural reform to build a system which discourages institutionalisation of children is yet to take place.

Lack of consensus about child care reform directions and implementation modalities among the different line ministries was evidenced by the Prime-Minister's Order issued in July 2010 aiming to expand the network of institutions for children, develop a "new type" of institution and consider placement of children from low-income families in internats. This policy decision resulted in increased placement of children from low-income families in residential institutions for orphans and children deprived of parental care. Further push for the child care reform is needed to ensure that the reform course taken in 2007 is irreversible. UNICEF Ukraine is currently providing support to the Ministry of Social Policy in development and operationalization of the 'National Strategy to Ensure the Rights of the Child and Family Support.'

## **I. Right to health**

Infant mortality in Ukraine in 2010 was 9.1 per 1,000 live births, which is two-to-three times higher than in other European countries. More than half of infant deaths are caused by conditions emerging during the perinatal period. Maternal mortality in 2010 was 22.4 per 100,000 live births, which is four times higher than in European countries.

Improvement of mother and child health is part of the national health sector reform launched by the "Programme of Economic Reforms for 2010-2014". To improve the perinatal care in Ukraine the President's Administration launched the National Project "New Life" - New Quality of Mother and Child Health Care," aimed at improving quality and accessibility of mother and child health care based on establishing tertiary level regional perinatal centres.

Ukraine has the highest incidence of HIV in Europe with the official estimate endorsed by the National Council on TB and HIV/AIDS under the Cabinet of Ministers as 0.86% of the adult population. The epidemic continues to increase rapidly, with 19,859 new cases of HIV officially reported in 2009. This represents a 7.6% increase in comparison with 2007<sup>4</sup>. While injecting drug use remains the primary route of transmission, heterosexual transmission is growing and women now represent 45% of all adults living with HIV in Ukraine.<sup>5</sup> The absolute number of children infected with HIV through mother-to-child transmission (MTCT) continues to increase as the number of HIV-infected pregnant women increases each year by 20-30%. In 2009 HIV prevalence among pregnant women was 0.55% – the highest in Europe and Central Asia.<sup>6</sup>

There has been some progress in the HIV/AIDS response in Ukraine, including increases in antiretroviral treatment (ART) coverage and particularly prevention of mother-to-child transmission (PMTCT). However, Ukraine needs to further strengthen its response to the HIV/AIDS epidemic. Although the Ministry of Health claims that 100% of infected children are covered by ART, this is not supported by data, due to the lack of knowledge about the number of infected children. In addition, only a minority of children and families affected by HIV/AIDS receive any care and support services. Most HIV-positive children are born into socially disadvantaged young families and 10% of HIV-positive mothers abandon their children to state-run orphanages.

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<sup>4</sup> HIV-infection in Ukraine. Information bulletin #33, Ministry of Health, Kyiv, 2010.

<sup>5</sup> 2009 Global AIDS Epidemic Update, UNAIDS

<sup>6</sup> HIV-infection in Ukraine. Information bulletin #33, Ministry of Health, Kyiv, 2010.

Ukraine has so far only made progress with one target of the Millennium Development Goals (MDG) for HIV/AIDS - reduction of the MTCT rate of HIV from 27% in 2000 to 6.3% in 2007<sup>7</sup>. Meeting the MDG on HIV/AIDS is seriously hampered by a huge shortfall in government financing. The government allocations for HIV/AIDS in 2009 fell 40% short of the amount budgeted for 2009 in the State AIDS Programme<sup>8</sup>. Poor coordination of the national HIV/AIDS response and weak inter-ministerial cooperation between different responsible ministries further weaken the response and is an issue of great concern.

The HIV epidemic is still concentrated among most at-risk populations (MARPs), and HIV is still mostly transmitted through injecting drug use, but the risk of a generalised epidemic continues to grow. The most at risk adolescents (MARA) age 15-19, are adolescent injecting users, girls and boys exploited for sex or involved in commercial sex, boys having sex with men and street children practicing risky HIV behaviours. A recent study conducted by the US Centre for Disease Control and Prevention<sup>9</sup> among street children and youth (age 15-24) showed that one out of five was HIV-positive. A recent UNICEF study<sup>10</sup> confirmed that more than half of MARA in Ukraine are at high risk of HIV infection due to unsafe behaviours, serious service access barriers and other vulnerability factors. The research demonstrated that risk behaviour starts early and is more common among adolescents than adults. Young people's lower knowledge of HIV/AIDS, and their lower coverage by and use of prevention services account for this. It is essential that MARA access services and information. The *National HIV/AIDS Programme 2009–2013* sets an ambitious national coverage target of 60% for at-risk groups including MARA, but governmental organizations remain insufficiently involved in service provision and state funding is extremely scarce.

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<sup>7</sup> Ukraine UNGASS Report, 2010

<sup>8</sup> World AIDS Day Press-Release, UNAIDS, 2009

<sup>9</sup> Robbins, C. et al (2010) Multicity HIV seroprevalence in street youth, Ukraine. *International Journal of STD & AIDS*: 2010; 21: 489–496 Available at <http://ijsa.rsmjournals.com/>.

<sup>10</sup> UNICEF (2009) 'Most-at-risk adolescents: the evidence base for strengthening the HIV response in Ukraine' – Kyiv, 2009