

SUBMISSION TO THE 79TH SESSION OF THE COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

SHADOW REPORT TO UKRAINE'S 19TH TO 21TH PERIODIC REPORT UNDER THE ICERD

The "Social Action" Centre – "No Borders" project



SOCIAL ACTION CENTRE
"NO BORDERS" project
www.noborders.org.ua

Minority Rights Group International



Contact persons:

Bernadett Sebaly: Bernadett.Sebaly@mrgmail.org

Iryna Fedorovych: fedorovych@noborders.org.ua

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I. INTRODUCTION & EXECUTIVE SUMMARY

1.1 This Shadow Report has been written for the Committee on the Elimination of Racial Discrimination to assist it in its consideration of Ukraine's Nineteenth to Twenty-first Periodic Report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, scheduled to occur during its 79th session. It has been written in response to Ukraine's Nineteenth to Twenty-first Periodic Report (CERD/C/UKR/19-21).

1.2 This Shadow Report has been prepared by the Social Action Centre –“No Borders” project (SAC), Minority Rights Group International (MRGI). SAC is Ukrainian NGO providing legal assistance to vulnerable minorities (especially, but exclusively to refugees and asylum seekers, foreign students, migrants), on matters of human rights violations, discrimination and hate crimes. MRG is a non-governmental organization working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide.

1.3 MRG and SAC undertook to assist the Committee on the Elimination of Racial Discrimination to consider Ukraine's performance under Articles 1, 2, 4, 5 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. This shadow report provides information with respect to vulnerable minorities (migrants, refugees, asylum seekers, foreign students and national minorities in Ukraine) unless otherwise stated. Therefore, the term minority used in this report will refer to any vulnerable minority unless specific term is used.

1.4 In summary, the submitting organisations encourage the Committee on the Elimination of Racial Discrimination to consider asking the Ukrainian Government the following questions with regard to Ukraine's Nineteenth to Twenty-first Periodic Report:

- Does the Government recognise the fact that Ukrainian discrimination is lacking frame law prohibiting all form of discrimination?
- Does the Government plan to draft such law?
- Does the Government plan to amend appropriate norms of Ukrainian legislation to effectively ban different forms of discrimination including racial discrimination?
- What guaranties can the Government offer to ensure effective investigation and equal treatment in cases of hate crimes?
- Does the Government plan to create new special body to serve as a state executive expert on discrimination?
- Does the Government plan to make amendments into the criminal legislation to provide effective mechanism of investigation and proving bias motivated crimes, including racially motivated crimes?
- Can the Government establish effective and transparent state monitoring discrimination cases and provide follow up on state actions to remedy to victims?
- How the Government will ensure the principle of equality and provide basic human rights to all regardless of their legal status in its proactive work on migration reform?

RECOMMENDATIONS TO THE STATE:

- ✓ Reform relevant legislative framework to ensure access to redress for victims of all kinds of racial discrimination meeting the standards established by Articles 2 and 4 of CERD. In particular in consultations with civil society organisations and relevant experts: 1) develop a comprehensive anti-discrimination legislation that would contain precise definition of discrimination, its clear comprehensive interpretation and standards of identification; 2) review criminal, civil and administrative law remedies to ensure that victims of racial discrimination have enforceable right to redress of pecuniary and moral damage they might have suffered as a result of any form of racial discrimination.
- ✓ Take measures to effectively ban activities of organisations propagating and inciting racial discrimination even in those cases when such organisations are not officially registered. Adequately respond to infringement of minorities' right to dignity, security of a person, private and family life by private parties and as well as the authorities.
- ✓ Reform and re-establish institutional framework necessary for effective implementation of the right any person under Ukraine's jurisdiction not to be discriminated against on the ground of race, colour of skin, ethnicity or nationality. Further intensify its human rights training for the police, prosecutors, border-guards, staff of temporary detention facilities of undocumented migrants and refugees and judiciary as well as facilitate the reporting of cases of police abuse of Roma and other persons of different ethnic origin, effectively investigate complaints and bring those found guilty of such acts to justice, provide adequate protection and compensation to victims.
- ✓ Take measures to eliminate hate speech particularly by government officials and politicians against non-citizens of African, Central and South-East Asian and Caucasus origin including in the context of measures aimed at migration management. In compliance with the requirement of Article 2(1)(c) Ukraine shall amend, rescind or nullify any laws and regulations including internal instructions and practice guidelines of state bodies particularly law enforcement authorities and to review governmental, national and local policies which have the effect of creating or perpetuating racial discrimination against non-citizens originating from Africa, Central-, South-, South-East Asia, Middle East and Caucasus on the ground of their nationality, skin colour and ethnic origin.
- ✓ 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. Make sure that non-citizens originating from Africa, Central-, South-, South-East Asia, Middle East and Caucasus are not discriminated against when detained by Ukrainian authorities in view of their expulsions.
- ✓ Prioritize observance human rights of every individual under Ukraine's jurisdiction, including non-citizens who have failed to comply with migration rules or are facing expulsion from Ukraine over measures aimed at migration management. Bring Ukrainian legislation on the status of foreigners and stateless persons, including refugees, asylum seekers as well as persons in need of subsidiary or temporary protection as well as victims of transnational trafficking in human beings, in compliance with Ukraine's obligations under international and regional human rights standards, including the International Covenant on Civil and Political Rights,

International Convention on the Status of Refugees, International Convention Against Torture, European Convention on Human Rights in particular Articles 3 (freedom from torture), 8 (right to private and family life) and 14 (prohibition of discrimination) thereof as well the Protocols to the said Convention, including Article 2 of the Protocol №7 (procedural guarantees in case of expulsion of aliens) and Protocol №14 (broader prohibition of discrimination).

- ✓ 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. 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.
- ✓ Ensure that the state owned universities where international students study provide truthful information to their perspective international students about living conditions and the quality of education, fully inform students of their rights in the language they understand (including by providing a copy of their study contract), introduce transparent procedures for the assessment of international students' success and an effective extra-judicial and judicial mechanisms of protection from arbitrary expulsion from the university.

II. PROHIBITION OF DISCRIMINATION IN UKRAINE: THE LEGISLATIVE FRAMEWORK AND THE PRACTICE OF ITS IMPLEMENTATION

II.1. Overview of a current legislative framework

Article 2(1)(d) of the Convention on the Elimination of all Forms of Racial Discrimination provides that *each State Party “shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization”*. Further requirements to State Parties' legislative frameworks relevant to the prohibition of discrimination is set out by Article 4 of the Convention that requires them *inter alia* to “*declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities*”; and “*declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law*”.

In 2006 when CERD examined Ukraine's legislative framework concerning the prohibition of discrimination it noted the lack capacity of the legal framework then in force in Ukraine to effectively prohibit racial discrimination. It welcomed the initiative aimed at development and adoption of comprehensive anti-discrimination law that had a potential to tackle existing legislative flows, though noting some points in which the draft law then under consideration should have been improved. The Committee made the following recommendations to Ukraine:

The Committee recommends that the State party proceed with the adoption of a comprehensive Anti-Discrimination Bill which also covers indirect discrimination, in accordance with article 1 of the Convention¹.

The Committee urges the State party to consider a relaxation of the strict requirement of wilful conduct set out in article 161 of the Criminal Code in order to facilitate successful prosecutions under that article. The Committee also requests the State party to consider extending the application of article 161 of the Criminal Code to cases where the victim of discrimination is not a citizen. It urges the State party to ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and to provide in its next report updated information concerning the application by the Ukrainian courts of criminal law provisions punishing acts of racial discrimination, in particular articles 66 and 161 of the Criminal Code. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any compensation or other remedies provided to victims of such acts².

It must be noted with regret that, despite the Committee's recommendations, half a decade later the comprehensive draft law on discrimination has still not been adopted by the Parliament of Ukraine. Today as it was in 2006 legal mechanisms for protection against 'racial' discrimination in the Ukraine's legal system 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 Proceedings³, Labour Code⁴, the Law “On Police [militia]”⁵, the Law on the Status of Foreigners

1 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>

2 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, CERD/C/UKR/18, of 8 February 2007, para. 9, p. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/77/PDF/G0740377.pdf?OpenElement>

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>

and Stateless Persons”⁶ and others.

Article 24 of the Constitution declares that citizens have equal constitutional rights and freedoms and are equal before the law. Claims of superiority or the imposition of restrictions based on race, ethnicity, skin colour, political, religious and other beliefs, gender, social status, wealth, place of residence, language, or other characteristics are unlawful. Despite that in theory provisions of Ukraine's Constitution are supposed to have a direct effect and application, Constitutional guarantees remain primarily declaratory⁷, and would need to be supplemented by statutory legislation to clearly define discrimination in accordance with international and regional human rights standards; to set out what unlawful activities fall within its scope; to specify what redress and remedy are available for victims of it; to identify responsible instances to which one might present a complaint of discrimination; and to detail procedural matters⁸.

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 CERD considered Ukraine's previous report as a result of public outcry concerning increasing number of violent racist crimes during 2006 and 2008⁹ the inadequate form in which prohibition of discrimination was articulated in the Criminal Code of Ukraine was slightly altered through the adoption the Law “On Amendments to the Criminal Code of Ukraine concerning the Liability for Crimes Motivated by Racial, National [inter-ethnic] or religious Intolerance”¹⁰ on 5 November 2009. Relevant amendments

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- 3 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, CERD/C/UKR/18, of 8 February 2007, para. 9, p. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/77/PDF/G0740377.pdf?OpenElement>
 - 3 Кодекс Адміністративного судочинства України від 06.07.2005 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2747-15>)
 - 4 Кодекс законів про працю від 10.12.1971 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=322-08>)
 - 5 Закон України “Про міліцію” від 20.12.1990 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=565-12>)
 - 6 Закон України “Про статус іноземців та осіб без громадянства” від 04.02.1994 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3929-12>)
 - 7 See for example conclusions of the European Court of Human Rights concerning practical effectiveness of Constitutional guarantees related to human rights and freedoms and the lack of their implementation in Ukraine's legal system in *Pronina v Ukraine* (№ 63566/00, judgment of 18 July 2006)
 - 8 European Roma Rights Centre: “Written Comments of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31- August 18, 2006”, 19 June 2006, pp. 7-8 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>)
 - 9 Inter alia Butkevych, M. “No Borders' Initiative: Manifestations of Racism and Xenophobia in Ukraine”, 15 May 2007 (www.khpg.org/index.php?id=1179241286); Amnesty International: “Ukraine: Racial Discrimination on The Rise”: Press release, 10 June 2008, AI Index: PRE01/181/2008 (www.amnesty.org/en/for-media/press-releases/ukraine-racial-discrimination-rise-20080710); Amnesty International: “Ukraine: Government Must Act to Stop Racial Discrimination”, Report, June 2008 (<http://www.amnesty.org/en/library/info/EUR50/005/2008/en>); European Commission against Racism and Intolerance, Council of Europe: “*Third Report on Ukraine*, adopted 29 June 2007, published 12 February 2008, (www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/Ukraine_CBC_en.asp); Likhachev, V. “Hate Crimes in Ukraine – 2008: Report on the results of monitoring of manifestations of racism and xenophobia in Ukraine” (“Преступлення на почве ненависти в Україні – 2008. Доклад по результатам мониторинга проявлений ксенофобии в Украине”), 2009 (<http://vaadua.org/News/news2009/2009-02/doklad%20lih%202008.html>); Kobzin, D., “Xenophobia in the Context of Multi-Ethnicity of the Ukrainian Society: Results of the Sociological Research by the Kharkiv Institute of Social Researches and the Ministry of Interior of Ukraine”, 2008, Kharkiv, Ukraine; Kobzin, D., Chernousov, A. “Intolerant activity and organisations in Ukraine: Results of Sociological Research by Kharkiv Institute of Social Research and the Ministry of Interior of Ukraine” (Нетолерантна діяльність та організації в Україні. Результати соціологічного дослідження Кобзін Д. О., Черноусов А. М.), 06.02.2009 (www.khpg.org.ua/index.php?id=1233952914) KhPG (2009) “Racism and Xenophobia in Ukraine: Reality and Fiction”, Report on the Results of Research by the Kharkiv Human Rights Group, Human Rights Publ., Kharkiv, Ukraine (Расизм і ксенофобія в Україні: реальність та вигадки, Харківська правозахисна група), 2009 and others.
 - 10 Закон України “Про внесення змін до Кримінального кодексу України щодо відповідальності за злочини з

introduced into the Criminal Code of Ukraine by that law enhanced the punishment provided for by the Article 161 and slightly changed its disposition. It sets out that “Intentional actions aimed at incitement of national [ethnic], racial or religious enmity and hatred, denigration of national [ethnic] honour and dignity, or insult of citizens' religious feelings, as well as direct or indirect restriction of rights or granting direct or indirect privileges to citizens on the grounds of race, skin colour, political, religious or other beliefs, sex, ethnic or social origin, financial shape, place of residence, language or other grounds” is a criminal offence. The 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 usability¹¹.

On the other hand the Law of 05.11.2009 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 and bodily harm. The amendments recognised a “motive of racial, inter-ethnic or religious bigotry” as a specific aggravating circumstance for the following offences: manslaughter (Article 115), intentional grave bodily harm (Article 121), intentional bodily harm of medium gravity (Article 122), battery and tormenting (Article 126), torture (Article 127) and threat of homicide (Article 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. For example before the introduction of amendments into Article 122, the judge who concluded that intentional infliction of bodily harm was motivated by racial hatred and chose to apply Article 67(1)(3) would be limited to a set of softer punishments provided by Article 122(1) since racist motive was not listed among specific aggravating circumstances envisaged by Article 122(2). For that judge the choice of possible punishments would be limited to (a) correctional labour for a period up to two years; (b) limitation of liberty for up to three years; (c) deprivation of liberty for up to three years. Applying Article 67(1)(3) theoretically might result in application of the strictest punishment of those prescribed by Article 122(1) – deprivation of liberty for three years – but it may not be stricter than that. However, after racist motive was introduced into this article as an aggravating circumstance the judge would have to apply Article 122(2) that stipulates the punishment for the same acts aggravated with specific circumstances – deprivation of liberty for a period from three to five years.

Although listing of a motive of racial, inter-ethnic or religious bigotry as a circumstance specifically aggravating certain types of crimes may only be regarded as a positive step towards better protection of individuals from all forms of racial discrimination, these measures by far may not be regarded as sufficient. In fact, 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. It may be because when these amendments were introduced no consideration at all was given to a whole range of valid recommendations provided by the local and international expert civil society organisations¹². These changes also failed to address major points of criticism and

мотивів расової, національної чи релігійної нетерпимості” від 05.11.2009 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1707-17>)

11 See for example European Roma Rights Centre: “Written Comments of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31-August 18, 2006”, 19 June 2006, p. 8-9 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>)

12 See for example collection of various publications by expert IOs, INGOs and NGOs that contain relevant recommendations and were made available to the Government of Ukraine: <http://www.xenodocuments.org.ua/library>. See also <http://library.khpg.org/index.php?r=a1b1c11>, <http://helsinki.org.ua/index.php?id=1245859734> and <http://eajc.org/page18/news15277.html>

concerns that were expressed by experts¹³ as well as failed to comply with the recommendations made by CERD in its concluding observations on Ukraine's last report (cited above)¹⁴.

Since points of criticism that were discussed by CERD during its 69th Session in relation to deficiencies of Ukraine's legislative framework remain largely the same, the current report will only focus on those issues that have not been previously brought to CERD's attention and that are equally if not more important for ensuring effective implementation of CERD in Ukraine. In order to better illustrate the practical effect of the current legislative framework relevant to the prohibition of discrimination it will be discussed here through the prism of the practice of its application in relation to effect of legislative framework on protection of minorities in Ukraine against racist violence, their protection from such manifestations of racism that do not necessarily entail violence, including incitement of racial hatred and racial discrimination in enjoyment of rights in various fields of life by authorities and private actors.

II.2. Failure of Ukraine authorities to protect minorities from racist violence and bring perpetrators of it to liability.

As mentioned above, in November 2009 some amendments specifically designed to improve the legal framework concerning racist violence have been approved by the Parliament. During the period covered by Ukraine's 19th - 21st periodic reports it was Article 161 of the Criminal Code of Ukraine that was applied to prosecute discriminatory component of racist violent crimes.

The Government of Ukraine indicated in its report that a number of crimes were prosecuted under Article 161 of the Criminal Code. Thus, 3 incidents that occurred in 2006 were classified under this Article, 2 in 2007, 6 in 2008 and 1 in 2009¹⁵. Most of these cases concerned hate speech thus these cases did not concern anti-discrimination component of these Article, but the elements of it that established liability for incitement of hatred and racist insult. However, at least 3 of them were cases of racist violence.

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 witness¹⁶.

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

13 For example European Roma Rights Centre: "Written Commends of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31-August 18, 2006", 19 June 2006, pp. 7-8 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>); Likhachev, V. "Law on countering xenophobia in Ukraine: expert's comments", 17.11.2009 (<http://eajc.org/page18/news14408.html>)

14 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, CERD/C/UKR/18, of 8 February 2007, para. 9, p. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/77/PDF/G0740377.pdf?OpenElement>

15 19th and 21st Periodic Reports of Ukraine submitted to CERD for consideration at its 79th Periodic Session, CERD/C/UKR/19-21, of 8 January 2010, p.63 (Eng)

16 Human Rights First: "Hate Crime Report Card – Ukraine. The Framework of Criminal Law" (www.humanrightsfirst.org/our-work/fighting-discrimination/hate-crime-report-card/hate-crime-report-card-ukraine/)

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 damage¹⁷.

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 police¹⁸.

These were first cases since 1992 in which Article 161 was used to punish racist motivation behind violent crimes¹⁹. 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. For example the murder of Mr. Kunon Mievi Godi in October 2006 was at first classified by investigative authorities not even as a manslaughter (Article 115 of CCU) but as infliction of grave bodily injuries that caused death of the victim (Article 121(2) of CCU). Reclassification of that incident under Articles 115 and 161 was only possible due to public dissatisfaction with such an approach of authorities in light of the brutality of the attack and the fact that perpetrators openly boasted about racist motives that guided them. The murder of Mr. Kang Jong Von was also classified by the investigative authorities under Article 121 (2) of the Criminal Code of Ukraine. Only due to the active involvement of the Embassy of South Korea who themselves represented the interests of the victims' family in domestic legal proceedings, at later stage the incident was reclassified appropriately.

Majority of violent crimes motivated by racism, however, have continued to be classified by the authorities with no regard to the possible racist motivation. The evidence of such practice is demonstrated even by content of 19th - 21st periodic reports of the government of Ukraine to CERD themselves. For example the government reported that

“The members of an informal youth group in Dnipropetrovsk who had attacked an Albanian national in August 2008 were identified. Criminal proceedings were initiated in the case under article 296, paragraph 2, of the Criminal Code (criminal mischief [“hooliganism”])”²⁰

According to the results of the hate crime monitoring by civil society organisations 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 during the period covered by the report to CERD. It is also noted that in majority of such cases, provided that they were reported to the police, racist motivation was dismissed from the outset and not even investigated by law enforcement authorities. According to the report by Diversity Initiative²¹ and V.Likhachev of Eurasian Jewish Congress, the number of racist crimes, recorded by NGO monitors during the period of 2006-2009 was the following:

- ❖ In 2006, 14 persons fell prey of racist attacks, 2 of them died as a result.
- ❖ In 2007, the results constitute 88 people who have suffered from these crimes, including 6 people killed.
- ❖ In 2008, 86 people were attacked, 4 of them were murdered.
- ❖ In 2009, reportedly, there were 37 hate crime victims, none of the incidents resulted in the victim's death.

17 Ibid.

18 Ibid.

19 Ibid.

20 19th and 21st Periodic Reports of Ukraine submitted to CERD for consideration at its 79th Periodic Session, CERD/C/UKR/19-21, of 8 January 2010, p. 65 (Eng)

21 A network of IOs and NGOs concerned with problems of racism and xenophobia in Ukraine

- ❖ In 2010, there were 14 incidents identified, none of them had fatal consequences.

Response of the authorities, including law enforcement, to such incidents remained dissatisfactory. For example:

- According to publication in “Krymskoye Vremya” newspaper, dated 15 February, 2007, a student of Georhiyivskyy Medical University in Simferopol, an Indian woman, suffered a cranio-cerebral injury as a result of attack of unknown persons. The journalist provided information from conversations with foreign students, stating that racist attacks occur on a constant basis, and sometimes radical right activists organize mass ambushes near hostels. The administration of university issued a recommendation to avoid being outdoors past 11 p.m. and not communicate with the Gypsy people.
- On 16 February, 2007, a group of Georgian citizens was attacked in Kyiv. According to the witness’ testimonies, the offenders looked like radical right activists. One of the victims was fatally injured. His brother was admitted to the hospital with severe injuries. Criminal case was initiated under the par. 2 of article 121 of the Criminal Code. According to media sources, the police considered a version of racial motives of the incident.
- On 14 April, an organization “Patriot Ukrayiny” (“Patriot of Ukraine”) held a March against Illegal Immigrants in Kyiv. No incidents were recorded during the event secured by police. Participants were calling out xenophobic and racist slogans. On the same day several violent incidents occurred in Kyiv. In the city centre, a fight happened between four young Algerians and local adolescents. According to the law enforcement bodies, the incident was of common nature.
- On 07 March, 2007, adolescents with shaved heads attacked Brazilian football player Gleyton Barbosa. There were more than 10 offenders who sprayed tear gas into the victim’s face, and after that pushed him onto the ground and continued beating. A young woman accompanying the victim screamed out that he was a football player, and the victim escaped to hide in the building of entertainment centre. Offenders were calling themselves skinheads, and continued humiliating the young woman for being around back person. The victim left Ukraine shortly after, and had not appealed to the police. No criminal case was initiated despite the fact that the incident was widely publicized by the media.
- On 17 March, 2007, Aleksandr Alaveranov (Ukrainian citizen, whose parents were Iranian and Ukrainian), was attacked in Kyiv. Unknown young person attacked Alaveranov, unprovoked. The victims suffered from 6 stabbing wounds that caused his death. Eyewitnesses and the victim himself before he passed away informed the police that the perpetrator looked like nazi skin-head. Possibility of racist motivation behind the attack was not investigated by the police because the victim “was not a foreign citizen”. A person convicted for the attack did not match victim's description, has had previous convictions and changed his confession multiple times. Parents of the victim do not believe that the police got the actual murderer and think that police are simply trying to get rid of that case by putting it on someone else. These considerations however were of no relevance to investigators.
- On 03 June, 2007, a 43-year old refugee from Iraq was murdered in Kyiv. The body was found with several stabbing wounds. Criminal case was initiated. According to victim’s friends, his fingers had been cut off before he was killed. Provided by the

testimonies of witnesses, offenders looked like radical right activists. On 04 June, 2007, press service of the Ministry of Internal Affairs announced that 4 suspects were apprehended in this case. It does not appear however that possible racist motivation was investigated by the authorities in this case.

- On 18 June, 2007, a group of high-school children attacked 13-year old adolescents of Moldovan ethnic origin. It was found later that decision to attack was made earlier, and the victims were followed. Three victims were provided medical assistance, one of them was hospitalized. The offenders were detained. Criminal case was initiated under criminal mischief [hooliganism] accusations, despite the fact that suspects have admitted their motives to be ideological. In addition, one of the offenders had a video of initiation to radical right activists group on his mobile telephone.
- On 21 July, 2007, unknown adolescents in Odessa committed a serious assault on Kuwaiti citizen. The offenders were breaking empty bottles on the victim's head. It is unclear how severe were the injuries, as well as there are different versions as to where medical assistance was provided to the victim. According to a witness, the victim did not wait until the ambulance arrived (40 minutes after the call) and went to one of the private clinics. According to the city directorate of the Ministry of Interior, he was admitted to the city clinical hospital, and left prior to police arrival.
- On 06 August, 2007, a group of young people in Lutsk started a fight with three musicians from Uganda. One of the Ugandans was shot at from a gas gun. The victims were provided medical assistance. Criminal case was initiated under the hooliganism article of the Criminal Code.
- On 14 October, 2007, three unknown persons in Kyiv attacked three Chinese girls, studying in Kyiv University. The victims were hospitalized with stabbing wounds. The attack was considered to be hooliganism, all three offenders were apprehended.
- On 14 October, 2007, a group of people attacked a citizen of Bangladesh in Kyiv. The victims died from beatings and stabbing wounds. According to the Ministry of Interior press service, the attack was committed with the purpose of robbery.
- On 10 January, 2008, in Lviv, a young man attacked a dark-skinned visitor of a restaurant and beat him with a wooden chair. The restaurant is located on the ground floor of a university where many foreign students live. According to the students, racist attacks around the dormitory campus are not rare; however, the authorities take no action to protect the students.
- On 27 January, 2008, unknown persons attacked a refugee from Congo. The victim died as a result of 17 stabbing wounds.
- On 08 March, 2008, a refugee from Sierra Leone was murdered in his fiancé's presence. He was stabbed, and his personal belongings remained untouched. Criminal case was initiated under par. 2 of art. 115 of the Criminal Code and possible racist of motivation perpetrators were not taken into account.
- On 03 April, 2008, a group of young people attacked the foreign students' dormitory of the medical university. The students managed to secure themselves in the building, and the doorman locked the entrances (while being hit in the head). The offenders continued to throw stones and hitting the door with the sticks. On the same day, a group of people in Ternopil attacked a 23-year old student from India. The victim was hospitalized with

serious injuries. According to the dean of foreign students of Ternopil Medical University, attacks and beating of foreign students had already taken place earlier. However, as it appears from the information available to the authors of this report, possible racist motivation behind these attacks was not duly investigated nor there are other measures taken to protect international students from racist violence.

- On 8 April 2009 in Kyiv four young men attacked two Chinese students (male and female). Perpetrators ran after their victims and attacked them from the back with fists, feet and an empty bottle. Attack terminated due to intervention of an eyewitness. Witnesses of the incident provided basic medical assistance to the victims and convinced them to report the incident to the police. Perpetrators were later apprehended. Police regarded the incident as hooliganism.
- On 29 May, 2008, a Nigerian national was murdered in Kyiv. The victim was 40 years old, and had been living in Ukraine for a long period of time. According to available information, he was attacked by two young men, and stabbed approximately ten times. The police stated there were no grounds to consider the incident a racist crime.
- On 18 June, 2008, two men from Donetsk severely assaulted a PhD Student from Palestine in Kyiv. The offenders were in the state of alcohol intoxication, and upon asking the victim what he was doing there, started beating him. Injuries resulted in the victim's death. Both suspects were apprehended, and charged with accusations under art. 115 of the Criminal Code of Ukraine. Police has denied that the incident was of racist nature. According to the chief press officer of Kyiv police, the suspects were not radical right activists, thus the crime was not viewed as racially motivated crime.
- On 01 January, 2009, a refugee from Chechnya was attacked in Chernihiv, being stabbed and taken to the hospital in a critical condition. The suspect was apprehended, and the police insisted that the incident is to be qualified as hooliganism. The victim's mother is certain that her son's non-European appearance caused the assault. In addition, one of the Chernihiv national-radical organizations posted information that "our friend" "stabbed a person of Caucasus nationality in a fight". The statement ends with words "Glory to the Heroes of White Resistance!". All this, however, did not persuade the police to duly investigate whether racist motives were underlying the attack.
- On 09 January, 2009, two men in the state of alcohol intoxication in Kremenchug suddenly attacked a man of Chinese origin. First, they hit the victim with a beer bottle, and as he fell on the ground, continued kicking him. Accidental witnesses scared off the offenders; both of them were later apprehended. One of the offenders had swastika image on his belt buckle, and cut-outs from national radical publications, along with the Hitler's portrait. The criminal case was initiated pursuant to article on hooliganism.
- On 31 March, 2009, four young men, members of «Patriot Ukrayiny» organization, attacked a citizen of Turkey accompanied by his girlfriend in the centre of Kyiv. The attack was accompanied by racist insults. The offenders were apprehended; some of them were wearing camouflage uniform and had videos of trainings and propaganda of «Patriot Ukrayiny» organization. The offenders' actions were qualified as hooliganism.
- On 05 June, 2009, citizens of Jordan and Lebanon were beaten by a policeman. One of the victims phone was broken. The assault was accompanied by racist verbal abuse. No action has been taken by the authorities to bring the perpetrator to liability.

- On 10 August, 2009, a citizen of Ethiopia was attacked in Kharkiv. He was assaulted by a group of young people wearing camouflage uniform. Three suspects were apprehended by police. Criminal case was initiated under hooliganism charges.
- On 11 August, 2009, a group of young people in Kharkiv committed verbal abuse and assault on a citizen of Tanzania. The victim attempted to escape, but offenders caught up with him, threw him on the ground and continued kicking. The victim was hospitalized and had to stay in a hospital for a month. Two suspects were apprehended; criminal case was initiated under mischief (hooliganism) charges.

As noted by the reports of the civil society organisations, 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 society²². Detailed information on more individual cases dated 2006-2009 is presented in Xenophobia in Ukraine: 2009 Report²³, “Xenophobia in Ukraine. Material from Monitoring 2007-2008”²⁴, as well as in 2008 Hate Crime Survey: Ukraine, published by the Human Rights First.²⁵

Experts 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 neither to the police nor law enforcement authorities. However, available data demonstrates the dynamics and trends in the field for the period. Starting with spring 2008, number of hate crimes has been decreasing, with several exceptional periods. In 2010, the number of hate crimes continued to decrease – ranging from 6 to 14 incidents (information from Diversity Initiative network²⁶ and Vyacheslav Likhachev, accordingly²⁷) according to different information sources. However, it has been noted by the civil society that the spring of 2011 has brought another surge of racist violence in Ukraine and the number of racist attacks documented during the first 6 months of 2011 exceed the total number of attacks documented during 2010.

The following cases have been reported by NGO monitors during the course of 2010-2011:

- On 14 July, 2010, right radical activists in Vasylkiv have beaten a young native of one of the Asian countries. The incident took place during a racist event of “Patriot Ukrayiny” organization.
- On 18 July, 2010, a dark-skinned singer, native of Uganda, was approached by two policemen in Kharkiv, who asked to come with them to security room of the supermarket for document check. In the room, policemen started insulting the victim, conducted a search, and then assaulted him while accusing of narcotics distribution. The victim was also robbed, and then hospitalized with various injuries. Kharkiv Prosecutor’s Office has dismissed the victim’s appeal on criminal case initiation.
- On 1 August, 2010, a citizen from Congo was shot in the leg by an unknown man near metro Chernihivska in Kyiv city.
- On 2 September, 2010, an asylum seeker from Eritrea was attacked by a group of young men in Odesa.

22 Likhachev, V. “Hate Crimes in Ukraine – 2009: Summing up” (<http://eajc.org/page18/news15643.html>)

23 Likhachev, V. “Xenophobia in Ukraine: 2009 Report”. (<http://eajc.org/page18/news16652.html>)

24 Likhachev, V. “Xenophobia in Ukraine. Material from monitoring 2007-2008, Kyiv”.

25 Human Rights First, 2008 Hate Crime Survey: Ukraine, <http://www.humanrightsfirst.org/our-work/fighting-discrimination/2008-hate-crime-survey/ukraine/>

26 <http://diversipedia.org.ua/eng/>

27 Vyacheslav Likhachev. Anti-Semitism, xenophobia and rights of national minorities in Ukraine: electronic bulletin.

- On 19 September, 2010, a citizen of Kuwait was diagnosed as being in a coma after being attacked by 10-15 men in Simferopol.
- On 7 October, 2010, a citizen of Zimbabwe studying at the National Medical University was punched by two men near the University building in Kyiv. The incident was not reported to law enforcement.
- On 01 November, 2010, a refugee from Ethiopia was assaulted in Khmelnytsky. Prior to the incident, the victim and offender had been in a conflict due to continuous racist threats and verbal abuse addressed to the victim and his family members.
- In November, 2010, in Makiyivka, Donetsk region, a 51-year old Roma woman was murdered. In January 2011, two suspects were apprehended. According to available information, they have been interested in studies of history and ideology of the Third Reich, as well as followed popular right radical trends of Nazi straight-edge. Initially, the case was qualified as wilful homicide. As of June, 2011, the qualification also includes par. 14 of art. 115 (racially-motivated homicide).
- Around midnight from 16 to 17 December, 2010, a man of Asian origin was kicked twice at the metro stop Minska. The victim did not report the incident to the metro police.
- On the 29 December, 2010, at about 17.00hrs, a foreign citizen was attacked by a group of five young men aged between 15 and 20 in front of McDonalds. The victim managed to escape and inform police but the police officer took no action.
- On 08 March, 2011, a group of approximately 15 people attacked two students from Nigeria. Police apprehended two offenders, but let them go eventually. No criminal case was initiated.
- On 18 March, 2011, three men in the state of alcohol intoxication attacked an asylum seeker from Somalia.
- On 24 March, 2011, a group of seven people attacked two foreign citizens – men from India and Pakistan. The victims received injuries, and were hospitalized. The criminal case was initiated due to publicity associated with the case.
- On 26 March, 2011, two men attacked a student from Nigerian in Dnipropetrovsk. The victim was hospitalized with three stab wounds. Due to unknown circumstances, the victim has filed an appeal for the police not to initiate criminal proceedings in the case.
- On 26 March, 2011, policemen in Mohylyov-Podilsky, Vinnytsya region, apprehended ethnic Azerbaijani, a citizen of Ukraine. One of the policemen stopped the victim's car, and took him to police station. In the station, the victim was beaten by the same policeman. According to witnesses, he was beaten, humiliated and threatened during several hours. Later, police has stated that the man did not have documents for the vehicle, and resisted police actions. The court declared the victim not guilty on charges of "non-compliance with legitimate demands of law enforcement authorities" pressed by police against him.
- On 2 April, 2011, a group of men attacked a citizen of Ukraine, native of Nigeria, on the metro. The assault was filmed by one of the passengers. Criminal case was initiated and transferred to court under hooliganism charges.

- On 23 May, 2011, a group of young people attacked three students from Iraq Kharkiv. According to the victims, the group of perpetrators consisted of 8 to 12 people, some of them had tattoos on their body (arms), some had brass-knuckles on and two of them were wearing facial masks (balaclava hats), which indicates that the perpetrators were acting as an organized group and probably may have been affiliated with some extreme rights groups. The attack was eventually reported to the police (although the police at the spot refused to take any action and humiliated one of the victims who approached them to ask for help, since 1 of the three students ended up in a hospital all of the victims were compelled to go the next day to police office locally to report the incident were police took it into action). The investigation on this incident is in process.
- On 31 May, 2011, a group of four men attacked a woman of Crimean Tatar origin, wearing Muslim headscarf. Being in the state of alcohol intoxication, they demanded for the woman to take the headscarf off, and started hitting upon refusal. During the assault, offenders have used verbal abused stating that Muslims are not worth living. The attack was stopped by a person who witnessed the incident. Criminal case was initiated under robbery charges. An appeal to the prosecutor's office in Simferopol has been submitted with regard to adequate qualification of the incident.
- On 03 June, 2011, a woman wearing traditional Muslim headscarf was assaulted by a man in Simferopol. No criminal case was initiated due to the victim's reluctance.

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. Thus, the Deputy Head of MoI Department of the town of Kremenchuk in his interview while commenting on one of the above listed violent attacks that occurred in 2009 and was perpetrated by “youth who [as it was established in the course of the investigation] sympathized with neo-nazist ideas” against the citizen of China unwittingly disclosed the “strategy” that Ukrainian law enforcement authorities follow while dealing with such incidents (courtesy of Olha Vesnyanka, editor of www.xenodocuments.org.ua):

“...so, they saw him... he did not have money on him... *they asked if he had a registration*... nonetheless, they immediately started beating him... well... they stopped only when somebody started shouting... [interviewer asked to clarify what were the motives of perpetrators, since the police officer mentioned something about money] well... I would say... rob... well... *most probably just hooliganism*... it does not seem to be a robbery... the investigation will identify... though... *if they wanted to rob him*... well... *they would take something from him*... *if they would take something from him we would immediately put it as a robbery*... but this way... this is *certainly just a simple hooliganism*...”

Reluctance of the authorities to investigate and recognize racist motivations that was demonstrated by the reluctance to apply Article 161 of the Criminal Code does not depend entirely on the fact that that provision is poorly formulated but on the lack of political will of the authorities to take such incidents seriously. This may also affect application of relevant newly introduced sub-sections of provisions concerning violent crimes.

Similar approach of law enforcement authorities is evident in recent cases concerning incidents that occurred after introduction of amendments into some provisions of the Criminal Code. For example on 2 April 2011 a Ukrainian citizen suffered from an unprovoked attack by three young men in a carriage of Kyiv metro (cited above). Two out of three perpetrators were detained shortly after the attack by a police officer who travelled in a carriage and witnessed the attack. The third one managed to escape the scene. Police initiated a criminal case against the perpetrators under Article 296 of the Criminal Code of Ukraine (hooliganism) and did not investigate possible racist motivation behind the attack. Two out of three perpetrators have faced a trial under hooliganism charges, however, third one was “never

found”. The victim believes that all three perpetrators knew each other well, from how they interacted at the crime scene²⁸.

Moreover, even provided that the political will of authorities to pay due regard to possible racist motivations in violent crimes will eventually occur, the current legal framework, despite slight positive changes remains deficient and incapable to address the problem of racist violence effectively. For example racial bias is not considered as a specific aggravating circumstance under Article 125 that provides for liability for infliction of minor gravity bodily harm to a person. The *corpus delicti* of that offence differs from the one provided for by Article 126 (battery and tormenting) where bias may be a specific aggravating circumstance in that it implies that violent acts left some injuries on the body of a person whereas Article 126 proscribes violence that has caused pain but did not leave any injuries. Consequently a racist attack that has resulted in minor bodily injuries for the victim is going to be classified under Article 125(1) of the Criminal Code of Ukraine and the one that did not under Article 126(2). Consequently, a racist attack that did not result in bodily injuries may lead to a punishment of a perpetrator in a form of limitation of liberty for up to five years or deprivation of liberty for the same period of time²⁹. Whereas a racist attack that resulted in bodily injuries of a victim is punishable only by a fine not exceeding fifty times minimum wage or community service for up to twenty hours or correctional labour for a period up to one year.

Moreover, according to Article 27 para 1 of the Criminal Procedure Code minor bodily injury is one of the tree offences proceedings on which rely solely on private prosecution. In other words law enforcement authorities are exempted in such cases from the liability to investigate the crime, criminal proceedings, save in very exceptional circumstances, may only be initiated by the victim (his her representative) who is supposed to act as a prosecution, including meeting all the procedural requirements of such proceedings that are imposed on prosecutors in criminal proceedings as well as fully bearing a burden of proof and meeting a rigid standard of proof required for criminal proceedings. This makes it very difficult if not impossible for a victim of racist violence who was lucky enough not to be seriously injured to identify perpetrators and to prove that they are guilty of the attack not to mention to establish a racist motive behind their actions. Moreover, if even the perpetrator is identified

28 See <http://korrespondent.net/video/ukraine/1203244-v-kiievskom-metro-izbili-chernokozhego-passazhira>; www.newsru.com/crime/04apr2011/metrobeatafrkiiev.html; www.kievrada.com/show/news/6049; <http://news.bigmir.net/capital/397006/>; <http://www.kyivpost.ua/ukraine/article/v-ukraine-stalo-bolshe-rasizma-20624.html> and others

29 There are no cases of racist attacks document yet that would have been classified under this provision. The authors of this report do not have reliable statistical data on a number of convictions under Article 126(2) that since 2001 has provided for an unamended list of other aggravating circumstances specific to this crime. The caseload of the Social Action Centre/No Borders Project, however, demonstrates that law enforcement authorities in general are very reluctant to even deal with cases that fall under that provision. It is a common practice among the police to refuse to classify incidents of tormenting as aggravated (under Article 126(2)) even though aggravating circumstances may be fairly evident. That allows them by virtue of Article 27 para 1 of the Criminal Procedure Code not to take any action for investigation of the incident and put the task of accusation on a victim herself that is a procedure for crimes classified under Article 125(1) and Article 126(1). For example a victim of a homophobic attack by a group of masked men who was lucky enough not to have suffered attestable bodily injuries approached the police to report the incident. It was fairly obvious that that unprovoked attack not only had a bias motive but also had been intended to intimidate a victim (“and alike”) consequences of which caused her substantial psychological suffering. Although each of those circumstances except for the homophobic motivation of perpetrators were supposed to make the incident classifiable under Article 126(2) and thus be subject to investigation by the police, the latter refused to initiate criminal proceedings. Already when taking down the victims testimony they assured her orally that they would not investigate the incident saying: “If they would at least break your leg or something we would then initiate a criminal case on your report. But look at you, you are fine, thus nothing serious happened”. There exists a high risk that with the similar approach would characteristic of their dealing with battery and tormenting aggravated by racist motive because Ukrainian police does not regard such incidents that did not cause substantial physical harm to a person.

and the victim has collected enough evidence to prove the circumstances of the attack that meets all required procedural standards, the victim is placed in particularly vulnerable circumstances vis a vis the perpetrator and may be subject to harassment and pressure that may prompt her to drop the charges against him all together.

G. a recognized refugee from Ethiopia who has been living in Khmelnytsky since 1997 on 1 November 2010 suffered from a violent attack by a neighbour, A. The perpetrator had previously harassed the victim and verbally abused him referring to his African origin. That day in November when A. was in a state of alcohol intoxication hostility of his resulted in unprovoked attack against G. A. used his dog (rottweiler), which made this experience particularly humiliating for the victim, and later his fists to attack G. At the point when A.'s dog that was fortunately muzzled pushed G. on the ground and tossed him around in her attempts to bite the victim A. was laughing and said that "this black should learn the lesson and go back to his Africa". The attack was terminated due to intervention of G's friend who persuaded A to stop his aggression. However, before leaving the scene A. told to G. that every time he sees him again he'll make his dog attack G. That prompted G. to report the incident to the police. Police however, refused to investigate the case and initiate criminal proceedings because bodily injuries that G. suffered were classified after brief forensic medical examination as minor. G. filed his claims to the court that eventually initiated criminal proceedings against A. In the proceedings before the court it is G. who is supposed to act as a prosecution and press charges *vis a vis* the perpetrator which is very difficult for any victim from both technical and moral perspectives. The perpetrator realizes that what he is facing is criminal prosecution and even though the punishment he may face would not be harsh being convicted for a crime entails a substantial stigma in Ukrainian society and will disadvantage him at the job market and etc. In the same time he sees G. as a sole cause of his discomfort as it is G. alone who is pressing charges against A. in the court. He also does not appear to think that what he did to G. was any wrong. These are probably the reasons why he has started further harassing and threatening G. He said that he's got connections in the police who, if he sees that he might be convicted, may arrest G. any moment, for example by insinuating that he was carrying drugs on him and then "who would believe a Niger, everybody knows that they all are drug dealers". Although A's threats may be not substantiated G. is afraid, feels threatened and intimidated and seriously considering to drop the charges because he is all alone in that enterprise of attempting to protect his dignity from further racist harassment and exhausted from difficult procedures that are required to obtain justice in criminal proceedings.

The above example illustrates the difficulties that a victim of racist attack who only entailed minor bodily injuries as a result of it may face in trying to bring the perpetrator to liability at least to have him hear from the state authority that what he did to her was wrong. In fact except for those people who suffered from substantial bodily injuries as a result of violent racist attack no victim of discrimination under Ukraine's jurisdiction have effective remedies available to her even in theory.

II.3 Failure of Ukraine to meet the requirement of Article 4 of CERD by effectively banning propaganda and incitement of racial discrimination.

Ukraine's legislation contains a ban on propaganda and incitement of racial discrimination (Article 161 of Criminal Code of Ukraine and The Law "On Civil Associations"), however, they fall short on effectively addressing these problems. It is partly due to poor formulation of Article 161 that makes it close to impossible to prosecute those persons or organisations that engage in propaganda of hatred (the deficiencies of that provision that remain unaltered were highlighted before the Committee during its 69th session³⁰). Another and even more substantial reason is the lack of Ukrainian authorities political will to adequately address these problems.

Unfortunately, racist discourse is very widespread in Ukrainian media. Openly racist statements have frequently been expressed by Ukrainian top government officials. Some examples may be found in the reports of NGO monitors cited above, including the data by Diversity Initiative network. The most recent regional research primarily concerning hate speech against Crimean Tartars was published in

30 European Roma Rights Centre: "Written Comments of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31-August 18, 2006", 19 June 2006, pp. 7-8 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>)

June 2011 by the Evpatoriya Center of Regional Development, concerning hate speech in Crimean media outlets³¹.

In addition to that recent research³² suggests that today far-right extremism is characterised by transitional form and has a tendency to transfer from street violence to gradual organization in Ukraine, with main ideological motives being conserved. A number of these organizations incorporate grounds for growth of racism and xenophobia.

Provided below is a list of key nationalistic and radical right web-sites and forums:

- <http://oriyentry.com> - «Oriyentry», mostly contains agitation materials, anti-liberal and anti-capitalistic articles;
- <http://sxe.ukrright.info/> - Nazi straight edge – though initially promoting ideas of non-abuse of alcohol, tobacco and other narcotic substances, as well as healthy nutrition, the web-site contains ideological materials, such as “14 Codes of Aryan Ethics”, “The White Genocide Manifesto”, as well as other racist articles/information.
- <http://kmisto.info/> - «Knyazhe misto», nationalistic news resource, includes publications on alleged “radical Islamic murder”, incidents of attacks on gypsies, claiming that “parasites disinfection is good” etc.
- <http://rid.org.ua/> - «Rid», nationalistic outlet, supportive of the Social-Nationalistic Assembly.
- <http://ukrright.info/> - «Positive Right», informational analytical resource of radical right activists.
- <http://www.reactor.org.ua/> - «Reaktor», first and key resource of autonomic Nazi in Ukraine
- <http://ntz.org.ua/> - «Strayk», ideological resource with articles, speeches, translated texts of both traditional Nazi and nationalist ideologists, as well as the “new right”
- <http://sna.in.ua/> - web-site of Social-Nationalistic Assembly.

Key organizations of radical right vector:

- PP „Bratstvo” – organization with unstable, as a rule, unstable, conservative ideological direction. Occasionally sympathizes the ultra-right and attempts provocative actions.
- Social-Nationalistic Assembly – militarized structured of party-army type, heading to creation of mass movement and ultra-right political party. Have representative offices in regions, with headquarters in Kharkiv. The organization promotes anti-immigrant views, in particular by conducting events, such as marches (a mass event was held in Kharkiv on 17 April, 2011, called “March against Illegal Immigration”)
- All-Ukrainian Union “Svoboda” – a radical right political party. A lot of members of the party are street Nazis, locally cooperating with autonomous groups. General ideas include limiting immigration, as well as promotion of Ukrainian language and culture.
- Blood and honor — international network Nazi organization. In Ukraine, the activities

31 Evpatoriya Center of Media Development: “Crimean Media. Hate Speech.”, 23 June 2011 (http://gurt.org.ua/uploads/news/2011/06/23/krimsk'i_zmi_mova_vorozhnechi_zvit.pdf)

32 Kharkiv Institute for Social Research, Ministry of Interior of Ukraine. Intolerant activities and organizations in Ukraine: results of sociological research, 2008.

are mostly confined to support of detained Nazi and organization of closed Nazi concerts

→ “Patriot of Ukraine” a national network of far-right group propagating militarism and migrantophobia. Some of its regional branches even are registered officially with local authorities, some act without official registration.

The latter organisation is notorious for organising so called marches “against illegal migration” in different cities of Ukraine some of which have been followed by a number of racist attacks³³. The most active branch of the “Patriot of Ukraine” (PU) currently appears to be the one based in Kharkiv. That of branch of PU appears to cooperate extensively with the so called Ukrainian Movement Against Illegal Immigration³⁴ and the so called group “Immigration Stop”. Apart from that the organization promotes and incites racial discrimination through material published on its web-site, web-pages of sympathizing organizations, and organized events in Kharkiv. (more on this incident to illustrate migrantophobia as an underlying element) Their most recent activity in Kharkiv has been targeting Vietnamese community in the city and according to some observations has contributed to increased hostility of local population against that group.

Thus, PU has recently initiated the so called “boycott of Vietnamese community in Kharkiv”. PU activists have been distributing leaflets and posters propagating hatred against the Vietnamese community among the local population³⁵. Apart from that PU organised a raid on a student dormitory where on one of the resided citizens of Vietnam. PU activists in military form entered the building of the dormitory and that floor, forced Vietnamese out of their rooms into the corridor and demanded to show them their documents³⁶. Reaction of police to the raid by PU activists at the student dormitory in Kharkiv did not include consideration of illegal intrusion, but was aimed at investigating the complaints PU activists made against Vietnamese residents of the dormitory instead. The “boycott” is ongoing, and has met no reaction from the law enforcement authorities of the city.

The above information demonstrates the failure of Ukrainian authorities to meet yet another recommendation made by CERD in its latest concluding observations concerning Ukraine:

The Committee recommends that the State party consider explicitly including organizations which promote and incite racial discrimination on the list of prohibited associations that are barred from legal registration under article 4 of the Citizens' Association Act.

II.3. Inefficiency of prohibition of discrimination contained in Ukrainian legislation (Article 2(1)(d)).

In theory Article 161 is intended to serve as mechanism of enforcement of the equality guarantees contained in the Constitution and other acts of legislation. From the legal point of view it constitutes the only instrument of redress made available to victims of racial discrimination not so extreme as violent manifestations thereof. In practice it serves as an obstacle preventing victims of racial

33 See for example videos of a couple of their marches: http://www.youtube.com/watch?v=_0k0AK0ifKQ;

http://www.youtube.com/watch?v=zEY6N_oonGw&feature=related

34 The organization originates from Russia is probably not registered with the authorities and does not have too many activists, however, remains very active on-line. In Russian Federation the “headquarters” of the Movement Against Illegal Migration that Ukrainian group appears to be a branch of was banned as extremist.

35 These materials portrayed Vietnamese community of Kharkiv as criminals, locust (see for example:

<http://sna.in.ua/archives/9073>)

36 See videos of raid on the student dormitory:

http://www.youtube.com/watch?v=4R4XhmzPM8A&feature=player_embedded#at=519;

<http://www.youtube.com/watch?v=bMKICatdV2s>

discrimination from receiving redress. This is, however, not only due to the deficiencies of its formation that were previously considered by CERD³⁷. It is also not only due to the lack of political will of the authorities to apply Article 161 to such cases that is demonstrated by the fact that all few cases prosecuted under this provision concerned either hate speech or racist violence and none concerned other forms of discrimination that are explicitly criminalised under that provision (including both direct and indirect discrimination).

In fact not always criminal punishment does constitute the appropriate response to discrimination, nor awards a victim appropriate response. However, as long as discrimination per se constitutes a criminal offence no perpetrator of discrimination in any form may be brought to liability other than in accordance with the procedure established by the Criminal Procedure Code by virtue of Article 58 of the Constitution of Ukraine. Such principle has been confirmed by the Supreme Court of Ukraine in 2003 in a number of cases related to liability of media for incitement of hatred. This makes it impossible for the victim to claim damages using civil remedies unless the actor of discrimination has been found guilty for committing a crime proscribed by Article 161 of the Criminal Procedure Code³⁸.

According to the Criminal Procedure Code of Ukraine, except for cases classified under Articles 126, 127(1), 356, victims play only a minor role in institution of criminal proceedings and assume wider procedural rights only after the case was passed to the court by the prosecutor. Thus, prohibition of discrimination instead contained in Article 161 of serving as a remedy for victims of discrimination in practice serves as a barrier to obtaining redress, because on the one hand institution of the criminal case under Article 161 entirely depends of the virtually absent political will of the authorities, and on the other recourse to civil remedies is impossible without the exhaustion of the criminal.

Similar legal problem existed previously in Russian Federation before the provision of the Criminal Code of RF analogous to Article 161 of the Criminal Code of Ukraine was recently revised. The European Court of Human Rights considered it in the case of Danilenkov and other v Russia (№ 67336/01, judgment of 30 July 2009). The case concerned discrimination on the ground of trade-union membership but disclosed a number of legislative deficiencies concerning implementation of prohibition of discrimination on any ground that were characteristic back in a day for Russian Federation and are still characteristic for Ukraine.

The Court noted that various techniques were used by the Kaliningrad seaport company in order to encourage employees to relinquish their trade union membership, including their reassignment to special work teams with limited opportunities, dismissals subsequently found to be unlawful by the courts, reductions in earnings, disciplinary sanctions and refusals to reinstate employees following court judgments. As a result, DUR membership shrank dramatically from 290 in 1999 to twenty-four in 2001. [...] It therefore agreed that the clear negative effects of DUR membership on the applicants were sufficient to constitute a *prima facie* case of discrimination in the enjoyment of the rights guaranteed by Article 11 of the Convention. The Court further noted that the applicants in the present case requested the authorities to prevent abuse on the part of their employers aimed at compelling them to leave the union. They drew the courts' attention to repeated discriminatory actions against them over a long period of time. In their view, allowing their discrimination complaint would have been the most effective means of protecting their right to join a trade union without being sanctioned or subject to disincentives. The Court also observed that Russian law at the material time contained a blanket prohibition on all discrimination on the ground of trade union membership or non-membership (section 9 of the Trade Union Act). Under domestic law the

37 European Roma Rights Centre: "Written Comments of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31-August 18, 2006", 19 June 2006, pp. 7-8 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>); Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine, CERD/C/UKR/18, of 8 February 2007, para. 9, p. available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/77/PDF/G0740377.pdf?OpenElement>

38 See for detailed discussion of this problem Yakubeko V. (<http://www.migdal.ru/antisemitism/5250/>).

applicants were entitled to have their discrimination complaint examined by a court, by virtue of the general rules of the Russian Civil Code (Articles 11-12) and the *lex specialis* contained in section 29 of the Trade Union Act. These provisions, however, remained ineffective in the instant case. The Court notes that the domestic judicial authorities, in two sets of proceedings, refused to entertain the applicants' discrimination complaints, holding that the existence of discrimination could be established only in criminal proceedings and that the applicants' claims could not therefore be determined via a civil action.

The principal deficiency of the criminal remedy is that, being based on the principle of personal liability, it requires proof “beyond reasonable doubt” of direct intent on the part of one of the company's key managers to discriminate against the trade union members. Failure to establish such intent led to decisions not to institute criminal proceedings. Furthermore, the victims of discrimination have only a minor role in the institution and conduct of criminal proceedings. The Court is thus not persuaded that a criminal prosecution, which depended on the ability of the prosecuting authorities to unmask and prove direct intent to discriminate against the trade union members, could have provided adequate and practicable redress in respect of the alleged anti-union discrimination. On the other hand, civil proceedings would have made it possible to perform the far more delicate task of examining all elements of the relationship between the applicants and their employer, including the combined effects of the various techniques used by the latter to induce Dockers to relinquish DUR membership, and to afford appropriate redress. The Court noted that it would not speculate as to whether the effective protection of the applicants' right not to be discriminated against could have prevented future unfavorable actions against them on the part of their employer, as the applicants suggested. Nonetheless, it considers that given the objective effects of the employer's conduct, the lack of such protection could engender fears of potential discrimination and discourage other persons from joining the trade union. This in turn could lead to its disappearance, with adverse effects on the enjoyment of the right to freedom of association. In sum, the Court considered that the State failed to fulfill its positive obligations to adopt effective and clear judicial protection against discrimination on the ground of trade union membership. It follows that there has been a violation of Article 14 (prohibition of discrimination) of the Convention taken together with Article 11 (freedom of association).

In theory the same approach as it is based on the Constitutional Provision is applicable to all other types of proceedings including administrative where cases against actions of failure to act may be brought by individuals. However, according to the Article 9 of the Code on Administrative Legal Proceedings administrative courts must examine whether the decisions of authorities that are being challenged were not discriminatory either in purpose or effect. In practice administrative courts sometimes consider discrimination claims on the merit. However, there are no adequate or clear procedural standards that such courts would rely on to establish whether actions or omissions of authorities were discriminatory. This may be the reason why discrimination claims even when they are examined by administrative courts on the merit are usually dismissed by them on purely formal grounds.

II.4. Inadequacy of institutional framework charged with elimination of racial discrimination in Ukraine.

As mentioned in the Report submitted by State party (19th-21st report due in 2010), in early 2008, an Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance was set up under the Cabinet of Ministers. 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 State Committee on Ethnic and Religious Affairs (www.scmn.gov.ua)”.

In 2009, the Interdepartmental Group held 7 sessions. In 2010, however, the Interdepartmental Working Group has stopped its activities *de facto*, as no sessions were held during the year. Consequently, the publication of the most recent information on the web page of the State Committee on Ethnic and Religious Affairs is dated 05 February, 2010. No later publications are available. Similarly departments within the Ministry of Internal Affairs at central and local levels charged with investigating and overseeing cases involving suspected racist motivations no longer exists.

III. Rights of foreign nationals and stateless persons in Ukraine and discrimination of 'visible minorities' in course of migration management

III.1 Overview of the legal framework governing the status of foreign nationals and stateless persons in Ukraine

Despite the requirement by CERD contained in the General Recommendation No. 30: “Discrimination Against Non-Citizens” of 01.10.2004 that States parties to the Convention are under an obligation to report fully upon legislation on non-citizens and its implementation, Ukraine's Nineteenth to Twenty-First Periodic reports contain virtually no information on this topic. Information on the legislation on non-citizens contained in the report is limited to the citation of the Article 26 of the Constitution that declares that foreign nationals and stateless persons legally present in Ukraine enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, with the exceptions established in the Constitution, laws and international treaties of Ukraine.

However, the NGOs putting together this report believe that it is impossible to unveil all faces of racism that exist in modern Ukraine without analysing the situation of non-nationals, including the laws that govern their status and the practice of their implementation. This is because, as the practice of the Social Action Centre/No Borders Project demonstrates, the conclusion that social scientists draw about modern forms of racism in Western Europe, that “‘Immigration’ has become, par excellence, the name of race, a new name, but one that is functionally equivalent to the old appellation, just as the term ‘immigrant’ is the chief characteristic which enables individuals to be classified in a racist typology”³⁹ has been recently to a large extent turning equally true also for Ukraine. Except that Ukrainian government as well as the majority of population view Ukraine primarily as a transit point for migrants trying to reach the European Union, so racism in Ukraine has some specifics in comparison to those forms that it takes in Western Europe, but is undoubtedly closely intertwined with migrantophobia.

As mentioned above majority of victims of racist crimes documented by the civil society are people originate from Africa, Central- and South-East Asia, Middle East as well Caucasus region. Prevailing majority of them are non-citizens. Of course, perpetrators do check passports of their victims before they beat them (although such incidents were also reported), victims' non-citizen status is not just a side characteristic. In fact, 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'. As illustrated below, popular stereotyping of people of African, Central- and South-East Asian, Middle Eastern (and to some extend Caucasus) origin as potential or actual 'illegal migrants' reflects the publicly declared position of Ukrainian authorities. Combined with the extremely negative image of the so called 'illegal migrants' that is also perpetrated by the official discourse such stereotypes not only lead to increased hostility towards people of African, Central- and South-East Asian, Middle Eastern and Caucasus origin among the general population of Ukraine, but also heavily affect the practices of authorities disadvantaging the above listed racialised groups, in particular in the field of migration management.

Current report does not intend to present a comprehensive analysis of Ukraine's migration laws and their practical dimensions. It will only present a brief general analysis of the current legal framework and highlight its main flaws that allow for systematic human rights violations and perpetuate racial discrimination against non-citizens. Apart from the above cited article of the Constitution, the main normative acts that define the specifics of the non-cizens' position in Ukraine are: Law of Ukraine “On

39 Balibar, E. “Racism and Crisis” published in Balibar, E. and Wallerstein, I. (1991) *Race, Nation, Class: Ambiguous Identities*, Verso, London, p. 222

the Status of Foreigners and Stateless Persons” of 04.02.1994⁴⁰; “The Concept Note on the State Migration Policy” approved by the Decree of the President of Ukraine №622/2011 dd. 30.05.2011⁴¹; “The Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, Their Exit from Ukraine and Transit through Its Territory” approved by the Cabinet of Ministers' Decree No. 1074 dd. 29 December 1995⁴²; Cabinet of Ministers' Decree No.227 dd. 20 February 1999 “On Introduction of a New Order for Issuing Visa Documents for Entry to Ukraine” (losing legal force on 10.09.2011 to be replaced by Cabinet of Ministers' Decree No.567 of 10.09.2011)⁴³; Law of Ukraine “On Border Control” of 05.11.2009⁴⁴, “Rules on Issuing Visas for Entry to Ukraine and Transit through Its Territory” approved by a Decree of the Cabinet of Ministers' No. 567 dd. 1 June 2011 (date of entry into force 10.09.2011)⁴⁵; “Instruction Concerning the Procedure of Extension of Foreigners' and Stateless Persons' Permits to Stay in Ukraine” approved by a Decree of the Ministry of Interior No.1456 dd. 01.12.2003⁴⁶; “Order of Issuance, Extension and Annulment of the Permits to Employ Labour of Foreigners and Stateless Persons” approved by the Cabinet of Ministers' Decree dd. 08.04.2009, No. 322⁴⁷; “Order of Selective Control Procedure over Availability on Foreign Nationals of Sufficient Funds for Stay in Ukraine” approved by the Decree of the Administration of the State Border Service No.519 of 14.07.2009⁴⁸; Regulation on the “Information on Foreigners and Stateless Persons who Exceeded the Term of Their Passports' Registration in Ukraine” approved by the Decree of the Administration of the State Border Service No. 444 dd. 27.05.2008⁴⁹; “Instruction on the Procedure of Interaction between the Border-guard Authorities of the State Border Service of Ukraine and the Ministry of Interior in Handing over Foreign Nationals and Stateless Persons Detained by Them” approved by the Decree of the Ministry of Interior No. 390 dd. 16.10.2007⁵⁰, “Regulation on the

40 Закон України “Про правовий статус іноземців та осіб без громадянства” від 04.02.94 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3929-12>)

41 “Концепція державної міграційної політики”, схвалена Указом Президента України №622/2011 від 30 травня 2011р. (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=622%2F2011>)

42 Правила в'їзду іноземців та осіб без громадянства в Україну, їх виїзду з України і транзитного проїзду через її територію затверджені Постановою Кабінету міністрів України від 29 грудня 1995 р. N 1074 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1074-95-%EF>)

43 Постанова Кабінету Міністрів України від 20 лютого 1999 р. N 227 Про запровадження нового порядку оформлення візових документів для в'їзду в Україну (Втрата чинності відбудеться 10.09.2011 на підставі Постанови Кабінету No. 567 від 10.09.2011 - <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=227-99-%EF>)

44 Закон України “Про прикордонний контроль” від 05.11.2009 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1710-17>)

45 Правила оформлення віз для в'їзду в Україну і транзитного проїзду через її територію, затверджені Постановою Кабінету Міністрів України від 1 червня 2011 р. N 567 Про затвердження (Набрання чинності відбудеться 10.09.2011 - <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=567-2011-%EF>)

46 Інструкція про порядок продовження терміну перебування в Україні іноземців та осіб без громадянства, затверджена Наказом Міністерства внутрішніх справ України N 1456 від 01.12.2003 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1180-03>)

47 “Порядок видачі, продовження строку дії та анулювання дозволів на використання праці іноземців та осіб без громадянства”, затверджений Постановою Кабінету Міністрів від від 8 квітня 2009 р. N 322 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=322-2009-%EF>)

48 “Порядок проведення вибіркового контролю за наявністю в іноземців та осіб без громадянства достатнього фінансового забезпечення для перебування в Україні” Наказ Адміністрації Державної прикордонної служби України № 519 від 14.07.2009 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0718-09>)

49 Положення про базу даних "Відомості про іноземців та осіб без громадянства, які перевищили термін реєстрації паспортних документів в Україні", затверджений Наказом Адміністрації Державної прикордонної служби України №444 від 27.05.2008 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3407-17>)

50 “Інструкція про порядок взаємодії між органами охорони державного кордону Державної прикордонної служби України та органами внутрішніх справ України при передаванні затриманих ними іноземців та осіб без громадянства”, затверджене Наказом Адміністрації Державної прикордонної служби України та Міністерства внутрішніх справ України № 742/1090 від 15.10.2004 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1398->

Facility for Temporary Accommodation of Foreigners and Stateless Persons who are Staying in Ukraine Illegally” approved by the Decree of the Ministry of Interior No.390 dd. 16.10.2007⁵¹; Law of Ukraine “On Protection of Population from Infectious Diseases” of 06.04.2000 (Article 24)⁵²; Law of Ukraine “On Countering Tuberculosis” dd. 05.07.2001 (Articles 18 and 19)⁵³; Decree of the Cabinet of Ministers “On Foreign Nationals' Studying in Ukraine”⁵⁴, “Regulation on Admission of Foreigners and Stateless Persons to Higher Educational Establishments” approved by the Cabinet of Ministers' Decree No. 1238 dd. 5 August 1998⁵⁵, Law of Ukraine “On Immigration” of 07.06.2001⁵⁶ “List of Infectious Diseases that are a Ground for Rejection in Permanent Residence Permit” approved by the Decree of the Ministry of Health of Ukraine No.415 dd. 19.10.2001⁵⁷, “Procedure for Forming an Immigration Quota. Procedure of Handling Applications for Immigration Permit and Requests for its Annulment and Implementation of Respective Decisions. Procedure for Issuance of a Permanent Residence Certificate.” approved by the Cabinet of Ministers' Decree No.1983 dd. 26.12.2002p.⁵⁸, Law of Ukraine “On Citizenship of Ukraine” of 18.01.2001⁵⁹, Code of Ukraine on Administrative Offences (art-s. 203-207) of 07.12.1984⁶⁰, *Law of Ukraine “On Refugees” of 21.06.2001⁶¹ (by the time Ukraine's report to CERD will be considered it will be replaced by the Law of Ukraine “On Refugees and Persons in need of Additional or Temporary protection”⁶²), “Rules concerning Residence at the Temporary Accommodation Centre for Refugees” approved by the Decree of the State Committee on Nationalities and Religions №31 dd. 05.09.2002⁶³, “Order on the Refugee Certificate” approved by the Cabinet of Ministers' Decree of 11 October 2002 №1527 dd. 11 October 2002⁶⁴, “Order of the Use of*

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- 51 “Положення про пункт тимчасового перебування іноземців та осіб без громадянства, які незаконно перебувають в Україні”, затверджене Наказом Міністерства внутрішніх справ України № №390 від 16.10.2007 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0549-08>)
- 52 Закон України “Про захист населення від інфекційних хвороб” від 06.04.200 (див. ст. 24 - <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1645-14>)
- 53 Закон України “Про боротьбу із захворюванням на туберкульоз” від 05.07.2001 (див. ст.ст. 18 та 19) <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2586-14>)
- 54 Постанова Кабінету Міністрів України “Про навчання іноземних громадян в Україні” №136 від 26 лютого 1993р. (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=136-93-%EF>)
- 55 “Положення про прийом іноземців та осіб без громадянства на навчання до вищих навчальних закладів”, затверджене Постановою Кабінету Міністрів України N 1238 від 5 серпня 1998 р. (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1238-98-%EF>)
- 56 Закон України “Про імміграцію” від 07.06.2001 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2491-14>)
- 57 “Перелік інфекційних хвороб, захворювання на які є підставою для відмови у наданні дозволу на імміграцію в Україну”, затверджений Наказом Міністерства охорони здоров'я України №415 від 19.10.2001 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0932-01>)
- 58 “Порядок ормування квоти імміграції. Порядок провадження за заявами про надання дозволу на імміграцію і поданнями про його скасування та виконання прийнятих рішень. Порядок оформлення і видачі посвідки на постійне проживання.”, затверджені Постановою Кабінету Міністрів No.1983 of від 26 грудня 2002 р. (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1983-2002-%EF>)
- 59 Закон України “Про громадянство України” від 18.01.2001 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2235-14>)
- 60 Кодекс України про адміністративні правопорушення від 07.12.1984 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=11&nreg=80731-10>)
- 61 Закон України “Про біженців” від 21.06.2001 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2557-14>)
- 62 Проект Закону України “Про біженців та осіб, що потребують додаткового або тимчасового захисту”, затверджений Верховною Радою України 08.07.2011, на момент написання цього звіту очікує підписання президентом (http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=38773)
- 63 “Правила проживання у пункті тимчасового розміщення біженців”, затверджені Наказом Державного комітету України у справах національностей та релігій №31 від 09.05.2002 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0798-02>)
- 64 “Положення про посвідчення біженця”, затверджене Постановою Кабінету Міністрів №1527 від 11.10.2002 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1527-2002-%EF>)

Funds Reserved in the State Budget for Provision of Assistance to Refugees” approved by the Cabinet of Ministers' Decree № 514 dd. 18 May 2011⁶⁵, “Order of Providing Refugees with Financial Assistance and Pension” approved by the Cabinet of Ministers' Decree № 1016 dd. 06.07.1998⁶⁶, “Procedure for Conduct of Obligatory Medical Examination of Persons who are Subject to a Decision to Accept for Consideration Their Application for Refugee Status in Ukraine” approved by the Decree of the Ministry of Health of Ukraine №82 dd. 04.03.2002⁶⁷ “Temporary Instruction on Documentation Related to Consideration of Questions Regarding Granting, Loss, Retraction of a refugee status” approved by the Decree of the State Committee on Nationalities and Religions №20 dd. 29.04.2002⁶⁸, “Order on a Travel Document of a Refugee for Travel Abroad” approved by the Cabinet of Ministers' Decree №1526 dd. 11.10.2002⁶⁹, “Instruction on the Procedure for Accepting and Handing over Applications for Refugee Status by the State Border-guard Service bodies, as well Concerning Provision of Testimonies on Illegal Border-crossing” Decree of the State Committee on Nationalities and Religions and Administration of the State Border-Guard Service №32/521 dd. 09.07.2004⁷⁰, “Procedure for Issuance and Extension of a Refugee Certificate” approved by the Decree of the State Committee on Nationalities and Religions №69 dd. 09.09.2005⁷¹, “Procedure for Provision of Medical Assistance to Foreigners and Stateless Persons Temporary Residing in Ukraine”, approved by the Cabinet of Ministers' Decree №667 dd. 22 June 2011⁷², Decree of the Plenary of the Higher Administrative Court of Ukraine №1 “On Courts' Practice Related to Consideration of Disputes concerning Refugee status, Expulsion of a Foreigner or a Stateless Person from Ukraine or Disputes Related to a Foreigner's or Stateless Person's Stay in Ukraine” dd. 25.06.2009⁷³.

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 past two years, when Ukraine undertook an obligation to improve its migration laws as a condition for liberalization of EU

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- 65 “Порядок використання коштів, передбачених у державному бюджеті для надання допомоги біженцям”, затверджений Постановою Кабінету Міністрів №514 від 18.05.2011 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=514-2011-%EF>)
- 66 “Порядок надання біженцям грошової допомоги та пенсії”, затверджений Постановою Кабінету Міністрів №1016 від 06.07.1998 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1016-98-%EF>)
- 67 “Порядок проведення обов'язкових медичних обстежень осіб, стосовно яких прийнято рішення про оформлення документів для вирішення питання щодо надання статусу біженця”, затверджений Наказом Міністерства охорони здоров'я України №82 від 04.03.1983 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0379-02>)
- 68 “Тимчасова інструкція про оформлення документів, необхідних для вирішення питань про надання, втрату, позбавлення статусу біженця”, затверджена Наказом Державного комітету України у справах національностей та релігій №20 від 29.04.2002 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0422-02>)
- 69 “Положення про проїзний документ біженця для виїзду за кордон”, затверджений Постановою Кабінету Міністрів №1526 від 11.10.2002 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1526-2002-%EF>)
- 70 “Інструкція про порядок прийняття та передання заяв про надання статусу біженця органами Державної прикордонної служби України органам міграційної служби, а також надання пояснень про причини незаконного перетинання кордону”, затверджена Наказом Державного комітету України у справах національностей та релігій та Адміністрації Державної прикордонної служби №32/521 від 09.07.2004 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0968-04>)
- 71 “Порядок оформлення, видачі та продовження терміну дії посвідчення біженця”, затверджений Наказом Державного комітету України у справах національностей та релігій №69 від 09.09.2005 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1319-05>)
- 72 “Порядок надання медичної допомоги іноземцям та особам без громадянства, які тимчасово перебувають на території України”, затверджений Постановою Кабінету Міністрів України №667 від 22 червня 2011 (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=667-2011-%EF>)
- 73 Постанова Пленуму Вищого адміністративного суду України №1 “Про судову практику розгляду спорів щодо статусу біженця, видворення іноземця чи особи без громадянства з України та спорів, пов'язаних із перебуванням іноземця та особи без громадянства в Україні” від 25.06.2009 (http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v_001760-09)

visa regime for Ukrainian citizens. The latest serious changes were introduced into the Law of Ukraine “On the Status of Foreigners and Stateless Persons” as recently as 05.04.2011. In a short while this is expected to be replaced by completely new piece of legislation under the same name that was pre-approved by the Parliament on 5 July 2011. A whole range of substantial amendments into other relevant regulations are going to enter into force at the end of September 2011. The Law “On Refugees” of 2001 is currently being replaced by the Law “On Refugees and Persons in Need of Additional or Temporary Protection” that was approved by the Parliament on 08 July 2011 and it is awaiting President's signature in order to enter into legal force.

Ukrainian legal framework concerning the rights of foreign nationals and stateless persons is characterized by many gaps, contradictions and inconsistencies and falls short of meeting international human rights standards, including prohibition of racial discrimination that Ukraine had declared obligatory for itself. The deficiencies of the current legislation have led to a vast number of serious violations of the human rights of foreigners and stateless persons by Ukrainian authorities. In practice this problem disproportionately affects non-nationals of African, Asian origin as well as those coming from Caucasus region. Abuse against non-nationals in Ukraine, including asylum seekers, has been documented extensively by Human Rights Watch in a range of its reports and statements published from 2005 to 2011⁷⁴ and Amnesty International, UNHCR and national human rights organisations. Civil society organisations putting together this report welcome the political will demonstrated by the Ukrainian authorities to reform relevant laws and regulations. However, they note with regret 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.

III.2. Stereotyping and stigmatising the members of “non-citizen” population groups on the basis of “race”, colour, decent and national and ethnic origin underpins legislative reforms (CERD General Recommendation №30, para 11 and 12).

It is officially declared that the current legislative reform in the field of migration and the status of non-nationals is intended to bring relevant legislation in compliance with Ukraine's obligations under international law, including in the field of human rights⁷⁵. However, despite these declarations there are grounds to fear that the legislative reform that is under way is likely to be disadvantageous for the human rights of non-citizens in Ukraine and even greater racialisation of migration management. It is because since after 2002 migrantophobic or even overtly racist arguments have been put forward by politicians to justify now frequent changes in migration-related legislation.

For example the author of the Draft Law “On Amendments to Some Acts of Legislation of Ukraine

74 “Ukraine: On the Margins”, Report by Human Rights Watch, November 2005 (<http://www.hrw.org/en/reports/2005/11/29/ukraine-margins>); European Union: Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees, Briefing Paper, Human Rights Watch, October 2006. (<http://www.hrw.org/legacy/backgrounder/eca/eu1006/>); Review on Ukraine's Compliance with the ICCPR, Letter to the United Nations Human Rights Committee, Human Rights, October 2006 (<http://www.hrw.org/en/news/2006/10/15/review-ukraine-s-compliance-iccpr>); “Buffeted in the Borderland : The Treatment of Asylum Seekers and Migrants in Ukraine”, Report by Human Rights Watch, December 2010 (<http://www.hrw.org/en/reports/2010/12/16/buffed-in-borderland>); “Fortress Europe and the EU-Ukraine Migrant Pact”, Human Rights Watch, December 2010 (<http://www.hrw.org/en/news/2010/12/17/fortress-europe-and-eu-ukraine-migrant-pact>); “EU must stop returning migrants to Ukraine: Detainees describe torture at the hands of Ukrainian officials”, Frelick, B. director of the Human Rights Watch Refugee Programme, January 2011 (<http://www.hrw.org/en/news/2011/01/15/eu-must-stop-returning-migrants-ukraine>)

75 See The Concept note on the state migration policy” approved by the Decree of the President of Ukraine №622/2011 of 30.05.2011 (<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=622%2F2011>); EU-Ukraine Association Agenda of 12.02.2010 (eeas.europa.eu/delegations/ukraine/eu_ukraine/political_relations/association_agenda/association_agenda_en.htm)

Related to Migration”⁷⁶ by which the most recent amendments were introduced into the Law of Ukraine “On the Status of Foreigners and Stateless Persons” justified necessity of its adoption as follows:

“According to the report of the Secretary General of UN, devoted to the monitoring the world demography, Ukraine is on the 4th place in the world by number of international migrants (6.8 million international migrants which constitutes 3.6% of the general number of migrants in the whole world, according to the 2005 data). Every year borders of our country are crossed officially by 30 millions of foreigners.

According to the last statistics of MoI of Ukraine, in 2003-2008 citizens of foreign states committed over 15 thousand crimes, which predominantly involve property and drugs. Value of the goods which illegal migrants are attempting to transport through the border of Ukraine, seized by customs, constituted hundreds of thousands of hryvnas every year.”⁷⁷

Such statements misinterpret the reality⁷⁸ and serve to present non-citizens, first of all, those coming

76 Закон України “Про внесення змін до деяких законодавчих актів України” від 05.04.2011 (eeas.europa.eu/delegations/ukraine/eu_ukraine/political_relations/association_agenda/association_agenda_en.htm)

76 Закон України “Про внесення змін до деяких законодавчих (<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3186-17>)

77 Explanatory note to the Draft Law “On amendments to some acts of legislation of Ukraine related to migration” ()

78 Since recently the topic of 'irregular migration' has occupied a prominent role in the popular public discourse, as it has been one of the priorities in the political agenda of the current as well previous government. The very term 'migrant' is popularly understood as an equivalent to 'illegal/irregular migration'. Which is why '6.8 million international migrants' is widely interpreted by media and extreme-right as a number of 'illegal migrants' present in Ukraine. Media use this impressive figure to create a sensation (for example: <http://tsn.ua/ukrayina/pochala-diyati-ugoda-pro-readmisiyu-ukrayina-chekeye-potoku-nelegaliv.html>; <http://www.radiosvoboda.org/content/article/24255361.html> and many more). Far-right are eager to cite it to create a fear and hostility among the general population against people who on the ground of their phenotype are perceived as 'foreigners'. Thus in November 2009 a spokes person of the migrantophobia-oriented political party VO “Svoboda” stated at the press-conference devoted then soon coming into legal force of the Readmission Agreement between EU and Ukraine: “According to data of the UN [...] during the years of independence 7 million of *illegals* entered Ukraine” (<http://www.interfax.com.ua/ukr/press-conference/25802/>). Their activists frequently organise marches “against illegal migration” all around Ukraine where they 'clarify' what they think is the origin of those '*illegals*' and what are the 'consequences' of their arrival: [urging to “stop invasion of illegals into Ukraine] “During recent years around 7 millions of migrants coming from *Africa, Asia and Caucasus* entered the territory of Ukraine. [...] Illegal migrants bring us diseases, drugs, unemployment and turn the streets of our cities into nests of criminality and ethnic Mafia” (<http://www.svoboda.org.ua/diyalnist/novyny/012753/>). This figure originates from the 2006 report by the UN Secretariat's Department of Economic and Social Affairs/Population Division (POP/DB/MIG/Rev.2005/Doc) and pertains to a number of current residence of Ukraine who were born outside outside its modern territory who are regarded as international migrants. In view of the fact that, as demonstrated above, references to this number have an effect of inciting hatred against 'non-white' minorities in Ukraine, local and international experts, decided to stress that this figure in fact seriously falsifies the reality, because most of the inflows of individuals who were born outside Ukraine's modern territory actually occurred before 1991, thus they were internal migrants within USSR. (For example, 44% of population self-identifying as Russians who currently reside in Ukraine, were born outside of its modern territory. Furthermore, the end of 1980s and the beginning of 1990s were characterised by intensive migration processes within former Soviet Union comprised of repatriating populations who/whose ancestors were forcibly removed during Soviet era from the areas of their traditional residence; servicemen of Soviet Army troops stationed in Central and Eastern Europe before the collapse of the Soviet Union and their families; as well as a large number of individuals who identified themselves as ethnic Ukrainians, and did not reside on its territory as a result of a range of diverse circumstances (Pylinsky, Y.M., ed. “Nontraditional” Immigrants in Kyiv: Seven Years Later [«Нетрадиційні» іммігранти у Києві: сім років потому / За заг. Ред. Пилинського Я.М. – К.: Стилос, 2009], Woodrow Wilson International Center for Scholars, Kennan Institute, 2009 available at www.kennan.kiev.ua/kkp/content/publications/research.htm; Düvell, F. and Vollmer B., “Irregular Migration in and from the Neighbourhood of the EU. A comparison of Morocco, Turkey and Ukraine”, *Clandestino: Undocumented Migration. Counting the Uncountable. Data and Trends Across Europe*, Centre on Migration, Policy and Society (Compas), University of Oxford, September 2009, available at <http://clandestino.eliamep.gr/category/irregular-migration-transit-countries>).

The second figure cited by the author of the discussed draft law (30 millions of foreign nationals who crossed the border of Ukraine) is also manipulative as it suggests that those 30 millions of foreigners had arrived and never left. It fails to specify that border crossing means both entry and exit and seems to omit the fact that prevailing majority of those

from African and Asian countries as well as those originating from Caucasus, as a threat. However, the above example is only mild and the most subtle form in which hate speech against certain groups of non-citizens in Ukraine is frequently expressed by politicians representing all sides of political spectrum. When debated in Parliament⁷⁹ the said draft law attracted wide support from representatives of all political forces. For example a member of an opposition party said the following to support the draft law proposed by his political rival:

“[While working in the Parliamentary Committee on the suggested draft law] I visited Brussels, and I visited Berlin, where I discussed with people who deal with these issues, namely with issues of migration... their migration policy. I was in Brussels that is hardly like Brussels already, where very liberal policy is being carried out, where, it might be, it is more of black people, who look like Arabs, then native Brusselians and native inhabitants of that country. [...] We are not ready yet to receive today such a quantity of illegals, who may now flood us. [...] In Berlin, as I was assured by Oberbrygermaister [...] that in Germany every ninth person - every ninth! - is not German any more. And I say: “Are you afraid of this?” She says: “[We] are getting afraid a bit already.” [...] I ask everyone today: I ask Sirs-nationalists [...], I ask comrades communists, I ask sirs-capitalists [...] to support today this Draft Law, because it is our Ukrainian law [...]. I hope for your rational position and protection of Ukraine in this respect.”⁸⁰

A representative of a party that is headed by the current speaker of the Parliament also expressed his favourable opinion about the draft law:

“The main attention in this draft law is directed at regulating at the legislative level precisely those relations that occur around the border. We, however, have to understand that it is not enough, because ... after crossing the border they start... these people start living in Ukrainian society already. And here we have terrible things happening [...]. We have the whole colonies being created of people with alien culture, with alien language, with non-traditional diseases, that are lairs of drug-trafficking, and etc., and etc., and etc... I think this process should be further improved in those aspects, in order to enhance criminal liability and create such conditions, so that inside Ukraine itself this people would not behave with such impunity... [...] Ukraine is not a thoroughfare. It is a state. We have to create conditions to make sure that there are work places for our own citizens, so that our citizens would not leave their own country and would not go abroad because they are being pushed out from their work-places by immigrants. In other words we are in favour of regulating these processes, however, not on the grounds of liberalism, but on the grounds of a kind of rigid conservatism. Only then we will have a protected territory and only then we will have Ukraine protected from threat. Otherwise we will wash out our own nation.”⁸¹

Another member of a ruling party decided to take an opportunity to criticize the previous government (now in opposition) through his support to the legislative initiative by his party fellow:

“...it was not enough for the [the previous] Government... to turn Ukraine into a migration drain sump..., when God knows who comes, and then we have all sorts of pandemics, children are getting sick, God knows what is happening in the country, criminality increases.”⁸²

foreign nationals who cross Ukrainian borders are nationals of neighbouring countries. It also does not specify that the statistics notes number of incidents of border crossing by a non-nationals but not his or her identity, which means that those who cross the border of Ukraine many times a year would be counted in it repeatedly.

The figure pertaining to 'crimes committed by foreigners' is not placed in the context of the general statistics on crime. For example only during 2005 total number of documented crimes was 485725, in 2006 – 420900, in 2007 – 401293; and in 2008 – 384424 (around three times more incidents were reported to the police as crimes but not taken into investigation). Thus, during a period when non-citizens allegedly committed 15000 crimes the total number of incidents in which criminal proceedings were initiated was 1 million 692 thousand and 342 (www.mvs.gov.ua). That means that the percentage of crimes allegedly committed by non-citizens constituted less than 0,01% out of total number.

All these suggests that the author of this draft law deliberately misrepresented the figures to present non-citizen population as a 'problem' and a threat to security and public order with the aim of justifying even stricter migration rules that were eventually approved by the parliament.

79 Parliamentary debates are broadcasted live at the special TV Channel “Rada” that has national coverage: <http://www.rada.gov.ua/~dtrp/>

80 Verbatim Record of the 48th meeting of the VI assembly of the Parliament of Ukraine, 22 January 2010 (www.rada.gov.ua/zakon/skl6/5session/STENOGR/22_01.htm)

81 Ibid.

82 Ibid.

Needless to say that these and other similar statements of the political elites of Ukraine that do not have any factual basis contribute to stigmatization of non-citizens particularly those who are perceived as 'non-white' and simultaneously as 'potential undocumented migrants'⁸³. It is not surprising in this context that not only ongoing legal reforms instead of ensuring adequate protection of the rights of non-citizens, including protection from discrimination, lead to their further infringement, but also that certain groups of non-citizens who because of their phenotype are perceived as potential (or actual) undocumented migrants suffer abuse and harassment from general population and authorities.

III.3 Stereotyping of non-citizens on the basis of their national origin by the authorities. Ethnic profiling by Ukrainian police as a 'tool' of enforcement of migration rules.

(CERD General Recommendation №30, para 12)

Anti-discrimination provisions are contained in most of the framework normative that govern the work of Ukrainian authorities. For example Article 5(2) of the Law of Ukraine “On Militia(Police)”⁸⁴ 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, officials of Ukrainian authorities (from administrations of state-owned universities to police, including immigration authorities) are often guided by stereotypes and sometimes even overtly racist convictions particularly when dealing with non-citizen population. It appears that discriminatory treatment of authorities against certain groups of non-citizen population is rooted in stereotypes discussed above.

Among other the popular beliefs that non-citizens originating from Africa, Central and South-East Asia, Middle East and Caucasus all 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. For example the State Committee on Nationalities and Religions, the authority that up until 10 December 2010 was responsible among other for forming and implementing policies in the field of inter-ethnic relations, migration and protecting the rights of ethnic minorities, stated the following in its summary on migration situation in Ukraine in 2009: “Out of 42,6 thousands foreign students who study in Ukraine – 23.3% (or 9952) students originate from the republics of former USSR and 73.3%, or 31261, are *citizens of countries that are traditionally supplying illegal migrants*, in particular 1203 citizens of Vietnam, 2971 – of India, 1618 – of Iraq, 1806 – of Iran, 2526 – Jordan, 6638 – China, 2067 – Nigeria, 636 – Pakistan, 567 – Palestine, 1864 – Syria and other countries of Asia and Africa are studying in Ukraine”⁸⁵. Experts of Eastern European Development Institute note in their research paper “Unheard Voices – Problems of Immigration, Human Rights and Freedoms In Ukraine” that Ukrainian government and university administrations presume that foreign students, particularly those who are coming from African and Asian countries, after graduation intend to stay in Ukraine illegally, engage in retail sales on some street market or even criminal activity⁸⁶.

The Social Action Centre/No Borders Project was recently approached by a female Congolese student who had commenced her studies at a preparatory (language) course at one of the state colleges in Kyiv in Autumn 2010. Soon after arriving to

83 For more examples of hate-speech by Ukrainian politicians directed against non-citizens originating from Caucasus African, Middle Eastern, Central and South-East Asian countries see: Human Rights in Ukraine 2009-2010: Generalized Report by the Ukrainian Helsinki Human Rights Union (<http://khpg.org/index.php?id=1298355452>)

84 of 20.12.1990 (Закон України “Про міліцію” від 20 грудня 1990р.: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=565-12>)

85 See: http://www.scnm.gov.ua/control/uk/publish/article?art_id=134359&cat_id=4792 2

86 “Unheard voices – problems of immigration, human rights and freedoms in Ukraine”, Research Report by the East European Development Institute, Kyiv: “Fera”, - 2008, p.90

Ukraine she found out that she was pregnant. According to the Law of Ukraine “On Citizenship” children born of foreign nationals who are residing (even temporarily) in Ukraine legally are entitled to Ukrainian citizenship if they do not acquire citizenship of their parents. The said student could not have known about this rule because information on legal particularities on acquisition of Ukrainian citizenship is simply not available in public domain in languages other than Russian or Ukrainian, particularly from abroad. However, the administration of the college where she arrived to study without even communicating to her properly (the student has only started learning Russian and the dean of the department responsible for international students did not speak any French) assumed that she has intentionally concealed the fact of her pregnancy in order to register her child as a citizen of Ukraine and get permission to immigrate on the basis of her child's Ukrainian citizenship. First the university administration were demanding that she makes an abortion. When she refused they that she has to go home to the Republic of Congo to give birth and only after that may come back to continue her studies. She opposed saying that it would be too expensive and to burdensome for her to go back and forth during the study year that she intended to complete. Then she was suggested to pay 1500 US dollars allegedly for medical insurance. To that she suggested that she did not understand why it was needed because she had a comprehensive medical insurance, but even with that it was customary in Ukraine to pay extra directly to doctors⁸⁷. A bit more than a month before giving birth she was invited to the Dean's office to sign some documents in Ukrainian or Russian that she did not understand. She was assured then by the university agent that signing those documents was a pure formality related to her expected absence from classes for a short while when she will be giving birth. Situation repeated at immigration police office where she was invited shortly after. However, around two weeks before her baby was due she found out that she was expelled from the university and that immigration police put a deportation stamp in her passport. It became apparent later that the document she was asked to sign by the university administration was a request to “expel her at her own will”. The same night she was kicked out from the student dormitory. With the deportation stamp in her passport she became an undocumented migrant and risked being not admitted to the hospital when two weeks after she gave birth to her child. As a consequence she faced enormous difficulties in registering her child because there is no Embassy of Republic of Congo in Ukraine. To fully understand in what situation she was put by the administration of her college and migration authorities one has to remember that in order to be able to leave Ukraine together with her child this student will need to go through a whole range of administrative procedures that are imposed by the authorities to prevent cross-border trafficking in children and that those procedures will simply not be accessible to her due to the deportation stamp in her passport.

Many universities where international students study place them in separate dormitories thus segregating them from Ukrainian students⁸⁸. There were cases reported when university administrations deliberately instructs local students not interact with international students. For example, a student from Africa who took part in a focus-group conducted by a Fulbright scholar Elise Garvey in 2008 in the

87 According to “Procedure for provision of medical assistance to foreigners and stateless persons temporary residing in Ukraine”, approved by the Cabinet of Ministers' Decree №667 of 22 June 2011 medical assistance, including urgent, may be provided to non-citizens only in exchange for payment. Exception to this rule only applies to foreign nationals and stateless persons who have a status of permanent residents. Accordingly this exception does not apply to university student, and what is even more worrying, to asylum seekers. Consequently every foreign student in Ukraine is obliged to purchase medical insurance, however, it is not sufficient to guarantee him/her adequate medical assistance. Due to inadequate remuneration offered to staff of the state-owned hospitals and clinics as well as their insufficient resourcing every patient (be it Ukrainian citizen or not, regardless of ethnicity, religion, 'race' or skin colour etc.) is usually suggested informally to pay doctors for their services. Amounts of such 'medical bribes' vary depending on the type of the service and the location of the medical institution. Thus, despite the fact that foreign nationals residing temporarily in Ukraine are obliged to purchase medical insurance, in addition to that, if they want to get good quality care, they like Ukrainian citizens for, who treatment is 'free of charge', still have to pay directly to doctors because the insurance money does not increase the low wage of the former. (See “Unheard voices – problems of immigration, human rights and freedoms in Ukraine”, Research Report by the East European Development Institute, Kyiv: “Fera”, - 2008, p.85 for more details). When it comes to emergency treatment one should note to the honour of Ukrainian medical professionals that usually it has been provided to every person in need regardless of their nationality, 'race', skin colour, ethnicity, religion and availability of means to pay for medical assistance. However, the above cited recent regulation practically instructs doctors to refuse urgent help to certain categories of non-nationals, including asylum seekers, who do not have sufficient funds to pay for it, which in practice may cost them lives. Such situation brings into light the lack of compliance with the following recommendation of CERD: “Ensure that States parties respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services” (CERD Recommendation №30, para 36).

88 “Unheard voices – problems of immigration, human rights and freedoms in Ukraine”, Research Report by the East European Development Institute, Kyiv: “Fera”, - 2008, p. 89

framework of her research “The Experience of Foreign Students in Kiev” testified:

“When I was in PodFak [preparatory course], we had a situation where the head of the dormitory had a meeting with the Ukrainian students and told them, “You shouldn’t mix with the foreign students because foreigners always bring diseases.”⁸⁹

Such practices are not characteristic to every university of Ukraine that offer higher education to international students (for a considerable fee). However, they are widespread enough throughout the country to provide reasons for alleging non-compliance of Ukraine with CERD recommendation for the State-Parties to the Convention to “avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, colour, descent and national or ethnic origin [...] with respect to higher education” (CERD Recommendation №30, para 31).

Another widespread manifestation of discriminatory practices of authorities targeting non-citizens of African, Central, South-East Asian and Caucasus origin 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 police⁹⁰. As noted by the Ukrainian Helsinki Human Rights Union (UHHRU) ‘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 colour, different shape of eyes, accent or other purely biological characteristics that a perceived to characterise a non-European would definitely attract attention of law enforcement authorities. Such attention often results in unlawful and arbitrary detention or forced finger printing. According to UHHRU observations in some cases such treatment is combined with racist slurs expressed by police officers, racist harassment, brutality and even physical abuse.

Since after 2001 when “combating illegal migration” has been defined as one of the top priorities in the work of the Ministry of Interior Ukrainian law enforcement authorities have started actively targeting people of non-European appearance on everyday basis. According to the data of the Association of Ukrainian Human Rights Monitors (UMDPL) the law enforcement agencies began to carry out annual investigation and search operations with the code names like “Alien”, “Migrant”, “Student”, “Tourist”, “Businessman”, etc., aiming at identifying the foreigners that failed to comply with migration rules. It also began to form and keep the centralized fingerprint records (the program called “Migrant”) and introduced the multi-level control over foreign nationals over-staying their residence permits. Virtually all departments of MoI have been engaged in such actions aimed at enforcement of migration rules. Law enforcement officials, with no respect to the rights to private life, right to security of a person, and sanctity of home, conducted mass-scale raids on student dormitories and private houses and flats, stopped and checked the “suspicious” cars, audited the companies where organizers or employees were foreign nationals. The practice of street document inspection became widely used if a person’s appearance was “non-European”, accompanied by seizure of their passports for further verification of

89 Garvey, E., The experience of foreign students in Kyiv, November 2008, p.9

90 See “Unheard voices – problems of immigration, human rights and freedoms in Ukraine”, Research Report by the East European Development Institute, Kyiv: “Fera”, - 2008; Garvey, E., The experience of foreign students in Kyiv, November 2008; Pylynsky, Y. et. al. “On the Front Burner: Tolerance!: collection of articles”, Woodrow Wilson International Center for Scholars, Kennan Institute, 2008 (Актуально: толерантність!: 36. ст./За ред. Ярослава Палинського: www.kennan.kiev.ua/kkp/content/publications/research.htm); Ruble, B.A. (2008) Establishing a New Right to the Ukrainian City, Woodrow Wilson International Center for Scholars, Kennan Institute, The Eurasian Migration Papers #1. (www.kennan.kiev.ua/kkp/content/publications/research.htm) and others.

their status in Ukraine⁹¹.

The UMDPL also observe that numbers of 'identified undocumented migrants' and 'deported non-citizens' are used by the Ministry of Interior as performance indicators in course of 'countering illegal migration'. Thus, to show the Government through reports that MoI has been 'efficiently countering illegal migration' high-ranking officials at the Ministry have demanded that their subordinates provide the required indicators as well as ensure that such indicators steadily increase over the years. These indicators were monitored at the highest level, and the local police chiefs who could not deliver the expected (at the MoI) results (e.g. 'increased number of identified illegal migrants' and 'increased number of deported non-nationals') were subjected to severe disciplinary measures⁹². For example in 2010 MoI sent to its local branches the following instructions (MoI Directive №10841, “On Drawbacks in Law Enforcement Practice on Fighting Illegal Immigration” on 18.06.2010, extracts):

“According to the decision of the Ministry's Headquarters of 23.04.2010, one of the top priority tasks for the MIA in 2010 is to continue its fight against illegal migration; however, our analysis of the completed work in this direction demonstrates that there has been certain slackening in this important sector of day-to-day militia activity. As compared to the year before, the number of identified illegal migrants dropped by 8%, the number of deported persons also decreased. In the following regions detection of illegal was unsatisfactory (a list of such regions). [...] In light of the above, it is necessary to perform a detailed analysis of the current conditions related to fighting illegal migration, and to take the required steps to intensify the work in this priority area of law enforcement activities. I would like to warn everybody about their personal responsibility for the work efficiency of their subordinates regarding countering illegal migration. [...]”.

Rank-and-file police officers testify that they are subjected to serious pressure by central authorities to deliver high 'indicators' (number of 'identified illegal migrants' and number of deportations):

“The proper figure on “caught illegals” had to be submitted any way possible. [...] we (district/local inspectors and officials of the police departments for citizenship, immigration and registration of persons [passport departments]) were literally squeezed to produce the required figures. It all becomes very fussy when the special operations like “Migrant” or “Market” are initiated; our chiefs conduct meetings on a daily basis, demand feedback and reports, but if there is nothing to report on, what do you do than? Nobody cares about the fact that it may be a rural area and foreigners do not even come there. [...] It is easier to passport departments, foreigners come there themselves. So, the officer opens the passport and sees if there may be some omissions – like delayed registration or a blurred stamp – that it you can process the bearer of that passport as illegal migrant”⁹³

Unlike the officials of the police departments responsible for citizenship, immigration and registration of persons who may look at stamps in passports to produce their performance indicators, officers of other branches of the police almost exclusively rely on phenotype of a person as ground for suspicion that he/she might be an undocumented migrant.

“I have just started pulling out my documents whenever I see police because I know they're going to stop me about it. We know the police are not here to protect us” - testified a student from Africa who studied in Kyiv⁹⁴.

Para 5 of the “The Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, Their Exit from Ukraine and Transit through Its Territory” approved by the Cabinet of Ministers' Decree No. 1074

91 See "Human Rights in activities of Ukrainian Police – 2010", report by the Association of Ukrainian Monitors of Human Rights Observance in the Activities of Law-Enforcement Agencies (UMDPL), Chapter 10: “Protection of rights of foreigners , refugees and asylum seekers in Ukraine” (<http://noborders.org.ua/en/fields-of-work/refugees-and-asylum-seekers/report-protection-of-right-of-foreigners-refugees-and-asylum-seekers/>)

92 Ibid.

93 From an interview with P., former district militia inspector who retired in 2010, see "Human Rights in activities of Ukrainian Police – 2010", report by the Association of Ukrainian Monitors of Human Rights Observance in the Activities of Law-Enforcement Agencies (UMDPL), Chapter 10: “Protection of rights of foreigners , refugees and asylum seekers in Ukraine” (<http://noborders.org.ua/en/fields-of-work/refugees-and-asylum-seekers/report-protection-of-right-of-foreigners-refugees-and-asylum-seekers/>)

94 Garvey, E., The experience of foreign students in Kyiv, November 2008, p.5

dd. 29 December 1995, as amended on 05.06.2000 requires all non-citizens to constantly have their national passports registered at Ukrainian police and be able to show that document to law enforcement authorities whenever requested. However, in practice of law enforcement authorities this requirement almost exclusively applies to non-European looking individuals. For example, in Kharkiv ethnic profiling is obviously evident, in particular on the territory of metro, and appears to be a regular practice for law enforcement in the city. The observation carried out by the Social Action Centre/No Borders Project revealed that local police target for ID checks exclusively people on non-European appearance. During observation carried out by the organisation at the entrance to one of the metro stations No Borders Project staff noted that the police officers stopped every individual or group who 'looked non-European' without paying any regard to all the rest of the metro users. Police requested that the apprehended individuals not only present their passports, but also was checking other documents. At the meeting with Project staff, international students who study in Kharkiv expressed concerns about having to constantly carry on them not only their passport, as prescribed by Ukrainian legislation, but also a dormitory pass, student ID, and tenancy contracts for those not living in the dormitory. In case they do not present some of these extra documents when stopped by police, they may be subjected to harassment and extortion, while not having a passport on them (that may happen even if they forgot at home) almost certainly leads to detention.

V. Manukyan, a lawyer from Kharkiv, who is a Ukrainian citizen of Armenian ethnic origin, got tired of constant ID checks and sued a police officer who apprehended him at one of the metro stations in November 2006 and held him there for some time to check if he was indeed a Ukrainian citizen causing Mr. Manukyan to be late to work. V. Manukyan first requested the officer's superior to explain him the reasons of his apprehension. The response indicated that the reason behind apprehension was Mr. Manukyan's "characteristic appearance"⁹⁵. This affirmed a lawyer's suspicion that he was targeted because of his ethnicity and he filed a law suit against the police officer alleging discrimination. The local court however, did not consider the treatment Mr. Manukyan was subjected to unlawful or discriminatory and agreed with the argument of the police that "due to characteristic appearance of Mr. Manukyan [the said police officer] had reasonable grounds to suspect that he may be a foreign national and may be violating migration rules, hence he had lawful grounds for apprehension of Mr. Manukyan for ID check."⁹⁶ The court of appeal also did not find any signs of discrimination in the treatment of Mr. Manukyan by the police officer⁹⁷.

Ethnic profiling by Ukrainian police currently puts in particularly vulnerable position persons of non-European origin who arrived to Ukraine to seek asylum. It is because until the current system of asylum seekers' documentation that provides for four different types of documents pertaining to different stages of refugee status determination procedure (RSD) is fully replaced by the one suggested by the *Law of Ukraine "On Refugees and Persons in Need of Additional or Temporary Protection"* (the law was adopted by the parliament and is currently awaiting Presidential signature to enter into legal force, but still require time to be implemented) on certain stages of procedure asylum seekers may be left with no documents at all⁹⁸. The following example from the practice of the Social Action Centre/No Borders

95 See <http://www.khpg.org/index.php?id=1203540735>

96 See <http://www.khpg.org/index.php?id=1207754822>

97 See <http://www.khpg.org/index.php?id=1218058510>

98 For example, when the asylum seeker is served with the notification on decision to refuse him in refugee status the document certifying that his asylum application is being considered by the authorities get ceased from him. Such person has a right to appeal against the rejection in refugee status to the court and once his appeal is being considered by the court he is entitled to the different type of document. However, that next certificate may only be issued to asylum seeker once the local migration service receives formal notification from the court that court proceedings were initiated concerning that asylum seekers appeal. It takes time for the courts to register the appeal and initiate proceedings on it, before it can send a notification to respondent who is a central authority (that was a State committee on Nationalities and Religions until December 2010, currently its status is not even clear), who then forwards a copy of this notification to the local migrations service, which on the basis of this document issues a new type of certificate. Naturally this process takes a long time. It even happens that notifications or even appeals get lost in it.

Project is illustrative of this problem:

In spring of 2008 an asylum seeker from Uzbekistan was detained by local police in such circumstances three times during four month. Notably before he was detained the last time he was finally issued with asylum-seeker's certificate and presented it to the police at the time of apprehension. Nonetheless police affected the detention because they did not have any knowledge about documentation of asylum seekers.

Mindful of the practice of ethnic profiling employed by Ukrainian police, in order to provide at least some protection to asylum seekers left with no documentation due to the deficiencies of Ukrainian legal framework governing RSD, UNHCR office in Kyiv was issuing them with protection letters. In 2008 NGOs that in cooperation with UNHCR provide assistance to refugees and asylum seekers received reports that local police were instructed by MoI headquarters that holders of UNCHR protection letters were all 'illegal migrants' and had to be specifically targeted⁹⁹.

However, non-European looking non-citizens may be subjected harassment as and detention even in those cases when they are able to present the police with every necessary and unnecessary document certifying the lawfulness of their status in Ukraine. Thus, in early 2009 Social Action Centre/No Borders Project was informed by international students who studied in Vinnytsya that in course of "Illegal Migrant" operation that was carried out by local police, a number of students of African and Asian origin were detained despite valid residence permits on them. Police officers who apprehended them said they "did not care about their documents", but were detaining them because they needed statistics on apprehended number of "illegal migrants".

In order to justify such high prioritisation 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'. According to UMDPL research it is MoI who are responsible for popular perception of 'undocumented migrants' as "terrorists, criminals, carriers of contagious diseases, or as people who will certainly take your job away from you". MoI were regularly publicizing and widely disseminating statistics pertaining to a number of "crimes committed by foreigners" that were taken out of the context of the total number of crimes committed in Ukraine for the same period of time. MoI press releases until very recently disproportionately highlighted criminal incidents where suspects were foreign nationals, particular originating from Caucasus, although fortunately Ukraine has not been affected by terrorism, certain statements released by MoI alleged that non-citizens of Middle Eastern or Caucasus origin posed a terrorist threat to the population of Ukraine¹⁰⁰. Such racist stereotypes about non-citizens originating from certain regions of the world were not only widely disseminated by MoI through media but also incorporated in regulations and instructions governing the work of local police.

For example methodical recommendations "On the Procedure to be followed by Militia Officials as to Identifying and Registering Illegal Migrants on the Territory of Ukraine", prepared by Dnipropetrovsk State University of Internal Affairs and the State Department on Citizenship, Immigration, and Registration of Persons at the Ministry of Interior that was disseminated among local police departments throughout Ukraine states the following:

"Analysis of the migration processes in the last decade shows that the problem of illegal migration is on the rise... The law enforcement authorities identified approximately 13.6 thousand illegal migrants in 2008, which indicates

99 More information on effects of ethnic profiling by Ukrainian police on refugees and asylum seekers will be presented below in special section devoted to their situation.

100 Ibid.

an 11% rise against the previous year. Mostly hoping to find better living conditions in Ukraine, migrants from the third-world countries and overpopulated areas intend to cross our border... for the most part, they have little education, insufficient working skills; they are prostitutes, former criminals or persons who try to avoid lawful punishment in the countries where they came from; many of such persons carry dangerous infectious diseases.

Migrants who currently stay in our country are mostly from the African and Asian regions. They have different mentality, culture, religion, and perception of the world. Their communities clash (intentionally or unintentionally) with the traditional way of life of the local people, thus creating problems and affecting the general ethno-political situation. Besides, migrants commit crimes or openly disregard administrative regulations, and it brings discredit upon the migrants as a whole. In the year 2009 alone... 116 crimes committed by illegal migrants were recorded.

In connection with the above argumentation, the problem of fighting illegal immigration in Ukraine is increasingly pressing....”¹⁰¹

It is not very difficult for an expert to deconstruct these statements as in reality even despite the practice of ethnic profiling targeting non-citizens of African, Asian, Middle Eastern and Caucasus origin it is not them who according to the statistics on administrative liability for violating migration rules form the majority of offenders of such rules. On the contrary prevailing majority of offenders of migration rules originate from Ukraine's neighbouring countries like Russia, Belarus and Moldova. However, these overtly xenophobic statements are part of the practice instruction given by MoI headquarters to their subordinates. Which is why it is only reasonable to suspect that these regulations not only lead to police specifically targeting individuals, who are perceived as originating from “the African and Asian regions”, for ID checks, but also that non-European (looking) non-citizens are disproportionately affected by the quest of the Ukrainian police for increasing the number of deportations that serves as an indicator of their success in 'fighting illegal migration'¹⁰². Moreover, such instructions are bound to result in spread of stereotypes about people of African and Asian origin not only among general population but also among the police, who might be later acting them out while policing the society. An incident that occurred on 18 July 2010 in a supermarket “Target” in Kharkiv is illustrative that negative stereotypes about non-citizens of certain ethnic background are in fact being acted out by some police officers in their work:

That day a citizen of Uganda O. entered the supermarket and was approached by police guarding the premises, who requested him to show his passport. After that they took him to one of the service rooms located on the second floor of the building and started searching him. They explained that they are looking for drugs. The search was conducted without proper documentation and witnesses that law requires to be present in such occasions were not invited. While searching him they used racist insults against him. When he protested against their behaviour they beat him¹⁰³.

Another example reported by UMDPL is also illustrative of a the fact that Ukrainian police tends to conceptualize those, who are perceived as potential or actual undocumented migrants, as criminals.

Thus, during the operation “Illegal” in Rivne police entered a restaurant where a group of businessman including a head and leading engineers of a Azerbaijani construction company as well as their French and Ukrainian partners were dining. Police demanded “all blacks” meaning Azerbaijanis to leave the premises to present their IDs to the police outside. The police explained that they need to carry out ID check of Azerbaijanis because they were searching for criminals and undocumented migrants, thus needed to check individuals from Caucasus region as possible suspects. The incident was resolved after a lengthy discussion between the police and Ukrainian and French businessmen who managed to convince the officials that their Azerbaijani colleagues were not criminals, but engineers¹⁰⁴.

101 Ibid.

102 See more in the following section

103 Ukrainian Helsinki Human Rights Union, “Human Rights in Ukraine in 2009-2010: Generalized Report” (<http://khpg.org/index.php?id=1298355452>)

104 "Human Rights in activities of Ukrainian Police – 2010", report by the Association of Ukrainian Monitors of Human Rights Observance in the Activities of Law-Enforcement Agencies (UMDPL), Chapter 10: “Protection of rights of foreigners , refugees and asylum seekers in Ukraine” (<http://noborders.org.ua/en/fields-of-work/refugees-and-asylum-seekers/report-protection-of-right-of-foreigners-refugees-and-asylum-seekers/>)

Apart from that certain groups of non-citizens are also perceived by law enforcement authorities as 'terrorists'. For example, in response to a request from the Social Action Centre/No Borders Project to inform what work is being carried out by MoI in Dnipropetrovsk region to address supposedly racist incidents that were recently reported to the NGO, local MoI Department stated no manifestations of racism were recorded in the region and informed instead of the following:

The MoI Chief Directorate in Dnipropetrovsk region is organizing investigative measures aimed at identification of newly-formed ethnic criminal groups to be placed under surveillance. MoI is keeping under control the places of residence of ethnic minorities as well as hotels, student dormitories, railway stations with the aim of identifying such criminal elements, as well as organisers of migrant smuggling through the territory of Ukraine. Special attention of law enforcement authorities in the region is directed at identifying radical individuals and groups, first of all, natives of Middle East and Persian Gulf, conflict regions of the CIS, who are on the territory of Ukraine and incubating intentions of committing terrorist acts and other extremist manifestations...”

As noted above, the question that was posed to Dnipropetrovsk police by the Social Action Centre/No Borders Project concerned only information on measures to address racist crimes. However, when replying to it Dnipropetrovsk police unwittingly demonstrated its own racist prejudices against certain groups of non-nationals that apparently underlies their practice of policing local population and particularly certain non-citizen communities. Thus, their answer demonstrates presumptuous attitude towards “foreigners originating from Middle East and Persian Gulf, conflict regions of the CIS”, including attribution of 'inclination to terrorism' to these groups of non-citizens. Such attitudes as demonstrated result in consequent racial profiling and stigmatisation of racialised groups. Unfortunately, there are grounds to believe that such attitude to certain groups of non-nationals is not exclusive to the police of Dnipropetrovsk region as similar practices have been documented by UMDPL in other regions of Ukraine¹⁰⁵.

Moreover, even before crossing Ukraine's border these people are often subjected to discriminatory treatment. According to the results of the research by E.Garvey into the situation of international students in Ukraine most of whom originate from African, Central, South-East Asian Countries and Caucasus region, more than 70% of such students report having experienced discrimination while exiting and particularly entering Ukraine. The treatment such students were subjected to by Ukrainian border-guards range from extended questioning to automatic segregation from the rest of the travelers to detention and in severe situations, deportation of their classmates. In some cases, students were detained for more than twenty four hours in transit zones of the airports that do not have conditions appropriate for accommodation of 'detainees'. A student from Africa who was detained for several days before eventually being allowed to enter the country to commence his university studies testified to the researcher: “They held me at the airport after I had just arrived. I slept on an iron chair for two days. They take you into a room and won't even allow us to contact the university. I was treated like a prisoner.”

Such incidents occur despite the fact that perspective or current students have all the documents required for entering Ukraine. It is also worth noting that there is no legislation currently in force in Ukraine 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 Ukrainian border-guard officials. Social Action Centre/No Borders Project received multiple reports of extortion by border-guards who threatened nationals of African and Asian countries with immediate deportation¹⁰⁶.

105 Ibid.

106 Multiple reports indicate that border-guards may cite non-existent customs' or migration rules to justify extortion.

However, the most worrying is the practical effect that such lack of effective legal guarantees of the respect of the rights of non-citizens at the border of Ukraine has on refugees. 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. The Social Action Centre/No Borders Project aware of several cases (2008-2009) when refoulement of refugees from Uzbekistan, who do not even need a visa to enter Ukraine but were denied entry to Ukraine by border-guards despite declaring their intention to seek asylum in Ukraine, was prevented only due to urgent intervention of UNHCR office in Kyiv. Intervention of UNCHR in those cases was possible only due to the fact that the said refugees prior to arrival knew phone numbers of several Ukrainian NGOs, who in partnership with UNHCR provide legal and social assistance to refugees and asylum seekers in Ukraine. Before they were ordered to switch off their phones they managed to call one of such NGOs and inform that they were asylum seekers who have just been taken off the train by Ukrainian border-guards despite having claimed asylum. It is not a typical incident because as a rule human rights organisations and UNCHR are not aware of particular circumstances of people who are denied entry to Ukraine and do not have any means to control whether denial of entry is not applied by border-guards to people claiming asylum at the border. They however, symptomatic and indicate that refugees in fact may be subjected to *refoulement* immediately upon arriving to Ukraine even if they claim asylum at the border. Similar incidents had previously been documented by Human Rights Watch in their 2005 report¹⁰⁷, however, it appears that nothing has been done so far by Ukrainian authorities to address this problem. Moreover legislative reform currently under way also does not foresee introduction of any mechanisms pertaining to protection of the rights of non-citizens intending to enter Ukraine.

On the contrary racial discrimination against certain groups of non-citizens has been recently openly legitimized by legislation. Thus since mid 2009 normative acts that set a basic framework for cross-border migration like the Law of Ukraine “On the Status of Foreigners and Stateless Persons” (as well as the draft new addition of this law that has been recently pre-approved by the Parliament: Article 41(1)(6)), Law of Ukraine “On Border Control” stipulate that foreign nationals arriving to Ukraine must demonstrate that they have funds for their intended period of stay in Ukraine to be allowed across the border. That requirement seems to apply to every non-citizen arriving to Ukraine, however, a specialized regulation, namely “The Rules of Entry of Foreign Nationals and Stateless Persons to Ukraine, Their Exit from Ukraine and Transit through Its Territory” approved by the Cabinet of Ministers' Decree No. 1074 dd. 29 December 1995, as amended on 06 May 2009 specifies the list of countries whose nationals are subject to control of the availability of funds prior to entering Ukraine.

The amount of funds they are required to demonstrate constitutes 20 times minimum monthly living allowance (the latter is regularly revised) for every month of the period they intend to stay in Ukraine¹⁰⁸. During the period from 01.01.2011 till 01.04.2011 the minimum monthly living allowance constituted 941 UAH, thus the national of the listed country had to demonstrate that he had around a minimum of 2353 US dollars per month on him, during 01.04.2011 and 01.10.2011 – the minimum would be 960 UAH and funds to demonstrate – around 2400 USD per month, during 01.10.2011 and

For example in May 2011 Social Action Centre/No Borders Project received reports from international students who study in Kharkiv that border-guards demanded money from arriving students saying that it was a fine for “the fact that a student was wearing too much jewelry” or for “bringing in two mobile phones instead of one”.

107 “Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union”, Report by Human Rights Watch, p. 35 (<http://www.hrw.org/en/reports/2005/11/29/ukraine-margins>)

108 See for example: <http://www.crimea.gov.ua/pogranichnij-kontrol/u-punktach-propusku-cherez-derzhavnij-kordon-zaprovadzhuetsya-vibirkoviy-kontrol-za-nayavnistiu-v-inozemstv-ta-osib-bez-gromadyanstva-finansovogo-zabezpechennya-pres-reliz>

01.12.2011 it would be 985 UAH and 2463 USD respectively, the amount to be demonstrated would reach 2510 USD per month in December. Thus if a person subject to such control was arriving, for example, to reunite with his family and intended to stay for a whole year of 2011 in the status of temporary resident, they would be obliged to demonstrate that they have at the very least around 24158 US dollars on them and would be denied entry for failing to do so. According to the press-statements by the Ministry of Interior of Ukraine the amount of money required to be demonstrated by nationals of certain countries when entering Ukraine was calculated “on the basis of a study of expenditures by foreign nationals and stateless persons in Ukraine for accommodation, food, transportation in Ukraine as well as expenses for medical and auto insurances”¹⁰⁹. Although life in Ukraine is not very cheap, the amount the authorities require certain groups of non-citizens to have on them as a prerequisite of entering Ukraine is obviously exaggerated. It is particularly evident in light of the fact that average monthly salary in Ukraine is currently around 300 USD¹¹⁰.

However, it is the list of countries whose nationals are required to be subject to such control that is of the particular interest for the purposes of the current report. The justification for introduction of the means control at the border for certain non-citizens was justified by the need to prevent 'illegal migration'. Hence, it was officially proclaimed that the countries that were put on the list are countries of “risk migration” (or “traditionally exporting illegal migrants”), however, no objective reasons why nationals of certain countries are regarded by Ukrainian authorities as posing a risk of violating migration laws have never been revealed. The list includes 90 countries¹¹¹. The analysis of that list reveals that there is no objectively verifiable criteria that would reasonably justify discrimination of the nationals of certain countries in border-control procedures. On the contrary the composition of the list appears to be quite arbitrary and underpinned by racist perceptions. For example only two countries of African continent (Morocco and Tunisia) were not included into that list, the list also included several Caribbean countries with significant Creole populations. In practice its introduction was interpreted by local border-guard authorities as a direct instruction to discriminate against migrants on the ground of their phenotype. Thus, Crimean Border-Guard service in its press-release generalized the list as follows: “The list of countries whose citizens are supposed to prove availability of funds includes 5 post-soviet states: Kyrgyzstan, Moldova [exceptions from the rule apply], Tajikistan, Turkmenistan and Uzbekistan, - as well as 85 African, Asian and Middle Eastern Countries”¹¹². It becomes evident from this statement that, if the officials responsible for expressing the official position of this authority responsible for implementation of that regulation did not even bother to study the list of those countries carefully enough to for example identify their Caribbean countries, the main criteria that is going to be

109 Press-release by the Border-guard service of Crimea (<http://www.crimea.gov.ua/pogranichniy-kontrol/u-punktach-propusku-cherez-derzhavniy-kordon-zaprovadzhuetsya-vibirkoviy-kontrol-za-nayavnistiu-v-inozemtsiv-ta-osib-bez-gromadyanstva-finansovogo-zabezpechennya-pres-reliz>)

110 <http://en.ura-inform.com/economics/2011/03/30/zarplsred?nocache>

111 These countries are Angola, Albania, Algeria, Afghanistan, Bangladesh, Benin, Botswana, Burkina Faso, Burundi, Bhutan, Vietnam, Gabon, Gambia, Gana, Guyana, Haiti, Guinea, Guinea-Bissau, Equatorial Guinea, Papua New Guinea, Djibouti, Commonwealth of Dominica, Dominican Republic, Eritrea, Ethiopia, Egypt, Yemen, Zambia, Zimbabwe, India, Indonesia, Iraq, Iran, Jordan, Cape Verde, Cambodia, Cameroon, Comoros, Kenya, China, Columbia, Côte d'Ivoire, Kirghistan, Congo, Democratic Republic of Congo, Korean Democratic Republic, Kingdom of Lesotho, Liberia, Lebanon, Livia, Mauritius, Mauritania, Madagascar, Malawi, Mali, Mozambique, Moldova (exceptions provided by bilateral agreement apply), Mongolia, Myanmar, Namibia, Nepal, Niger, Nigeria, Nicaragua, Pakistan, Palestine, South Africa, Rwanda, São Tomé and Príncipe, Swaziland, Seychelles, Senegal, Syria, Somalia, Suriname, Sudan, Timor Leste, Sierra Leon, Tajikistan, Tanzania, Togo, Tonga, Turkmenistan, Uzbekistan, Uganda, Philippines, Central African Republic, Chad and Sri Lanka

112 <http://www.crimea.gov.ua/pogranichniy-kontrol/u-punktach-propusku-cherez-derzhavniy-kordon-zaprovadzhuetsya-vibirkoviy-kontrol-za-nayavnistiu-v-inozemtsiv-ta-osib-bez-gromadyanstva-finansovogo-zabezpechennya-pres-reliz>

used by border-guards when selecting people for such checks will be phenotype (combined with the absence of a passport issued by a developed country). These circumstance combined with unreasonably high amounts of money required by the regulation (that will not be foreseeable in light of the increasing minimum monthly living allowance and currency exchange rates) constitutes a mean for arbitrary denial of entry to certain categories of non-citizens without taking into consideration their right to private and family life.

In fact, prior to introduction of such list high government officials also advocated for including these countries of Caucasus region. However, due to close political, economic and historical ties with those countries it did not happen. This does not mean, however, that non-nationals originating from Caucasus region are exempted from discrimination at Ukrainian borders that non-citizens originating from African, Middle-Eastern, Central and South-East Asian countries are subject to. Their treatment by Ukrainian border-guards is best exemplified by experiences of Russian nationals of Chechen ethnic origin. While Russian citizens of Russian ethnic origin do not experience harassment by Ukrainian border-guards individuals of Chechen ethnic origin are specifically target. Since Human Rights Watch in its 2005 report documented discrimination against Chechens by Ukrainian border-guards the treatment they are subjected to has not changed the slightest. "If we are Chechens, it is like a stamp at the border", testified one of the Human Rights Watch informants¹¹³. Another interviewee, a Chechen female asylum seeker, reported Human Rights Watch that she was simply pulled off the train while trying to enter Ukraine, on the sole ground that she was Chechen: "It was 4:00 a.m. in early January. I was the only person in the train [who was] Chechen; I asked why they took me out. They said, "Because you are Chechen and we have an order to take you out." I said, "I am a refugee [...] I have a letter from the United Nations." I showed them documents but they were not enough."¹¹⁴

III.4 Expulsion and deportation of non-citizens

III. 4.1. Failure of Ukraine to ensure that the effect of laws concerning deportation and other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate against certain groups of non-citizens on the basis of race, colour or ethnic or national origin.

As it was noted above, 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' (colour, 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. International regulations of the Ministry of Interior that were analysed in the previous section demonstrate that the indicators that law enforcement strive to achieve by means of ID checks are a number of 'identified illegal migrants' and a number of deportations.

The following definition of this term "illegal migrant" is contained in the "The Instruction concerning the procedure of Extension of Foreigners' and Stateless Persons' Permits to Stay in Ukraine" approved by a Decree of the Ministry of Interior No.1456 dd. 01.12.2003 is as follows: "unlawful (illegal) migrant – is a foreign citizen or a stateless person, who crossed Ukraine's border illegally (beyond the border-crossing points, or through them but avoiding border-control) and did not request granting them a refugee status or asylum within 3 working days upon arrival, as well as a foreign national or a stateless person, who arrived to Ukraine legally, but after expiry of their residence permit lost any

113 "Ukraine: On the Margins Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union", Report by Human Rights Watch, p. 35 (<http://www.hrw.org/en/reports/2005/11/29/ukraine-margins>)

114 Ibid.; see also Levin, M. "Chechen Migration and Integration in Ukraine: Working Paper", 2006 (www.chechnyaadvocacy.org/refugees/ChechenMigrationinUkraine.pdf) for multiple illustrations of practice of ethnic profiling against Chechens at Ukrainian borders and consequences such practices have.

grounds for further stay in Ukraine but evade from leaving Ukraine”. In practice, however, the criteria used by Ukrainian law enforcement authorities for regarding that or another person as an 'illegal migrant' are far from clarity. For example in 2008 according to the official statistics 14876 'illegal migrants' were identified¹¹⁵. That figure exactly corresponded to a number of persons who were expelled from Ukraine during that year¹¹⁶. In the following years two figures were not exactly the same but the Ministry of Interior in its official statements indicated that there were interconnected. Thus, MoI of Ukraine stated that in 2009 14310 'illegal migrants' were identified and 13824 (“96,6% out of the total number of identified”) illegal migrants were expelled from Ukraine (including 2299 who were subjected to coercive return). In 2010 the figures were 14.5 thousand and 14.1 (“or 97.4% out of the identified 'illegal migrants’”, including 1972 coercively returned) respectively.

The criteria behind the composition of the figure of 'expelled illegal migrants' is somewhat clearer than those behind the figure of identified ones, but still very confusing and contradictory. Thus, up until 05.04.2011 Article 32 of the Law of Ukraine “On the Status of Foreigners and Stateless Persons” provided for the following list of grounds for expulsion of foreign nationals and stateless persons from Ukraine: 1) a person has committed a crime in Ukraine (after serving one’s sentence); 2) a person has committed an administrative offence in Ukraine (after serving administrative punishment imposed); 3) a person's actions seriously violate legislation related to the status of foreigners and stateless persons; 4) one’s actions contradict the interests of national security of protection of public order; 5) if it is necessary for protection of health, rights and legitimate interests of the citizens of Ukraine. Ukrainian legislation did not (and still effectively does not) provide for law enforcement authorities to pay due regard to any personal circumstances of a person subject to deportation (unless that person was under protection of the Law of Ukraine “On Refugees”), including private and family life of such individuals and one’s right not to be returned to a country where she faces a real risk of torture, inhuman and degrading treatment (CERD Recommendation №30, para 27 and 28, more details on these points will follow below). In practice as long as any of the above listed conditions occurred and a person liable to deportation did not enjoy protection offered by the Law of Ukraine “On Refugees” it was fully at sole discretion of the respective authority whether that person would be subjected to expulsion or not.

These conditions, in their turn, if taken together and in light of the lack of effective procedural guarantees of non-citizens (particularly those who are not able to speak either Russian or Ukrainian), had a potential of putting virtually every non-citizen in Ukraine at risk of expulsion upon the discretion of relevant law enforcement authorities, particularly MoI. For example, one of the grounds for expulsion of non-citizens provided for by the law was committing an administrative offence. The Code of Ukraine on Administrative Offences provides for administrative liability for around 200 types of administrative offences that range from smoking in public places to illegally crossing the border. Among law enforcement authorities decisions to expel a non-citizen that are a consequence of the fact that a person has committed an administrative offence majority result from local courts finding such a non-citizen guilty in violating the rules of stay and transit of non-nationals provided for by Article 203 thereof.

Article 203 of the Code of Ukraine on Administrative Offences provides for the following: (1) Foreign nationals and stateless persons violating the rules of stay in Ukraine, e.g. reside without documents certifying the right to reside in Ukraine or with invalid or expired documents, undertake employment without respective work permit, if the legislation of Ukraine requires them to obtain such a permit, do not comply with the procedure for movement and changing places of residence, overstay a visa or a residence permit, do not arrive to the place of study or work within a prescribed period of time after entering Ukraine, as well as infringe the rules of transit – shall be liable to a fine 30 to 50 untaxed minimum wages; (2) Foreign nationals and stateless persons who do not comply with the established

115 See http://www.scnm.gov.ua/control/uk/publish/article?art_id=134359&cat_id=47922

116 From the response of the MoI to the request for information sent by the Social Action Centre/No Borders Project

registration procedure or overstayed, if identified at the border-crossing points – shall be liable to warning or a fine of 30 to 50 untaxed minimum wages; (3) This article does not extend to cases when foreign nationals and stateless persons crossed the state border of Ukraine illegally with the aim of applying for refugee status and are staying in Ukraine during a period of time that is required to approach the respective branch of the migration service with the application for refugee status in accordance with the Law of Ukraine “On Refugees”.

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 of Ukraine “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 Ukrainian authorities at its territory that as of 1 April 2011 constituted 278.5 thousand people, including 199.3 permanent residents. 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 bureaucratisation and lack of clarity of related procedures¹¹⁷. These circumstances on the one hand put all non-citizens into a vulnerable position where they are like to not be able to comply with excessive and complicated requirements that exposes them to abuse of authority by law-enforcement authorities who at their sole discretion chose to against whom measures of repressive character are to be applied¹¹⁸. It is precisely that exercise of discretion by law enforcement officials that discriminates against certain groups among non-citizen population of Ukraine on the ground of their 'race' (national or ethnic origin and religion).

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. For example during the past two years among those who were subjected to administrative liability (that alone is a ground for removal), even despite ethnic profiling, close to 30% are citizens of the Russian Federation. Among those who are brought to administrative liability there are usually 3 times more Russian citizens than the citizens of Azerbaijan or Uzbekistan, almost 4 times more Russians than citizens of Moldova and Georgia; 6 times more Russians than Armenians, 8 times more than Chinese, 11 times more than Turks, 17 times more than Vietnamese etc. However, the national composition of persons subjected to deportations substantially differs as a result of discretion applied by Ukrainian law-enforcement authorities when choosing harsher means of migration rules enforcement than just a fine. Russian nationals usually comprise 15%-17% percent of persons who are yearly subjected to expulsion by Ukrainian authorities¹¹⁹, number of citizens of Uzbekistan deported from Ukraine every year almost equals to that of Russian nationals¹²⁰, ratio between Russian nationals being removed from Ukraine and Azerbaijanis in the same situation is 1.2:1 (as opposed to 3:1), only slightly more Russians than Georgians are removed from Ukraine 1.4:1 while there are 4 times more Russians than Georgian violating migration rules. Chinese who were found guilty in violating migration rules under Article 203 of the Code of Administrative Offences are 4 times more likely than Russians to get deported in addition to payment of the fine; same applies to Afghan nationals etc¹²¹. These figures illustrate that non-citizens originating from countries of Caucasus,

117 The problems of Ukraine's legal framework related to the status of non-nationals are too many to discuss them here comprehensively and in detail. However, some more details on certain problematic issues will be discussed in sections below

118 Like brining to administrative liability or adopting removal directions

119 It is worth noting that there are reasons to believe that among those Russian nationals who are subjected to removals ethnic Chechens are over-represented.

120 Such situation occurs not only despite the fact that there are substantially more Russians in Ukraine who enjoy the same visa regime in Ukraine as do citizens of Uzbekistan, but also despite the fact that ratio of Russian nationals and citizens of Uzbekistan liable to removal according to Ukrainian legislation is 3:1.

121 For a comparison Belarusians who are perceived as 'equally white' as Russians are no more likely to be subjected

Africa, Central and South-East Asia and Middle East are more likely to be subjected to harsher penalties for infringements of migration rules than non-citizens originating from countries that are perceived as 'white', including Russia, Belarus, Western European countries and Northern America in similar circumstances.

This situation like ethnic profiling analysed in the previous section appears to be a consequence of high prioritisation 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 Ukrainian authorities even in normative documents. It is worth noting that attempts to challenge this situation have by means of domestically available remedies have not levied any result:

A Nigerian national who challenged the decision of authorities to deport him from Ukraine at the court, alleged among other that deportation order against him was discriminatory as it was a consequence of the discriminatory effect that combination of above cited regulations (MoI Instruction On the Procedure to be followed by Militia Officials as to Identifying and Registering Illegal Migrants on the Territory of Ukraine) had on him as on person of African origin. The court of first instance that considered his case simply chose not to entertain the discrimination claim at all. The court of appeal while finding that the deportation decision was indeed unlawful without analysing overtly xenophobic content of the regulations that the student referred to¹²² in support of his discrimination claim concluded that allegations of discriminatory treatment were unsubstantiated because what student alleged to have discriminated against him were regulations "that applied to equally to everyone thus could not have been discriminatory".

The above conclusion should be also put into the context that nationals of the countries of Africa and Middle East South-East Asia, and to a lesser extend Central Asia, are less likely than others to be able to protect their rights through the use of procedural guarantees offered by the Code on Administrative Offences due to their lack of proficiency in Ukrainian or at least Russian. The Code guarantees a right to interpreter to individuals who do not understand the language of proceedings. However, in practice that guarantee is seldom realised. Not only the authorities fail to provide interpreters on their own initiative they often prevent the non-citizen subject to such proceedings from inviting at least friends or relatives who are able to communicate with them and know local languages better than these persons, so that such people could help them understand at least the basics of what was going on¹²³. Thus, such persons are more likely to be subjected to an unfair ruling of the local court finding them guilty in the administrative offence than individuals likely to have better knowledge of Russian in the first place and latter be subjected to expulsion proceedings on the basis of being found guilty in the administrative offence. This brings up a recommendation CERD to the government to pay greater attention to multiple

to removal in addition to administrative fines in case they are caught on infringing migration rules.

122 Abstracts from the said regulations as well as the extended discussion of their combined effect were presented in the previous section.

123 Law enforcement authorities and courts justify their actions with reference to the requirement to the standard of interpreters qualification. To act as a interpreter in courts or before the authorities interpreter must have a diploma certifying their interpretation skills issued by state-accredited Ukrainian university. Naturally friends or family of a non-citizen subject to such proceedings are unlikely to have such a certificate of their language skills. Law enforcement authorities in these circumstances not only fail to ensure that the person has access interpretation of required standard they also actively forbid them to use any kind of assistance with interpretation that does not meet it from the formal point of view. In practice, law enforcement authorities as a rule actively forbid or prevent any third persons (be it public, friends or family of a person subject to such proceedings). Such practice results in that persons subject to such proceedings not only are not able to understand what is going on, but they are also prevented from realizing their rights and defending themselves. In addition to that persons subject to proceedings envisaged by the Code on Administrative Assistance have in theory a right to benefit from legal assistance. However, the procedure for obtaining access to such assistance is neither effective nor sufficiently clear. This results in the fact that prevailing majority of non-citizens subjected to administrative liability have no representation in the proceedings. This problem is also characteristic for proceedings concerning deportations and detention in view of expulsion.

discrimination (CERD Recommendation №30, para 8).

It is worth noting that up until April 2011 finding persons guilty in the administrative offence according to the procedure established by the Code on Administrative Offences was not a necessary pre-requisite of a non-citizen's expulsion on the ground of his 'violation of migration rules'. Despite the fact that violation of such rules constituted an administrative offence according to the Code it was also considered as yet another alone-standing ground for expulsion. Thus, the Supreme Administrative Court of Ukraine concluded that exactly the same actions as those constituting an offence under Article 203(1) of the Code on Administrative Offences constituted a serious violation of the laws related to the status of foreigners and stateless persons and was in itself sufficient ground for removal. This gave a way for law-enforcement authorities to abuse the process further and avoid even the insufficient guarantee the Code on Administrative Offences offered to persons subject to it. For example, multiple cases were reported to the Social Action Centre/No Borders Projects when non-citizens submitted their passports to the authorities in due course for the extension of their residence permit. The authorities, however, would retain their documents for a substantial time up until substantial period of time passes since their previous residence permit expires. After that happens they are getting their passport back without the extension of their residence permits or not even formal refusal in such extension, but the deportation stamp. The former is usually justified with them having seriously violated the laws related to the status of foreigners by residing since after the expiry of their previous residence permit without registration even though all that time such people did not have access to their passports that were being held by the 'passport police service'.

One of the cases out of many similar in the case-load of the Social Action Centre/No Borders Project is illustrative of the problems that are created by the legal inconsistency described above.

In early September 2010 a 3rd year university student from Nigeria who studied medicine in English and did not know either Russian or Ukrainian paid for his classes and submitted his passport to the University's Dean of Foreign Students for the extension of his residence permit for another year. The latter in line with Ukrainian legislation are responsible for organising registration of their students with the passport service of the police. Police, however, withheld student's passport for much longer than it usually did. The student was subjected to finger printing by the police, was forced to sign some documents the content of which he did not understand. He understood, however, that while that was happening police officials used derogative words against him referring to his African origin. On 18 November he was invited to come to a local court, which he did. In the court building was brought into one room where a lady spoke with the police in Russian. He did not understand the content of their conversation and the lady did not even attempt to ask any questions of him. After they left that room he was ordered by the police officer to pay 340 UAH¹²⁴ as a precondition for getting his passport back. The student paid that money to the bank the next day and on 20 November 2010 came to the police 'passport service' to finally get his passport back only to find out that as per stamp in his passport he was deported from Ukraine as of 15 November 2010 and has only one month to pack and leave. Only in the evening that day after he got his friend to translate for him a text in Ukrainian that he got from the police together with his passport was he able to find out from a piece that the reason for his deportation was that after 20 September 2010 (when his passport was already supposed to be with the police) he resided in Ukraine without registration and thus violated the legislation on the status of foreigners. He attempted to get his Ukrainian university to explain him the situation and stand up for him but in a bit less than a month time they informed him that they are not going to oppose the position of the police because they depend on them for registration of the thousands of foreign students and that he was now also expelled from the university. In some time with the help of an NGO lawyer the student obtained a copy of the court's decision of 18 November 2010. It declared that him residing without registration after 20 September 2010 constituted an administrative offence under Article 203 of the Code on Administrative Offences. With the help of the NGO the student appealed against that decision and the court of appeal found that since there was no student's fault in that he resided without registration after 20 September he is not guilty in violating migration rules and could not have been brought to administrative liability under Article 203 of the Code on Administrative Offences. On the basis of that student has challenged the deportation order issued against him by the police. The police, however, maintained that although the deportation order was based on the

same facts as the administrative fine that has been quashed, the deportation was justified since the ground for deportation was not the that the student was found guilty in committing the administrative offence but that according to the police he has violated legislation related to the status of foreign nationals and stateless persons.

The amendments to the Law of Ukraine “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 offence. The new draft law “On the Status of Foreigners and Stateless Persons” that has been recently pre-approved by the Parliament, 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 easily¹²⁵.

In addition to that some of those formal grounds as listed in the current and the proposed legislation perpetuate multiple discrimination (CERD Recommendation №30, para 8). For example despite the fact that prohibition of discrimination against HIV-positive individuals and those who belong to risk groups had been recently introduced into Ukrainian legislation¹²⁶ laws and regulations related to the status of foreign nationals and stateless persons contain provisions openly discriminating against HIV-positive non-citizens. In addition to that these provisions disproportionately affect those non-citizens that originate from developing countries. Thus, the measures “required for the protection of health of the population” simply requesting every person who requires a visa to Ukraine¹²⁷ to present a medical certificate on the absence of HIV/AIDS tuberculosis or “other contagious diseases” as a precondition for obtaining a visa to Ukraine¹²⁸, persons who are perceived to belong to a group of population with high risk of “carrying contagious diseases” may be denied entry to Ukraine, HIV/AIDS, tuberculosis or “other contagious diseases” may be a ground for refusing extension of a residence permit to a person, permit to immigrate (permanent residence permit), rejection in refugee status (and when the new Law “On refugees and persons in need of additional or temporary protection” comes into force also newly introduced forms of protection, including the one designed for persons who if removed face a risk of being subjected to torture in a country of destination)¹²⁹.

III.4.2. Failure to ensure due respect to family and private life of non-citizens in managing migration.

In its Recommendation №30 CERD instructed the State parties to avoid expulsion of non-citizens, especially of long term residents, that would result in disproportionate interference with the right to family life (para 28). Similar obligation is envisaged by a range of regional human rights instruments that Ukraine is a party to. In particular Article 8 of the European Convention for the Protection of

125 See more on how the deficiencies of Ukraine's migration laws and practice of their enforcement results in increasing lack of access to documentation by persons who have legitimate grounds for staying in Ukraine in Uehling, G. (2004) “Unwanted migration: combating and unwittingly creating irregular migration in Ukraine”, Working paper, Geneva: UNHCR (www.unhcr.org/416b98dc6.html)

126 Article 14 of the Law of Ukraine on “Prevention of the spread of diseases caused by HIV, legal and social protection of HIV-positive individuals”

127 Mainly developing countries

128 See Article 24 the Law “On Protecting the Population from Contagious Diseases” of 06.04.2000, Article 19 of the Law “On Countering Tuberculosis” of 05.07.2001 and others.

129 See the Law “On the Status of Foreigners and Stateless Persons”; Draft Law “On the Status of Foreigners and Stateless Persons”; the Law “On Border Control”; Law “On Refugees”; Draft Law “On Refugees and Persons in Need of Additional or Temporary Protection”; Law “On Immigration”; “List of contagious diseases that are a ground for rejection in permanent residence permit” approved by the Decree of the Ministry of Health of Ukraine No.415 of 19.10.2001.

Human Rights and Basic Freedoms that is obligatory for Ukraine implies an obligation not to remove non-citizens if removal would constitute a disproportionate interference with such persons private and family life. Ukrainian legislation, however, does not provide for an obligation of the authorities to take into consideration the effect a removal might have on individual's private and family life. On the contrary it is only formal conditions that the Ukrainian authorities are taking into account when taking and implementing decisions affecting the status of non-citizens in Ukraine, including their expulsion.

The very procedure provided for by Ukrainian law for adoption by law enforcement authorities of a decision to remove a non-citizen does not even provide him for an opportunity to put his reasons against his deportation, including in cases when removal would affect his private or family life, before that decision had been taken. As a rule a person finds out about the fact that he may be subject to deportation only after that decision was adopted by the law enforcement authorities. The case-load of the Social Action Centre/No Borders Project demonstrates that when a non-national threatened with the expulsion order attempts to explain his circumstances and give reasons against his expulsion, the law enforcement authorities indicate that such circumstances are none of their business and what they care of is only the availability of formal grounds for removal (a person was found guilty in committing administrative offence, or that his registration has expired).

Since the law of Ukraine “On the Status of Foreigners and Stateless Persons” does afford due regard to persons individual circumstances and places emphasis of formal conditions of non-citizens presence in Ukraine domestic courts, in those rare cases when individuals received access to such remedy, endorse expulsion orders on formal grounds. The case illustrative of the lack of respect to non-citizens private and family life by Ukrainian authorities in enforcement of migration laws may be found in the Note on analysis and generalisation of the practice of administrative courts concerning implementation of the legislation related to enforced expulsion of foreign nationals and stateless persons from Ukraine issued by the Higher Administrative Court of Ukraine on 04.12.2008 and used by first and second instance administrative courts as a guideline in their practice. It is notable that the case presented below was cited by the Higher Administrative Court as an example of the correct application of the respective legislation:

A non-citizen of unspecified ethnic origin was a long-term resident of Ukraine. As it appears from the text of the Note that before 1991 he used to be a citizen of USSR. At the moment Ukraine's independence was proclaimed he used to reside permanently in some other republic but Ukraine, however, since arriving to Ukraine (presumably before 2001) he undoubtedly has established close personal and family ties in Ukraine, including such ties which were sufficient ground for acquiring a permanent residence permit. These may have included having a spouse and children in Ukraine. For a certain period of time he resided in Ukraine with the Soviet passport that in 2005 became invalid according to the legislation of the country to whose citizenship he assumed he had a right to and had to be replaced with the new passport of a citizen of that state. However, the Embassy of that state in Ukraine was not authorised to issue national passports to individuals who had a title to their citizenship. Instead, the said individual was issued with certificates that attested his identity and noted that he was a citizen of that state. On the basis of those certificates on 21.09.2005 the said person obtained a permission to immigrate to Ukraine and was issued with a permanent residence permit. On 21.06.2007 the Embassy of that state served him with another certificate that indicated that he was not a citizen of that state and the certificates issued to him before were invalidated leaving him de facto stateless and with no ID. Consequently law enforcement authorities requested a local administrative court to order his removal from the territory of Ukraine for violating Ukraine's legislation on the status of foreigners by residing on its territory without a valid ID. The court has decided to enforce his removal on purely formal ground that according to the Law “On Immigration” his residence permit was to be annulled since it came to light that documents on the basis of which it was issued have expired. Neither the court of first instance, nor the court of appeal chose to examine personal circumstances of the said individual and consider the effects expulsion might have on his private and family life. They did not even take into consideration the fact that his expulsion was not practically possible since there was no country where he could be removed to after the Embassy of the state he

believed he was a citizen of declared him not to be their citizen¹³⁰.

Although, further information on the particularities of this case is not provided in the Note by the Higher Administrative Court it would be safe to assume that the said person, even despite his removal was hardly possible, was consequently placed at the temporary detention centre for undocumented migrants, that may be applied by the administrative courts as long as they have decided that a non-citizen should be forcefully removed from Ukraine.

The organisations putting together this report have insufficient expertise to discuss here the issue of statelessness and the lack of proactive measures aimed at naturalisation of former citizens of predecessor States in Ukraine. It is however evident that these two problems are interconnected in Ukrainian context and as the above example illustrates have become very acute with the intensification of the 'fight against illegal migration' by Ukrainian authorities. Previously it was the lack of effort of the authorities aimed at regularisation of the status of such persons that interfered with their right to private life¹³¹. Currently, however, the drive of law enforcement authorities to attain the highest success indicators (e.g. number of identified and deported undocumented migrants) combined with the total absence of guarantees of respect to private and family life of non-citizens in Ukrainian legislation appears to be brining that problem to a new level.

III.4.3. Lack of procedural guarantees to protect non-citizens from arbitrary detention. Conditions of detention and discrimination against certain groups of non-citizens on the ground of their national origin in enjoyment of their right to liberty and security of a person (CERD Recommendation №30; para 19).

According to the Law of Ukraine “On the Status of Foreign Nationals and Stateless Persons” 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 6 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 of undocumented migrants 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.

The authors of this report may only welcome the fact that detention is not applied to every person subject to enforced deportation. However, the fact that the law does not provide clear criteria against which the Ukrainian courts identify the necessity of detaining a non-citizen to affect the removal as well as the fact that temporarily holding facilities for undocumented migrants are clearly 'visibly' documented 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 colour, ethnic and national origin in combination with their language capacity). This hypothesis is particularly worrying because current conditions of detention in those facilities may still not be characterised 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.

Due to the financial support from the EU Ukraine has extended the infrastructure of the detention

130 See: http://www.vasu.gov.ua/ua/generalization_court_practice.html?_m=publications&_t=rec&id=1147

131 See: Uehling, G. “Evaluation of UNHCR’s programme to prevent and reduce statelessness in Crimea, Ukraine”, EPAU/2004/03, March 2004

facilities for undocumented migrants. Organisations putting together this report may only welcome that by improving that infrastructure Ukraine appears to be moving from inhumane practices described in 2005 Human Rights Watch report¹³². However, despite certain progress conditions of detention of undocumented migrants may still be regarded as amounting to degrading treatment. Detailed information concerning this problem is presented in the 2010 Human Rights Watch report¹³³ attached hereto. Moreover, the authors of this report are concerned about the practice of routine detention of non-citizens whose removal may not be practically affected, as in the example described in previous section of this report. 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 six month in detention (the maximum term established by the law) only to be detained again shortly after release¹³⁴.

III.4.4. Failure of Ukraine to ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture

The Law of Ukraine “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 the following:

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.

In case a foreigner or a stateless person has committed a crime in a country where she may face torture, inhuman or degrading treatment or punishment, her extradition may not be implemented on the grounds provided for by the Criminal Procedure Code of Ukraine in case there are no circumstances that make proceedings on such a case impossible, upon the request of the competent authority of the foreign state Ukraine takes over the investigation of the criminal case concerning such a person or arranges for her to serve the sentence delivered in another state.

The Law of Ukraine “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.

A refugee may not be expelled or forcefully returned to countries where he may be subjected to torture and other forms of inhuman or degrading treatment or punishment, or from where he may 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.

The relevant provision of the Law “On the Status of Foreigners and Stateless Persons” will remain purely declaratory until relevant framework for its full implementation is introduced in Ukrainian legislation. The attempt to make it is made by the new Law of Ukraine “On refugees and persons in need of subsidiary and temporary protection” that is currently pending President's approval makes an attempt to bridge this gap by introduction of the subsidiary status. However, it itself entails substantial deficiencies that may in that prohibition of *refoulement* both for refugees and persons in need of subsidiary and temporary protection purely declaratory.

First of all the new law conditions *non-refoulement* of persons who may face torture, inhuman and

132 “Ukraine: On the Margins”, Report by Human Rights Watch, November 2005 (<http://www.hrw.org/en/reports/2005/11/29/ukraine-margins>)

133 “Buffeted in the Borderland : The Treatment of Asylum Seekers and Migrants in Ukraine”, Report by Human Rights Watch, December 2010 (<http://www.hrw.org/en/reports/2010/12/16/buffed-borderland>)

134 Ibid.

degrading treatment upon their health condition, behaviour¹³⁵. 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.

Another obstacle to the full implementation of *non-refoulement* principle is a lack of clear procedural standards of assessment of refugee claims (and with the adoption of the new law also claims of persons in need of international protection) that is also reflected in the above example concerning Somalis. Furthermore, effective procedural guarantees against expulsions that may affect their human rights are not available to foreign nationals and stateless persons who are being removed from Ukraine. Currently appeal against the denial of entry or deportation decision do not have suspensive effect. This problem might be rectified when the new law on the status of foreign nationals and stateless persons will be adopted. However, deficiencies that exist in relevant legislative framework may hardly guarantee that procedural guarantees in case of expulsion of foreigners required among other by Article 23 of the International Covenant on Civil and Political Rights as well as Article 2 of Protocol 7 of the European Convention on Human Rights will be given due effect.

Until recently 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 to her in Ukrainian language which prevents many non-citizens who do not speak it from being able to understand and effectively challenge it. Moreover it usually only refers to formal grounds for removal and does not take individual's personal circumstances into account. The authority adopting a deportation order against a person is not obliged to inform her about the procedure she has to follow to challenge such a decision, thus non-citizens are usually not even aware of the fact that it may be challenged. If the person decides to challenge removal direction in Ukrainian courts, she will face enormous difficulties in obtaining legal assistance or interpretation.

A group of 14 Afghan citizens was apprehended by the State Border Guard Service at the Ukraine-Slovakia border in September 2010, and transferred to the MOI detention center Zhuravychi. According to UNHCR representative¹³⁶, at least 10 of them had attempted to apply for refugee status, however, their applications were turned down. According to deportation decision of Zakarpattya precinct administrative court, the State Border Guard Service organized expulsion of the group through Kyiv Boryspil Airport. . They were not given the opportunity to appeal the rejected claim, or appeal their deportation. The group also claim they have not been provided with interpreters while applying for asylum or during the deportation process and that they were required to sign documents in a language they do not understand. Some were not present during the hearing in which their case was considered. They have said that they have been ill-treated during detention during transportation to Kyiv, and this statement was also supported by the UNHCR representative, as well as Amnesty International in Ukraine¹³⁷. Upon arriving to Boryspil, members of the group were beaten by the border-guards, detained and ill-treated, including being deprived of meals and water, as well as medical assistance. Later, 6 Afghan citizens, including one minor, were deported to Afghanistan.

There are also reasons to fear that even when the subsidiary status will be introduced into Ukrainian

135 See Article 6 of the now Draft 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.

136 http://www.bbc.co.uk/ukrainian/news/2011/03/110317_butkevych_ok.shtml

137 Amnesty International Press Release "Citizens of Afghanistan were beaten during detention in Boryspil Airport" <http://amnesty.org.ua/2011/03/17/gromadyan-afganistanu-pobili-pid-chas-zatrimannya-u-aeroporti/>

legislation it will offer little chance for protection to persons in need of it due to the lack of political will of authorities to host foreign nationals in need of protection. For example there is a zero recognition rate of asylum seekers from Somalia in Ukraine. Ukrainian authorities claim that it is due to the lack of subsidiary protection mechanisms in Ukrainian legislation. They categorically state that “Somalis can’t get refugee status.” In light of the fact that among Somali asylum seekers in Ukraine may well be members of minority clans who qualify under the definition of a refugee contained in Geneva Convention and the current Law of Ukraine “On the status of refugees”, such categorical statements only indicate that asylum applications of Somalis are not examined duly by Ukrainian authorities. On this ground Human Rights Watch researchers allege that Somalis and other vulnerable groups of refugee population like Chechens may be discriminated against by Ukrainian authorities on the ground of their national origin¹³⁸.

III.4.5 Lack of effective remedies available for non-citizens to challenge expulsion from Ukraine particularly disadvantage those non-nationals who are not proficient either in Ukrainian or Russian languages.

Until recently 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 to her in Ukrainian language which prevents many non-citizens who do not speak it from being able to understand and effectively challenge it. Moreover it usually only refers to formal grounds for removal and does not take individual's personal circumstances into account. The authority adopting a deportation order against a person is not obliged to inform her about the procedure she has to follow to challenge such a decision, thus non-citizens are usually not even aware of the fact that it may be challenged.

Currently appeal against the denial of entry or deportation decision do not have suspensive effect.

138 “Buffeted in the Borderland : The Treatment of Asylum Seekers and Migrants in Ukraine”, Report by Human Rights Watch, December 2010 (<http://www.hrw.org/en/reports/2010/12/16/buffeted-borderland>)

III. Minorities rights

Throughout 2010 Ukrainian authorities have **taken no measures to modernize legislation related to national minorities**. While the President tried to “optimize” the structure of the executive bodies, he liquidated the State committee on nationalities and religion, an institution co-ordinating policy of protecting national minorities, administrating resources aimed to implement state-wide programs of returning and settling deported Crimean Tatars, as well as people with other nationalities who returned to Ukraine. But even earlier these programs were not always financed according to their needs. In the field of inter-ethnic relations legal norms on ensuring national minorities’ rights against ethnic and racial discrimination remain declarative. The same is valid for settling problems of integration of migrants, as well as inter-ethnic co-operation. Ukraine also failed so far to develop a comprehensive, systematic and long-term program of Roma integration. Ukraine also needs to teach tolerance and international dialogue at schools and universities.

III. 1. Article 2. Review of policies - Removal of racial discrimination from legislation and policy

Adequate legislation is ensured not only due to the absence of racial discrimination in the legislation, but also when all its provisions are clear. In Ukraine there is no strategy and ethno-national policy accepted by the authorities, although several drafts were sent to the Parliament. Correspondingly, the absence of terminology, agreement on the definition of „national minority” and criteria for distinction from „ethnic group” and „ethnic minority”, “indigenous people” and even immigrants makes it impossible to elaborate mechanism to fight race discrimination and support minorities, although in the Constitution (Articles 10, 11, 92, 119, 138) these terms are used. There is no clear antidiscrimination law. Therefore, the review of existing provisions and their supplement should be on the agenda and be considered as a starting point for the further steps of combating discrimination.

The provisions of “Agreement on the issues regarding restoration of rights of the deported persons, national minorities and peoples”, signed by the CIS States in Bishkek, 1992, includes deported Crimean Tatars. The document has been prolonged for 10 years more in 2003 during the meeting of CIS States leaders in Sent-Petersburg, and ratified by the Act of Ukrainian Parliament (№1501-VI - 18.02.04). From the moment of its signature, none of the CIS States participate in the process of restoration of the deported Crimean Tatars rights. Today, Ukraine is the only State that faces the problems concerning the repatriation of the Crimean Tatars, as best it can, which is not enough though. At the same time, Ukraine does not spur the implementation of documents adopted by the Council of Europe and OSCE in respect of the Crimean Tatars and other minorities.

Thus, the PACE Committee on Migration, Refugees and Demography penal session (Apr.5, 2000, Strasburg (France) covered the Crimean Tatar issues. Almost every provision of the special Recommendation №1455 (2000) “Repatriation and Integration of the Crimean Tatars” on Ukraine remains disembodied. More than that, once hardly adopted by the Parliament of Ukraine (June 2004) Decree – ‘Restoration of the rights of persons deported due to national sign’ - had been rejected by the President of Ukraine, consequently, never came into force.

The Presidential decree №39/2006 20.10.06 aims to improve present political and legal foundations for the regulation of the ethno-political processes in Ukraine; adaptation of national legislation to the international legal framework in the sphere of the inter-ethnic relations and minority rights defence.

Nevertheless, a number of issues remain unsolved:

1. The right of the Crimean Tatars as indigenous people to their ethnical identity, preservation and development of the ethno-cultural heritage. It stipulates the right to the use of the Crimean language in all spheres of life, development of national culture, traditional religion.
2. The right to free national self-identity. The religion plays an important role in the life of the Crimean Tatars since it is an inevitable part of their cultural development. Inter-confessional relations characterized by high politicization might become another factor for the worsening of the social-political situation. In addition to this, the influence of the so-called Islamic factor, Islamofobia and Islam extremism determine to some extent problematic state of affairs in the Crimea.

It is necessary to adopt the law on the rights restoration of the formerly deported persons on the basis of their national identity, which would allow the Crimean Tatars return to the homeland and prevent potential conflict in the interethnic and inter-confessional sphere.

As a **case study** of the inter-ethnic conflict the following should be mentioned:

As a result of a fire near the village of Mirnoe (Zhigulina Rosha tract), in Crimea, the recently-completed roof of a mosque burned and collapsed on the night of December 24 and early hours of December 25, 2010. The walls and partitions near the roof of the mosque, which was still in the process of being constructed, were subjected to heat-damage and deformation.

According to preliminary estimates, direct losses from the fire amount to UAH 100,000 (USD 12,558). Testimony from local residents as well as nature of the fire make it possible to conclude, with a high degree of certainty, that the building was intentionally set on fire, in what appears to be a criminal act of arson, by a yet unidentified person or group of people.

In particular, the events of the past weekend resonated with the Muslim Ummah of Crimea, where the incident elicited indignation.

The Spiritual Board of Muslims of Crimea is treating these events as purposeful acts, intended to destabilize interreligious harmony in the Crimea. Consequently, the Muslim Board is calling on law enforcement authorities to adopt urgent measures aimed at identifying those responsible for the act of arson and bringing them to justice.

The Spiritual Board of Muslims of Crimea, on behalf of Crimean Muslims, is particularly troubled by the lack of accountability that law enforcement authorities have demonstrated in investigating and solving previous acts of vandalism. These include an attempt to burn down the Seyt-Settar Mosque as well as pogroms in a cemetery near the village of Uvarovka (Nizhnegorsk raion) and pogroms in Chistenkoe (Simferopol raion) in February and April of 2008. Such acts of provocation represent direct attacks on, and pose an immediate threat to, human life.

Recognition

- As per December 2007 data, 264 thousand Crimean Tatars live in Crimea, and they constitute 13% of the whole population on the peninsula.
- The Ukrainian Government treats the Crimean Tatars as a “national minority”. However, having being historically the residents of the Crimean Peninsula before 1944, the Crimean Tatars claim to be an indigenous people of Crimea, and strives for recognition of its heritage on the Crimean land. The ‘indigenous people’ term used to be applied by the Soviet Union towards the Crimean Tatars.
- Despite all, the Crimean Tatars are considered to be a national minority, and special elective national institution of the Crimean Tatars – Kurultay – still remains unrecognized by the Ukrainian authorities.
- The Constitution of Ukraine, Article 11, stresses: “The State promotes ...development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine”. However, the

Article does not mention the political development and does not ensure the political representation of minorities, and indigenous peoples.

- The Crimean Tatars consistently insist on realization of their self-determination right in the form of national-territorial autonomy in Crimea within integral Ukrainian state.
- The Crimean Tatar people require acknowledgement of their status as an indigenous people of Crimea.

III.2. Article 5. Equality before the law

According to the Mejlis of Crimean Tatar People there has not been a single law aiming at rehabilitation both the collective rights of entire nation, which repatriates after half a century long exile, and the individual rights of the Crimean Tatars. The absence of the legislation to resolve multiple conflicts related to the Crimean Tatars forms negative ethnic stereotypes within society.

(c) The right to vote and participate in public affairs

It is necessary to make clear in the legislation the political and legal status of the Crimean Tatar people and all rights which should be guaranteed by the United Nations Declaration on the rights of indigenous peoples (2007), which Ukraine still did not sign.

The Crimean Tatars still remain unrepresented in governmental system of Autonomous Republic of Crimea (ARC), including the Verkhovna Rada of Crimea despite for one Member of Parliament of Ukraine. Taking into account all above mentioned, the Government of Ukraine together with the Crimean Parliament should ensure appropriate representation of Crimean Tatars by adopting special mechanisms, as it is indicated in the Article 4, II Part of Frame Convention of European Council on Protection of National Minorities, that was ratified by Ukraine in 1998. It is necessary to adopt special measures to promote Crimean Tatar's political involvement in Government and Parliament of Crimea – the land where the Crimean Tatar entity is a significant part of Crimean population.

(e) Economic, social and cultural rights

Among other issues that lay in economic, social and cultural realm that require both adoption of new legal regulative norms and fair application of already existing norms we should mention the following:

- Allotment to repatriates of land plots for construction of housing and for economic activities, including agricultural production,
- Provision of affordable housing for the most socially vulnerable repatriates,
- Setting a system of fair compensation (restitution) for unduly expropriated property and real estate, including the land,
- Revival of entire state system of school and pre-school education on the Crimean Tatar language,
- Securing of equal conditions for religions in terms of relations between state and believers
- Reinstallation of historical toponymy renamed after the deportation

III.3. The right to own property and The right to housing

According to the Article 47 of the Constitution of Ukraine “Everyone has the right to housing.” and “Citizens in need of social protection are provided with housing by the State and bodies of local self-government”. But, only 20% of Crimean Tatars received the allotted land plots in the regions of depressive development.

The Compensation system of lost property by virtue of deportation is necessary to implement equal access for housing facilities. Even more, the Article 33 of the Constitution of Ukraine declares: “Everyone who is legally present on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of Ukraine, with the exception of restrictions established by law.” The Ukrainian legislation restricts the allocation of agricultural land by

giving the right to get the land plot only to former workers of collective farms (“kolkhoz”). De-facto, this regulation leaves behind the Crimean Tatars, who had been deported by the “kolkhoz” times. Besides, recently the Crimean Tatars, claiming the land, tend to be bitterly suppressed by the Crimean Police. Therefore, the sides should find adequate resolution of land issue in Crimea via allocation of land plots, or compensation of lost lands, and to bring to a standstill the harassment of the protesters.

Linguistic issues

According to the Article 2(b), each State Party undertakes not to support racial discrimination, while under discrimination the distinction as to race, sex, language or religion is understood. Representatives of linguistic and national minorities in Ukraine are discriminated on a linguistic basis in key areas of public life. Deregulated issue of the use of languages affects the system of education. Children that speak minority languages (Russian, Romanian, Hungarian, Jewish and others), in practice, are deprived of the rights that enjoy state language (Ukrainian) speakers. The number of schools that provide education to children in their native language is cut down: for the last 16 years in Ukraine more than 16 thousand schools where pupils were taught in the languages of national minorities were closed (that comprises more than 60% of the total amount of secondary schools in 1992). Moreover, the number of students who are studying in these languages has decreased approximately by 7 times, from 3 millions to 480,000¹³⁹.

Presently, pupils are taught in Crimean Tatar, Moldavian, Romanian, Hungarian, Polish, Russian languages in Ukraine, comprising the network of 1500 of schools with 0,5 million pupils.

February 25, 2010 The European Parliament adopted a resolution on the situation in Ukraine. In paragraph 5 of this resolution the European Parliament pointed that Ukraine should ensure the rights of minorities to get education in their native language.

Thus, the legislation of Ukraine and ratified international agreements guarantee the right to pass final examinations in secondary education and entrance examinations to higher education institutions in minority languages and prevent from any discrimination, restrictions of privilege.

III.4. Article 7. Adoption of immediate and effective measures, particularly in the fields of teaching and education.

A variety of forms of racial segregation of Roma in education have been identified by the ERRC and its partners in Ukraine¹⁴⁰. They can be described as: (a) separate classes for Roma in a separate school building; (b) geographically segregated schools in predominantly Romani neighbourhoods; (c) schools where Roma predominate or where they are only students; (d) classes for children with mental disabilities where Roma are overrepresented; and (e) schools at risk of becoming segregated when non-Romani parents decide to take their children to other schools allegedly due to the health problems of Romani children who live in very poor conditions.

Most Romani children either graduate illiterate or leave school at an early stage. In addition, most of the predominantly Roma schools are in poor physical condition with no cafeteria or dining hall, no sport facilities, with no indoor toilets or running water, with minimal furniture in various stages of disrepair and lacking the facilities necessary to educate students adequately, such as computers and laboratories. Even the most basic equipment is inadequate or altogether lacking.

Case study: the newspaper in the Crimean language

On 7th of July 1989 the first issue of the newspaper in the Crimean language took place. Since 1991 the finance of this newspaper from the centre stopped and since that time was supported from the

¹³⁹ <http://r-u.org.ua/en/official/190-news.html>

¹⁴⁰ <http://www.errc.org>

republican budget, but constantly there were financial problems. The situation did not change when the newspaper became supported from the federal budget (since 2004), although it allowed to issue it twice a week. It is known that the Crimean people had two daily newspapers in the period from 1906 till the October revolution; today all national autonomies on the post-Soviet Union territory have their daily newspapers. In comparison, there are only two newspapers in the Crimean language: one of them is issued once in two weeks, the other one weekly. The newspaper "Krim" supports the strengthening of the language environment of the four thousand Crimean families. It has a lot of social functions which might be compared to the national theatre, museum or library. The existence of the newspaper is also essential since the Crimean language is included in the UNESCO list of threatened languages. From January 2011 the newspaper is in a very difficult situation and might be closed due to the lack of finance.

IV.5. Rights of Refugees and Asylum Seekers in Ukraine

IV.5. 1. General information.

Over recent years many Ukrainian and international human rights organizations – such as Ukrainian Helsinki Human Rights Union¹⁴¹, European Council on Refugees and Exiles, Human Rights Watch¹⁴² etc. – 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 Ukrainian legislation and detailed analysis of migrants' rights violations. For that reason in this submission only most serious issues will be mentioned.

In accordance with Ukrainian Act No. 2942-III dated 10 January 2002, Ukraine acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

Taking into consideration the norms set forth in the 1951 Convention relating to the Status of Refugees and the Law of Ukraine “On Refugees”, persons who are not citizens of Ukraine and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, citizenship, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality (citizenship) and being outside the country of their former habitual residence, are unable or, owing to such fear, are unwilling to return to it, are granted refugee status in Ukraine.

Current version of the Law of Ukraine “On Refugees” was last amended in 2005. It has several flaws that does not help fully protect refugees and asylum seekers rights and leaves platform for violations. The new version of the Law was adopted by the Parliament on July 8, 2011, but had not entered into force yet. It needs to be signed by the President first. This new Law does provide several changes and can improve the situation in future. More about the new Law can be found below.

Persons who are granted refugee status in Ukraine are aliens or stateless persons who are in Ukraine legally. These persons enjoy the same rights and freedoms and have the same responsibilities as citizens of Ukraine, with the exception of those cases established by the Constitution and laws of Ukraine and international treaties. In accordance with article 20 of the Law of Ukraine “On Refugees”, a person who has been granted refugee status has the same rights as Ukrainian citizens to:

- freedom of movement, free choice of place of residence, and the right freely to leave Ukraine, subject to the restrictions established by law;
- work;
- engage in entrepreneurial activity not prohibited by law;
- health protection, medical care and medical insurance;
- recreation;
- education;
- freedom of one's world view and religion;
- send individual or collective written appeals or make a personal appeal to State or local

141 <http://www.helsinki.org.ua/en/index.php?id=1246103405> and <http://www.helsinki.org.ua/en/index.php?id=1298468500>

142 <http://www.hrw.org/en/reports/2010/12/16/buffeted-borderland-0>

government authorities, officials or employees;

- own, use, and dispose of his or her property and the results of his or her intellectual and creative work;
- challenge through the courts the decisions, actions, or omissions of State or local government authorities, officials or employees;
- appeal for protection of his or her rights to the Ombudsman;
- legal assistance.

A person who has been granted refugee status in Ukraine has the same rights as Ukrainian citizens with regard to marriage and family relations. With only one important notice – 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.

A person who has been granted refugee status in Ukraine has the right to receive financial assistance, a pension, and other types of social security following the procedure established by Ukrainian legislation, and to the use of housing provided at his or her place of residence according to the Law. How it works in practice, please see below.

A person who has been granted refugee status in Ukraine enjoys other rights and freedoms as provided for by the Constitution and the Laws of Ukraine.

In addition, the Law of Ukraine “On Citizenship” states that for persons who have been granted refugee status or asylum in Ukraine, a condition for obtaining Ukrainian citizenship is that they must have resided legally in Ukraine for three consecutive years from the moment they were granted refugee status or asylum in Ukraine, and persons who entered Ukraine as stateless persons must have resided legally in Ukraine for three consecutive years from the moment they received a Ukrainian residence permit. Everyone to be granted a citizenship of Ukraine should pass an exam on Ukrainian language.

The Constitution of Ukraine, Article 26 states that foreigner and stateless person can be granted asylum in Ukraine. But unfortunately neither the Law of Ukraine “On Refugees”, nor any other Law in Ukraine do provide a procedure for that. This norm remains useless and was never applied.

At the contrary rights of asylum seekers are very limited in comparison to rights of recognized refugees. Asylum seekers have right to:

- temporary employment,
- temporary housing or rent,
- education,
- medical assistance,
- free legal assistance.

There is a lack of complementary/subsidiary forms of protection in Ukraine. This leads to incidents related to denials of asylum for persons who obviously need protection but technically do not fall within the provisions of the Convention of 1951 and the Law of Ukraine “On Refugees”. The current version of the Law of Ukraine “On Refugees” does not provide for any complementary/subsidiary form of protection for asylum seekers. Thus many people in need of protection who are not refugees in terms of understanding of Geneva Convention are refused protection. New version of the Law does provide

for complementary status, but it has not entered into force yet.

There has been a grave problem with the State Migration Authority and many attempts to restructure it during recent years. 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. Although the asylum procedure has formally resumed, the system remains essentially broken. The asylum system has been restructured eight times in 10 years, each transition resulting in gaps in protection. A 2007 UN High Commissioner for Refugees (UNHCR) report on the situation of asylum' seekers in Ukraine observed:

These continuous reorganizations, exacerbated by frequent changes in management and limited financial resources allocated by the State Budget have led to problems of access to asylum and substantive procedures, and have negatively impacted on the quality and speed of asylum decisions¹⁴³

The total shutdown of the asylum-granting authority of the State Committee on Nationalities and Religions (SCNR) occurred as a result of an on-again/off-again showdown between the President and the Cabinet of Ministers. The specific controversy that resulted in suspension of the asylum system for a year was the Cabinet of Ministers' decree on June 24, 2009 to establish a State Migration Service (SMS) under the authority of the Ministry of Interior that would transfer the Department on Refugee Affairs from the SCNR and merge it with the new SMS, effective August 1, 2009. Then the President Viktor Yushchenko vetoed the Cabinet of Ministers' decree, so that no authority — neither the SCNR nor the never-established SMS—had legal authority to grant asylum.¹⁴⁴ The situation seemed to be finally resolved when in November 2010 the President Yanukovich 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 Ministry of Interior. Unfortunately up to now, newly created State Migration Service still exists only on paper, which results in denying many people in need of protection, a due and careful examination of their claims.

Another grave problem is non-transparency of decision-making system on affording a status of refugee. Some denials elude analysing neither from the perspective of the law, nor from the perspective of the reason. The automatic refusal at the first stage of application for refugee status and the need to appeal it seems to become a binding part of granting refugee status. Whereas some others were made in diplomatic and foreign policy contexts: a status of refugee is not afforded under apprehension of damaging relations with countries of origin of refugees. This also includes violation of the right to privacy – when Ukrainian governmental institutions inform personal data of refugees to the law enforcement agencies of a country of origin.

Case Falun Gong follower, refugee from China: Mr. Z.K., asylum seeker from China, entered the refugee status determination procedure in Ukraine in 2008. When he received the notification on denial in status, his lawyer was allowed to review the materials of his case at the State Committee on Nationalities and Religion. According to the lawyer there was letter that stated that Ministry of Foreign Affairs and Chinese Embassy did not recommend granting a refugee status to Z.K. because it will harm bilateral relationships between Ukraine and China. The lawyer also informed that in the materials of the case he saw a positive recommendation of the Kyiv Migration Service, therewith the final conclusion was negative. He appealed against the rejection, and, after a number of court hearings, was resettled to a third safety country via the UNHCR procedure, where he was recognized as a refugee. Z.K. attempts to receive the refugee status in Ukraine were completely unsuccessful.

143 <http://www.unhcr.org/refworld/docid/472f43162.html>

144 <http://www.hrw.org/en/reports/2010/12/16/buffeted-borderland-0>

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 law enforcement officers for document checks or unlawful more durable detentions. Also they are frequent victims of extortion by the militia officers. These incidents are instances of ethnic profiling widely practised by Ukrainian law enforcement representatives, and culture of institutional racism peculiar to Ukrainian militia.¹⁴⁵ It had especially intensified when declared “fight against illegal migration” became one of priority activities of the Ministry of Interior, supported by EU.

IV. 5.2. Comments:

In accordance with Article 20 of the Law of Ukraine “On Refugees”, a person with refugee status has the same rights as Ukrainian citizens to:

- Freedom of movement, free choice of place of residence, and the right freely to leave Ukraine, subject to the restrictions established by law:

It should be noted that refugees, as well as citizens of Ukraine, are obliged to register their place of residence every time they move, if they stay in one place for more than six month. It is difficult if not impossible to obtain any social help from the state (medical assistance, education, social assistance form social service, including consulting re employment) without registration. Temporary registration in housing is possible for adults only. The registration of temporary residence for asylum seekers and refugees made according to the address provided in the application.

Registration of minors is complicated and imposes responsibility on house owners which they do not want to share. This factor makes registration of minors in rented housing practically impossible.

Mrs. N.P., asylum seeker from Uzbekistan, is in the process of appeal against the rejection of her application to receive refugee status in Ukraine. On May 2011 she visited VGIRFO (the Department of state registration of individuals and foreigners) for the extension of her registration, but she was told that she needed to provide the confirmation of consent from the owner of her flat. This rule applies only to foreigners who want to get a temporary residence permit in Ukraine, according to the Law, it should not be applied to the refugees and asylum seekers, when they provide information for temporary registration. After the recourse to the court on the illegality of the VGIRFO requirements, registration was extended, but the situation repeated some weeks later.

- Work:

Changes in the Ukrainian legislation are crucial in order to protect the rights of the refugees and asylum seekers. Among the most important acts there is the Law of Ukraine “On Professional Occupation of the Population” which is especially about employment order /procedure for foreigners temporarily residing on Ukrainian territory. For the employment of this category of foreigners, according to the Article 8 of the Law, it is necessary to get a special work permit, for which the employer pays considerable amount of money, otherwise he is fined. The same article defines the special category of foreigners who do not need the working permit. For the reason that the Law of Ukraine “On Professional Occupation of the Population” was adopted before the implementation of the Law of

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<http://noborders.org.ua/en/fields-of-work/refugees-and-asylum-seekers/report-protection-of-right-of-foreigners-refugees-and-asylum-seekers/>

Ukraine “On Refugees” from 1993¹⁴⁶, so refugees and asylum seekers were not mentioned. However, regulation of the procedure for foreigners to get the working permit was taken on the higher level. The Cabinet of Ministers has adopted the special Ordinance concerning this issue, (on the confirmation about regulations of granting working permit to foreigners and persons without citizenship of 1st November 1999 № 2028) Ministry of labour and social policy of Ukraine, main developer of the project, advised to abandon the necessity of working permits to all persons of that special category mentioned in the Ordinance, refugees were among them. Nevertheless, in that Ordinance, the legal expertise found the controversies with the Law of Ukraine “On Professional Occupation of the Population”, where the category – refugees and asylum seekers was absent. As a result, officially working permits for the refugees are still required. The procedure requires the employer to get a permit to hire a foreigner.

The Law of Ukraine “On Refugees” from 2005 having equated this category of foreigners for the right to work with the Ukrainian nationals, created legislative grounds for the solution of this problem for recognized refugees.

The problem of using/exploiting the right to work guaranteed by the Convention on the refugees status as well as by the Constitution of Ukraine and the Law of Ukraine “On Refugees” is linked to the lack of awareness and knowledge in this sphere of controlling institutions and potential employers. The reason for this is not the absence of desire to learn labour legislation but the absence of the term “refugee” as category of persons having right to work in the Law of Ukraine “On Professional Occupation of the Population” and Ukrainian Labour Code, not speaking about asylum seekers. Refugee discrimination is seen in the fact that Article 5 of the Law of Ukraine “On Professional Occupation of the Population” which offers additional guarantees to those lawful residents which cannot compete on equal levels on the labour market. According to the content of the Law, for a refugee to be able to get those additional guarantees, he has to be freed from places of freedom deprivation, become invalid/handicap, etc.

Concerning the employment of asylum seekers, there is an uptight problem, for even the Law of Ukraine “On Refugees” has not clearly determined their right to work. As the rule of law is fundamental for Ukraine, everything that is not directly forbidden by Law is permitted, so there is a possibility of proving the right to temporary work for asylum seekers (social guarantees need not even to be mentioned)¹⁴⁷. Yet, the problem arises in access to the employment. It consists in the fact that the right for the temporary employment mentioned in the Law of Ukraine “On Refugees” for asylum seekers, is not mentioned in any other Law, which means that practically the order how asylum seekers can enjoy their right for temporary employment and how employers can hire them does not exist in Ukrainian legislation. The lack of a clearly defined mechanism for exercising the right to work for asylum seekers leads to opportunities for abuse by law enforcement agency staff and to constant refusals by employers to officially employ these persons. During raids in search of illegal immigrants, police officers frequently detain asylum seekers without making any effort to distinguish between the

146 The Law of Ukraine “About Refugees” from 1993 – is the first law about refugees, was amended further in 2003, 2005 and 2011. Version from 2011 at the moment of this report creation was approved by the Parliament and send to the President to be signed. It did not come into force yet.

147 There had been cases the right for temporary employment had been recognized by the Court ruling, but unfortunately these individual cases do not change general practice and do not prevent asylum seekers being fined for working without work permit.

two groups of people. They are detained and fined on the basis of the same notorious Article 203 of the Code of Administrative Offences.

It should also be pointed out that according to the Law “On Refugees” it is the duty of a specially authorized State body on issues of employment and social policy to provide assistance in seeking work to people in respect of whom a decision has been taken to process documents for taking a decision on whether or not to grant refugee status. However the text of the law contains the phrase «where possible» which allows this body to not fulfil its obligations at all. According to Article 5 of the Law, the Cabinet of Ministers should have approved procedure for assisting in finding work for refugees and asylum seekers, however to this day no such procedure has been adopted or even drawn up. The said norm of the law has no meaning and exists only on paper.

Mr. Z.K., the asylum seeker from Uzbekistan, applied for refugee status in Ukraine, got rejection and appealed against it. He got a job of shop assistant to earn for his life. Some weeks later he was arrested on his working place by policemen due to the reason that “as the foreigner, he should have the proper permission for work” and he was prosecuted under Article 203.1 of the Code of Administrative Offences. Mr. Z.K. was supported by a qualified attorney, who proved in the court that there was no violation of law on the part of asylum seeker, so the case was closed. However, the cases where asylum seekers are trying to be prosecuted on such grounds remain very frequent, and the court's decision is not always imposed in their favour.

- Engage in entrepreneurial activity not prohibited by law:

In order to entrepreneurial practice/activity, firstly it is required to register according to the Law of Ukraine “On state registration of juridical persons and physical persons- entrepreneurs”. Unfortunately, only recognized refugees are capable to ask for such a registration, asylum seekers would be refused, even though they have a right to temporary employment according to the legislation. Entrepreneurial practice/ activity, not forbidden by law is a type of self-occupation, meaning that a person who provides for himself and earns for life, is properly registered and pays taxes.

- Health protection, medical care and medical insurance:

Till the 1 of July 2011 it was possible for refugees and asylum seekers to receive a free medical assistance in urgent cases. All other medical services were paid. Starting from July 1, 2011, under the decree of the Cabinet of Ministers all foreigners should pay for any kind of medical assistance notwithstanding their status. This applies even to urgent cases. This new provision excludes benefits for refugees or asylum seekers so they have to pay as foreigners or buy medical insurances. This makes medical assistance also inaccessible for them.

The Law “On Refugees” provides that applicants should go under medical examination when they enter the procedure, but it does not provide such medical examination for free, nor there is a special hospital for asylum seekers and refugee. With the new decree many of them will be denied medical assistance due to their very low income.

- Education:

Situation with secondary education for refugee children is positive enough: all children attend schools. However, hardly any refugee enters higher educational institutions for the reason that higher education is paid and is not available because of financial problems. The state does not give quota for free education for refugees or asylum seekers either. These two categories are just not mentioned at the list of vulnerable persons who can get free higher education.

There is still another problem with social integration linked to the education. The state does not provide a possibility to learn state language for free to refugees and asylum seekers. But according to the Law of Ukraine “On the citizenship” a person to require Ukrainian citizenship needs to pass an exam to prove the knowledge of the state language. Thus a refugee or asylum seeker can learn Ukrainian only at private course or at courses administered by NGOs.

There is also no procedure for diploma and qualification recognition for refugees and asylum seekers, so they have no proves to their education or experience when they want to enter the labour market. This procedure re foreigners should be administered via the Ministry of Foreign Affairs.

- Financial Aid:

Objective financial aid for acquiring subjects of urgent necessity of the sum of 17 hrn (those persons who did not reach 16 years old – 10 hrn 20 kop – less than 2 Euro) can be granted only to refugees after they are recognized by the state, and only once, as a lump sum. Moreover, the refugees can receive these money only in the central office of the SMS (e.g., in Kyiv), and they should spend much more to get there from the regions. Evidently, the amount of benefit does not cover actual expenses and put down human dignity.

During the period from 1998 till 2011 there were no radical changes into the Order for granting the financial aid and pension to refugees, approved by the Ordinance of the Cabinet of the Ministers of Ukraine from 6th July 1998 №1016, albeit the procedure of receiving the status lasts less than a year. Even though the amount of the benefit is ridiculous, the state is granting it only to recognized refugees, not considering asylum seekers.

- Pension:

Refugees and asylum seekers cannot transfer their pension to Ukraine, even if it could be proved with supporting documents due to the lack of essential provision in Ukrainian legislation. The category “refugee” is not listed in the Law of Ukraine “On Pensions”.

Mr. S.S., asylum seeker from Uzbekistan, lives in Kyiv region, Ukraine for several years. He reached his retirement age before he left Uzbekistan. In Ukraine, he appealed against the rejection of his application for the refugee status several months ago. He collected all the papers to prove his pension, but he can't transfer it to Ukraine because of his status. Because of his age, Mr. S.S. can't find a job and is forced to live on financial assistance from NGOs.

- Benefits to families with children:

For the fact that problems with allocation of benefit at birth of a child and bringing up a child till he or she reaches 3years old arise only in case of those refugees, who work unofficially or do not work and for this reason they are not insured in the generally-obligatory state social insurance system, so the comments would touch upon exclusively granting of benefits through Administration of work and social protection of the population.

The Law of Ukraine “On state financial support to families with children” deals with several types of benefits. Let's concentrate on general problematic aspects, the Order of appointment and payout of state financial support to the families with children considers necessity of the documents that can be presented only by refugees living in their own apartments or having agreements of housing rent legalized in certain fixed order. As in most of the cases neither is there such privately owned housing

nor agreements on rent, no one can gather certain documents from local housing bureau, considered in the above mentioned Order. The document needed is a registration of a child at certain housing address. This is crucial to follow the procedure and be appointed the financial support payments. Inspectors refuse to try to find other ways out of the situation because it is not mentioned in the Law, albeit there is a juridical/legal fact (birth of the child), with appearance of which the state has to have certain obligations.

- Benefits to persons without right to pension and persons with disabilities:

Concerning this type of state financial support, in our opinion the Law “On state social support to persons without right to pension and persons with disabilities” itself is controversial to the Constitution of Ukraine. Speaking about problems of granting this benefit to refugees, in practice there had been some verbal refusals to appoint financial support from social workers, motivated by the fact that refugees do not have the right to be granted such type of benefit – which illustrates again professional illiteracy/ignorance and bureaucratic cynicism. Except for this, there is still an unsolved problem with documents from local housing bureau mentioned above. An essential point is that for to be granted the benefit, a person has to be of low-income, but if the refugee is officially renting an apartment, the agreement has to be registered within Tax Service, so deriving from the price of the rent such a refugee cannot be considered as having low-income. Not having the Rent agreement, he/she (refugee) will not be able to present all necessary documents.

- Housing provisions:

According to Ukrainian legislation there is a Housing Fund for temporary living. Unfortunately, today such kind of housing has not been granted to any refugee. The problem is not only that it is hard to gather all the documents, but also that this Fund was created only on paper. Temporary accommodation centers (TAC) established by the state for asylum seekers and refugees do not provide enough place to house all those in need. There are only two such TAC in Ukraine. Those places can host no more than 250 persons. For the asylum seekers it’s very difficult to get the place in the TAC. If she/he gets a place there, she/he needs to find a job nearby to cover his/her basic needs. Due to the fact, that TACs are located far from the region centers, it could be difficult for those who need to find a job.

IV. 5.3. New Law of Ukraine “On refugees and persons in need for complimentary and temporary protection”¹⁴⁸.

This Law was approved by the Parliament on June 8, 2011¹⁴⁹. It is still has to be signed by the President to enter into force¹⁵⁰.

148 UNHCR provided General Comments and Specific Comments to the draft Law, which were shared with the Human Rights Committee of the Parliament on 29 October 2010 and 28 February 2011. General Comments:

http://www.unhcr.org.ua/img/uploads/docs/Comments%20_general_%20to%20the%20Law%20of%20Ukraine%20on%20refugees.pdf

149 The Parliament news about adoption (302 MP voted positively, none against).
http://portal.rada.gov.ua/rada/control/uk/publish/printable_article?art_id=280547

150 The text of the draft law and the comparative table are available at
http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=38773

Main improvements of the Law:

- introduction of complementary and temporary protection statuses – to provide protection as per international obligations of Ukraine;
- introduction of one ID (instead of current three, depending on the stage of procedure and appeal) for seekers of protection in Ukraine pending RSD (incl. during the appeal to the central authority (SMS) or to court – to reduce bureaucracy);
- withdrawal of the ID/Certificate only if within 5 working days from the moment of rejection: (a) in further admission (b) on substance; (c) due to cessation/deprivation/cancellation of status no appeal have been submitted – to allow smooth appeal and prevent expulsion;
- enhancing confidentiality of the applicants and their family members in COO by non sending requests with their personal data to law-enforcers of their countries of origin and non disclosing the fact of submission of application for protection in Ukraine;
- introduction of a right of the applicant admitted into RSD: to confidentially correspond with UNHCR and to be visited by UNHCR staff – to be protected;
- government cooperation with UNHCR on resettlement in cases of necessity – to address difficult and vulnerable cases;
- simultaneous recognition of children with their parents - to preserve the family unity;
- 5 years validity of both recognized refugee and person in need of complementary protection Certificates and their Travel Documents – to ensure integration, freedom of movement and non-discrimination;
- exceptional issuing of both recognized refugee and person in need of complementary protection Certificates at the age of 14 – to cover respective education and medical needs of the individuals;
- regarding refugees as persons who reside permanently in Ukraine from the moment of their recognition – to allow their access to social and economic rights and proper integration in Ukraine.

However, there is a number of shortcoming and flaws in the Law that needs to be further improved to be in harmony with the respective EU Directives, international practice and items 21-22 of *the National Plan On Implementation of the Action Plan for Liberalization by the European Union of a Visa Regime for Ukraine*, approved by the Presidential Decree No. 494/2011 dated 22 April 2011, they are still remained in the draft law to be signed by the President. These are the following:

- Two (by combining non- admission with non- admission into further RSD procedure within 15 working days) instead of three stages RSD procedure - could have allow to reduce the bureaucracy;
- Mentioning of affects of indiscriminate violence in situations of international or internal armed conflict in the definition of *a person in need of complementary protection* could have (a) simplify substantiation by the applicants that they would face tortures, inhuman or degrading treatment in their country of origin and (b) be in line with Art 15 of *the 2004 EU Directive definition*;
- providing of temporary protection to foreigners and stateless persons who arrive in Ukraine *en mass* also from countries not neighbouring Ukraine;
- the list of basic rights for persons who submitted an application for recognition as a refugee or as a person who needs complementary protection in Ukraine;

- for persons already admitted in RSD procedure, the following basic rights are missing: submission of application in the language the applicant knows; RSD interpretation costs to be explicitly covered by SMS bodies; interview by SMS body staff of the same sex as the applicant; adequate reception conditions; reimbursement of accommodation costs to those vulnerable applicants and their family members who are not accommodated in the temporary accommodation centers for refugees; to be personally present during consideration of their RSD appeals (important for those who are subject to administrative detention or temporary or extradition arrests!);
- the possibility to apply for recognition as refugee or as a person who needs complementary protection in Ukraine not only through State Border Guards Services (SBGS) bodies but also through MOI and the State–Criminal Executive Service (SIZO) bodies with a clear duties of the latter to hand over of such applications to SMS bodies within the concrete time frame;
- issuance of the ID on the day of submission of the application to SMS body or during two days if applied through the detention facility of SBGS, MOI or SCES;
- the duties of the asylum authorities to analyze Country of Origin Information and its correct use in refugee status determination adjudications;
- the extraterritorial character of recognition of persons in need of international protection on the territory of Ukraine (the draft envisages this possibility only for refugees recognised under *the 1951 Refugee Convention*);
- the inclusion of the principle of the “benefit of the doubt” in refugee status determination adjudication;
- no harmony with Art 32 and 33 of *the 1951 Refugee Convention* as the draft allows deprivation of refugee or complementary protection status from a person who is involved in activities posing threat health of the population of Ukraine.
- the reference to cooperation with UNHCR¹⁵¹ in the spirit of article 35 of *the 1951 Refugee Convention* on all issues of concern to UNHCR, inclusion access to applicants’ files.

151 UNHRC’ specific comments http://www.unhcr.org.ua/img/uploads/docs/Microsoft%20Word%20-%20Comments%20_specific_%20to%20the%20Law%20of%20Ukraine%20on%20refugees.pdf

IV.6. Situation of International Students in Ukraine

Foreign students also constitute a vulnerable group due to the fact that large number of persons, coming to Ukraine, belong to so-called visible minorities, thus, subjected to discriminatory practices describe earlier in this report, they are often not familiar with the language, environment, as well as legal framework and their rights as foreign nationals staying legally in Ukraine. Provided hereinafter is an overview of the situation of foreign nationals undertaking their studies in Ukraine, developed by the Social Action Centre/No Borders Project based on organization's caseload, as well as other studies previously conducted on this issue¹⁵².

Students come to Ukraine for university studies due to relatively low cost of both studies and accommodation, good reputation of Ukrainian education stemming from Soviet period, less burdensome, in comparison to the EU, visa procedures, as well as availability English-language courses and safer living conditions, as opposed to Russia, where racist violence is manifested to greater extent. However, prevailing majority of foreign students currently studying in Ukraine testify that what they found in Ukraine did not meet their expectations, particularly in terms of costs and quality of education and life.

Prior to arrival to Ukraine students receive information about conditions of study in Ukraine and their universities mostly from recruiting agents with whom they have to deal to obtain admission to any Ukrainian university. Some receive information from Internet (however very few Ukrainian universities have English versions of their official web-sites). No official information about conditions of studying in Ukraine is available to students prior to their arrival directly from the chosen university or through Embassies of Ukraine. According to the template agreement approved by the Ministry of Education of Ukraine recruiting agents are responsible for providing true information about the conditions of studies in a particular university and are accountable before the administration of the University that contracted that agent.

Universities not only do not exercise any control over information that is being provided by recruiting agencies to perspective students but also do not set any but formal requirements for admission (there are no admission tests only the requirement that a future student has required minimum education level) students encourage agents to recruit as many students as possible regardless of the quality of their knowledge and regardless of their motivation (as a rule the agent simply gets a commission off every student he recruited to study in the university that he is contracted by). Such an attitude leads to various malpractices by the agents who not only misrepresent conditions of studies in Ukraine to perspective students but also as some reports show sometimes forge documentation to receive commission for recruiting students who do not even have required minimum level of qualification. This former practice often occurs without knowledge of the perspective students themselves and first of all concerns transfer students.

As a result, for the majority of the international students discrepancies between the information they receive from agents and actual state of things include higher cost of living and studying, lower quality of education, higher expenses due to corruption in universities, questionable recognition of Ukrainian diplomas abroad, as well as difficulties in part-time employment and participation in exchange programmes for international studies. Also, as mentioned above, environment in Ukraine creates

152 The overview of the situation of foreign students (foreign nationals and stateless persons) in Ukraine is based on previous research by Amnesty International (2007-2008, partly reflected in 2008 report "Ukraine: Government must act to stop racial discrimination"), Eastern European Development Institute (EEDI: "Unheard voices problems of immigration, human rights and freedoms in Ukraine", 2008) and Elise Garvey (Fulbright fellow, "The Experience of Foreign Students in Ukraine", 2008) as well as on empirical data available to the Social Action Centre/No Borders Project from its practice.

difficulties in terms of discriminatory practices, hostile attitudes and room for abuse created both by legislation and standard operations of law enforcement bodies and other authorities. Moreover, the environment According to statistics provided by the Diversity Initiative (EEDI¹⁵³ and Garvey), majority of victims of racist attacks since 2007 were international students. Consequently, they choose to avoid interaction with local population and stay indoors due to the fear of becoming a victim of racist attack. Moreover, international students are facing day-to-day harassment from local population on the streets of the cities they live in and study.

Upon their arrival to Ukraine, students find themselves in vulnerable situation starting from the border-crossing point, where they are not allowed across the border unless received by university representative on the other side. This not only causes situations were soon-to-be students are kept in airport arrival halls for long hours or even days but also creates a room for abusive and corrupt practices of border-guards and university representatives against newly recruited students kept at the border.

Such a vulnerable position of students creates a room for even more blatant abuse by representatives of the universities. For example, it was reported that students who arrive to Donesk airport to commence their studies at Lugansk State Medical university are expected at the airport by the agent representing university and are required to pay substantial amounts of money (from two hundred dollars three years ago up to two thousand dollars in September 2010) for transfer from Donetsk to Lugansk (by coach) before they are allowed to cross Ukrainian border. Those who refuse to pay are threatened by immediate deportation (needless to say that those students who are able to pay this money do it, as far more has already been invested by them or their parents into visa, travel, agency fees and sometimes even school fees for the first year of studies).

Legal conditions of study of international students in Ukraine, since most of them study on contractual basis, are supposed to be stipulated by their contracts with universities, internal regulations of universities, and relevant legislative acts. Major problems concerning this aspect is that most of the time foreign students are presented with these documents in either Russian or Ukrainian language (university regulations and legal framework for their stay in Ukraine are only available in public domain in Ukrainian or Russian). Even though contracts are sometimes accompanied by another language version, for instance, English or French, newly recruited students do not receive their copy and are initially forced to sign the Russian/Ukrainian version only. In addition to that many international students are even deprived of an opportunity to ask any authoritative advice from university administration, because they either do not know where to go or even worth staff of the University administration does not speak any English.

International students arriving to Ukraine to study have to obtain type “O” visa, a single-entry visa that is usually valid through several weeks upon their arrival to Ukraine. Following this period, they are required to obtain registration as a proof of legal grounds for their stay in Ukraine. However, during these several weeks and registration process a room for abuse, including bribes, is created due to their vulnerability and through threats of deportation.

Moreover, as mentioned earlier in current report, inadequacy of migration laws and desire of Ukrainian law enforcement authorities to generate statistics on “expulsions” is severely affecting the rights of international students in Ukraine – universities never take action to protect the rights of their students against unlawful practices of law enforcement authorities.

Opportunities for transferring to another university are also limited, as Ukrainian law stipulates that

153 EEDI: “Unheard voices problems of immigration, human rights and freedoms in Ukraine”, 2008

international student who arrived upon the invitation of one Ukrainian university may only transfer to another one upon the consent of the original university. The law does not stipulate the procedure of how such consent should be provided nor does it list the grounds on which universities are allowed to refuse student transfers. This leaves a room for abuse of authority by host universities and arbitrary interferences with students' right to education.

Procedures regulating expulsion of students from universities create plenty of room for abuse of authority, as Ukrainian legislation also does not stipulate clearly the expulsion procedure and does not contain any procedural means of protection from arbitrary expulsion that could be available to students prior to the moment the expulsion is enacted. According to the students' testimonies and the case load of the Social Action Centre/No Borders Project administrations of the universities often inform students about the fact that they were expelled only several months after the expulsion was enacted (usually not before their current residence permit expires), never provide them with the copy of a decision by which they were expelled from the university (Rector's Decree) and seldom communicate them reasons behind their expulsion in any other way.

Remedies by means of which international students could challenge the university decision to expel them are neither effective nor available to them. Ukrainian students may challenge the unlawful expulsion from the university either in domestic courts. For national students two procedures are available: administrative or civil (there is no set practice concerning the jurisdiction over such disputes). For international students in theory judicial review is also available as a remedy against unlawful expulsion (note: unlike to national students, only difficult and costly civil procedure is available to them because they mostly study on contractual basis). However, in practice such remedy is not available to them not just because it is difficult, costly and lengthy, but because once a foreign student is expelled from the university, the purpose justifying his/her residence permit ceases to exist and he/she becomes liable to deportation. While Ukrainian legislation indicates that a judicial review of a deportation/termination of a residence permit suspends them (however, without providing for a mechanism to obtain a valid residence permit for the period of such judicial review), nothing in Ukrainian laws indicates that contesting expulsion from the university gives a right to a student to stay in Ukraine while his case against the university is being considered by national courts.

V. Information about Submitting NGOs

1. Minority Rights Group International

Minority Rights Group International campaigns worldwide with around 130 partners in over 60 countries to ensure that disadvantaged minorities and indigenous peoples, often the poorest of the poor, can make their voices heard. Through training and education, legal cases, publications and the media, we support minority and indigenous people as they strive to maintain their rights to the land they live on, the languages they speak, to equal opportunities in education and employment, and to full participation in public life.

We understand how discrimination based on age, class, gender and disability can have a multiple impact on disadvantaged minorities, and our campaigns target governments and communities to eradicate such attitudes.

Minority Rights Group International has over 40 years experience of working with non-dominant ethnic, religious and linguistic communities and we bring a long term view of these issues to bear in all the work we do.

We work with minorities as diverse as the Batwa in Central Africa, Roma in Europe, Christians in Iraq and Dalits in India and Nepal to name but a few.

MRG is an international non-governmental organization (NGO) with an international governing Council that meets twice a year. We have consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission for Human and Peoples' Rights.

More about MRGI can be found here <http://www.mrgi.org/>

2. The “Social Action” Centre – “No Borders” project:

“No Borders” project as a part of SAC was created in 2008 with the following task:

1. *attract attention to problems and defects in the system of asylum in Ukraine*; initiate discussion of the difficult situation in which refugees and asylum seekers live in Ukraine;
2. *counteraction to racism and xenophobia in Ukrainian society*, including hate crimes; right now this problem is recognized by Ukrainian authorities due to effective and mass campaign conducted by Ukrainian and international NGOs;
3. *attract attention of society to the problem of hate speech usage in Ukraine*, specially but not only, by politicians and mass media – topic which was not previous discussed;
4. *attract attention to the human rights abuses* concerning freedom of movement, migrants rights in Ukraine and Europe, discriminatory migration and police practices.

To reach these goals, “No Borders” project implements or participates in programs and projects concerning:

- legal support to refugees and asylum seekers;
- monitoring of xenophobia and racism;

- legal support to victims of hate crimes and discrimination;
- trainings and other educational initiatives on these topics with various target groups.

Right now “No Borders” project implements the following activity:

Legal and social support to refugees from Central Asia.

Monitoring of racial and ethnic hatred in Ukrainian part of the Internet

”Combating hate crime in Ukraine through legal action”

More about “No Borders” project can be found here www.noborders.org.ua