



# EQUAL RIGHTS TRUST

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## **Suggestions for the List of Issues Prior to Reporting to be adopted by the Committee on Economic, Social and Cultural Rights at its 63<sup>rd</sup> session (PSWG) in relation to:**

### **Ukraine**

17 September 2018

#### **Statement of Interest**

1. The Equal Rights Trust (the Trust) submits the following suggested questions for the list of issues prior to reporting to be adopted by the Committee on Economic, Social and Cultural Rights (the Committee) at its 63<sup>rd</sup> Session (Pre-Sessional Working Group) in relation to Ukraine.
2. The Equal Rights Trust (the Trust) is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of equality laws. Over the last decade, we have worked in partnership with organisations in more than 45 countries to support equality defenders to press for the adoption and effective implementation of comprehensive anti-discrimination law.
3. We have been involved in efforts to combat discrimination in Ukraine since 2012. Under a project focused on supporting civil society to promote improved protection, the Trust worked in partnership with Nash Mir (Our World) Gay & Lesbian Center. In the context of this project, the Trust and Nash Mir also undertook research on patterns of discrimination and inequality, including discrimination in accessing the rights under the International Covenant on Economic, Social and Cultural Rights (the Covenant). This research culminated in the publication of the report *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine* (the Report) in 2015.<sup>1</sup> The report provides, for the first time, a comprehensive assessment of the lived experience of those exposed to discrimination on the basis of various grounds, with an analysis of the national legal framework on equality and non-discrimination

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<sup>1</sup> Equal Rights Trust, *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*, August 2015, ERT Country Report Series: 5, available at: [www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf](http://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf).

in Ukraine. In 2014, the Trust submitted a shadow report to the CESCR Committee in respect of its review of Ukraine at its 52<sup>nd</sup> Session.<sup>2</sup>

4. Our suggestions for the list of issues to be adopted by the Committee at the 63<sup>rd</sup> Session (PSWG) mainly relate to the extent of the implementation of the State Party's comprehensive anti-discrimination law which was amended shortly after the previous review of Ukraine by the Committee.

### **Article 2(2): The Legal Framework**

5. Ukraine adopted a specific anti-discrimination law, Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" which entered into force in 2012.<sup>3</sup> However, this Law fell short of international standards on equality and non-discrimination, including in respect of its obligations under Article 2(2) of the Covenant as elaborated by the Committee under its General Comment No. 20.
6. In 2014, we produced an extensive legal analysis of this Law setting out the need for significant amendments of the Law in order to meet international standards on equality.<sup>4</sup> The Trust also outlined the substantive and procedural shortcomings of the 2012 Law in our previous submission to the Committee in 2014.<sup>5</sup> The Committee highlighted a number of these problems in its Concluding Observations.<sup>6</sup>
7. We therefore welcomed the substantial revisions to the 2012 Law through the adoption of the Law of Ukraine "On Amendments to the Particular Legal Acts of Ukraine on Prevention and Combating Discrimination" in May 2014. Nevertheless, the Law continues to have a number of significant shortcomings.<sup>7</sup> For example, while discrimination is prohibited on the

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<sup>2</sup> Equal Rights Trust, *Parallel report submitted to the 52nd session of the Committee on Economic, Social and Cultural Rights in relation to the sixth periodic report submitted by: Ukraine*, March 2014, available at: [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/UKR/INT\\_CESCR\\_CSS\\_UKR\\_17065\\_E.docx](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/UKR/INT_CESCR_CSS_UKR_17065_E.docx)

<sup>3</sup> See Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 37.

<sup>4</sup> Equal Rights Trust, *Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine": Legal Analysis*, October 2013, available at: [http://www.equalrightstrust.org/ertdocumentbank/ERT%20Legal%20Analysis%20of%20Anti-Discrimination%20Legislation%20in%20Ukraine%20\(English\).pdf](http://www.equalrightstrust.org/ertdocumentbank/ERT%20Legal%20Analysis%20of%20Anti-Discrimination%20Legislation%20in%20Ukraine%20(English).pdf).

<sup>5</sup> Equal Rights Trust, *Parallel report submitted to the 52nd session of the Committee on Economic, Social and Cultural Rights in relation to the sixth periodic report submitted by: Ukraine*, March 2014, available at: [https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/UKR/INT\\_CESCR\\_CSS\\_UKR\\_17065\\_E.docx](https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/UKR/INT_CESCR_CSS_UKR_17065_E.docx)

<sup>6</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the sixth periodic report of Ukraine*, 13 June 2014 E/C.12/UKR/CO/6, Para 7.

<sup>7</sup> See Equal Rights Trust, *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*, August 2015, ERT Country Report Series: 5, Chapter 3.2.2 for a detailed discussion of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" (as amended) and its shortcomings.

basis of an extensive and open-ended list of characteristics, it does not include sexual orientation, gender identity, health status or economic status amongst those grounds which are explicitly listed. Even after amendment in 2014, the Law failed to require positive action measures where necessary to accelerate progress towards equality. It also contained limited remedies and failed to fully harmonise the law with other pieces of legislation. Thus, while the 2012 Law (as amended) sets out that persons who believe they are subject to discrimination have the right to bring a complaint to the Commissioner of the Verkhovna Rada of Ukraine on Human Rights and/or the courts, no further provisions are provided as to how victims can access justice.

#### **Suggested Questions – Legal Framework**

- What plans, if any, does the State Party have to further amend the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”?
- What steps, if any, has the State Party taken address shortcomings in the legal framework, such as the lack of a requirement to take positive action measures?
- What data does the State Party have on the number of cases have been brought under the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”? Does the State Party have statistics of the number of complaints brought to the Commissioner of the Verkhovna Rada under the 2012 Law?
- What remedies have been provided by courts and by the Commissioner of Verkhovna Rada for breach of provisions under the 2012 Law?
- What evidence does the State Party have on the levels of awareness on part of the public and public and private duty-bearers of the 2012 Law (as amended) and what indicators does the State Party use to measure such awareness?
- What regulations, policies or other measures have been taken since the adoption of the 2012 Law (as amended) to operationalise the Law?
- What steps has the State Party taken to harmonise the 2012 anti-discrimination law (as amended) with other legislation?
- How does the State evaluate the overall effectiveness of the 2012 Law (as amended)?

## **Discrimination Affecting the Enjoyment of Other Covenant Rights**

8. The report *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine* presents evidence of discrimination and inequality on grounds of, *inter alia*, gender, sexual orientation and gender identity, disability and ethnicity.<sup>8</sup> The report found that discrimination is a major factor in limiting the enjoyment of Covenant rights on an equal basis with others. In this section of the submission we provide selected highlights of our finding, in order to illustrate the impact of discrimination on various grounds on the enjoyment of Covenant rights.

### **Articles 6 and 7: The Right to Work and the Right to Just and Favourable Conditions of Work**

9. The Trust's report *In the Crosscurrents* presents evidence of discrimination in the access to employment, particularly on the basis of gender, sexual orientation and gender identity, disability and ethnicity. For example, a survey of members of the LGBTI community undertaken by our partner Nash Mir in 2011 found that 89% of respondents whose sexual orientation or gender identity were known to others have faced discrimination, often in the area of employment.<sup>9</sup>
10. Research for our 2015 Report found various examples of gender discrimination in employment. For example, we noted various instances of discrimination in recruitment practices, including adverts which only ask for women or men to the exclusion of the other sex.<sup>10</sup> We also found that the state maintained various discriminatory legislative provisions in the Labour Code which favour mothers over fathers.<sup>11</sup>
11. Despite law and policy which aims to enhance access to employment for persons with disabilities, our Report found that such provisions are not enforced. Research for our Report found that the quota which requires companies to recruit persons with disabilities was not always observed, something which was also noted by the Committee in its last Concluding Observations on Ukraine.<sup>12</sup>

#### **Suggested Questions – Employment**

- What concrete measures has the State Party taken to effectively implement the 2012 anti-discrimination law (as amended) and other relevant legislation to ensure equal access to and enjoyment of the right to work without discrimination?
- What steps, if any, has the State Party taken to identify and amend or repeal discriminatory legislative provisions in the area of employment?

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<sup>8</sup> See above note 2.

<sup>9</sup> *Ibid.*, p. 62

<sup>10</sup> *Ibid.*, pp. 45-46

<sup>11</sup> *Ibid.*, pp.34-35

<sup>12</sup> *Ibid.*, p. 101; UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the sixth periodic report of Ukraine*, 13 June 2014 E/C.12/UKR/CO/6, Para 12.

## Article 12: The Right to the Highest Attainable Standard of Physical and Mental Health

12. In our 2015 Report, we evidenced widespread stigma and discrimination on the basis of sexual orientation and gender identity in the area of healthcare. Our partner Nash Mir conducted a survey of members of the LGBTI community in 2011 where experiences disclosed by the respondents included refusal of treatment and even attempts to compulsorily “treat” homosexuality.<sup>13</sup>
13. For persons with disabilities, our Report found that access to medical facilities remained restricted despite various commitments on part of the State Party to improve access. One example was the lack of ramps at many private and public medical facilities which prevent persons with physical disabilities from accessing healthcare.<sup>14</sup>
14. Our Report also found widespread discrimination against persons living with HIV in the area of healthcare. This included, for example, straight refusal on part of medical staff to provide medical treatment for a person living with HIV once their status is revealed.<sup>15</sup>

### Suggested Question - Healthcare

- What concrete measures has the State Party taken to effectively implement the 2012 anti-discrimination law (as amended) and other relevant legislation to ensure the equal access to and enjoyment of the right to health without discrimination on any ground?

## Article 13: The Right to Education

15. As set out in detail in the Trust’s report *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, discrimination can be a major factor inhibiting access to and completion of education.<sup>16</sup> In Ukraine, our 2015 Report provided evidence of discrimination against various groups in the field of education.
16. For example, our research found evidence that Roma children in Ukraine receive poorer quality education than other children, and often faced bullying and other forms of abuse.<sup>17</sup> Further, we found evidence that Roma children were refused admission due to lack of identification documents.<sup>18</sup>

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<sup>13</sup> See above note 2, p. 81.

<sup>14</sup> *Ibid.*, p.96

<sup>15</sup> *Ibid.*, p.117

<sup>16</sup> Equal Rights Trust: *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, London, November 2017, available at: [http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality\\_e-version\\_2.pdf](http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality_e-version_2.pdf).

<sup>17</sup> See above note 2, p. 139.

<sup>18</sup> *Ibid.*

17. Inclusive education for children with disabilities in Ukraine is limited. Our 2015 Report found that parents often do not have another option than to send a child with disabilities to special boarding schools.<sup>19</sup>

**Suggested Question - Education**

- What concrete measures has the State Party taken to effectively implement the 2012 anti-discrimination law (as amended) and other relevant legislation to ensure the equal access to and enjoyment of the right to education without discrimination on any ground?

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<sup>19</sup> *Ibid.*, p. 104