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EQUAL RIGHTS TRUST

The Equal Rights Trust

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Ukraine

11 July 2016

Statement of Interest

1. The Equal Rights Trust submits this alternative report to the Committee on the Elimination of Racial Discrimination (the Committee) commenting on the combined 22nd and 23rd reports by Ukraine.
2. The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. In 2015 the Trust published *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*, the first comprehensive study ever produced on the rights to equality and non-discrimination in that country. The product of a two and a half year engagement in Ukraine, the report includes testimony collected from victims of discrimination throughout the country, together with the findings of an extensive review of existing literature and statistical data. It also includes an in-depth analysis of Ukraine's legal and policy framework on equality and non-discrimination.
4. This submission is based on the *In the Crosscurrents* report. It examines Ukraine's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention), focusing in particular on the enjoyment of rights of minority groups and racially and ethnically discriminatory laws. Our research identified that certain racial and ethnic minority groups in Ukraine experience considerable discrimination, including mostly notably the Roma, Crimean Tatars and Jews.
5. The submission relies upon the Committee's interpretations of the Convention in its General Comments. It also relies on the Declaration of Principles on Equality (the Declaration),¹ a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current

¹ Declaration of Principles on Equality, Equal Rights Trust, London, 2008.

international understanding of Principles on Equality”.² It has also been endorsed by the Parliamentary Assembly of the Council of Europe.³

6. This submission presents some of the key findings of our research with respect to racial and ethnic discrimination in Ukraine. The comprehensive nature of our report is such that it presents detailed information on racial and ethnic discrimination faced by a number of different minority groups, in all areas of life governed by law. In the interests of concision, this submission does not reproduce our findings, but instead aims to highlight – and provide examples of – the key patterns of racial and ethnic discrimination identified in the report. Copies of the report itself are provided alongside this submission, and can be downloaded from www.equalrightstrust.org/crosscurrents-addressing-discrimination-inequality-ukraine.
7. This submission begins by examining laws and legal provisions which discriminate on the basis of race or ethnicity, before examining the extent to which Ukraine has met its obligations to prohibit discrimination in practice, specifically focusing on hate crime, interaction with public authorities, education and employment.

Discriminatory Legal Provisions

8. Article 1(2) of the Convention permits States to draw distinctions between citizens and non-citizens. However, in General Recommendation No. 30, the Committee noted that Article 1(2) “must be construed so as to avoid undermining the basic prohibition of discrimination”.⁴ In particular, in relation to the obligation under Article 5 of the Convention to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights the Committee noted the need for “human rights (...) to be enjoyed by all persons.”⁵
9. Although, as the Committee has previously noted,⁶ in general foreign nationals and stateless persons in Ukraine enjoy the same rights and freedoms as Ukrainian citizens, there are some legal provisions that discriminate, without justification, against non-citizens. For example, although the Constitution of Ukraine guarantees the right to housing to everyone (Article 47, paragraph 1) and provides a right to social housing for citizens who require social assistance, this right is limited by the Housing Code of Ukraine which restricts the right to social housing to citizens of Ukraine. In addition to directly discriminating on the basis of citizenship, this provision indirectly discriminates against Roma who often lack personal documentation and do not have citizenship, meaning they are frequently unable to access social housing in Ukraine.
10. There are also many restrictions on non-citizens in the field of employment. Only Ukrainian citizens are eligible for positions in the civil service, in local government bodies, in the military, in the prosecutor’s office, at the Security Service of Ukraine, in internal affairs bodies, at the State Customs

² *Naz Foundation v Government of NCT of Delhi and Others*, High Court of Delhi, WP(C) No. 7455/2001, Para 93.

³ Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

⁴ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against non-citizens*. UN Doc, 2005. Para 2.

⁵ *Ibid*, Para 3.

⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ukraine*, UN Doc. CERD/C/UKR/CO/19-21, 14 September 2011, Para 17.

Service of Ukraine, as judges, and as counsellors-at-law, notaries and auditors.⁷ Foreign nationals are also not allowed to establish farms, although they are allowed to work on them.⁸ Although, as noted above, Article 1(2) does allow distinctions to be drawn between citizens and non-citizens, restrictions must pursue a legitimate aim – for example where there is a genuine occupational requirement. Provisions limiting certain professions to citizens – such as auditors or founder of a farm, are unjustified.

11. The Trust calls on the Committee to recommend that Ukraine take measures to amend or repeal legal provisions which discriminate against non-citizens.

Article 2(1): Violence and Hate Crime

12. The Committee has noted the need for States to “ensure protection of the security and integrity of Roma (...) by adopting measures for preventing racially motivated acts of violence against them”.⁹ Although Article 161 of the Ukrainian Criminal Code, prohibits “deliberate actions aimed at inciting national, racial or religious enmity and hatred”, in line with Article 2(1) of the Convention, interviews conducted for our report and research by other organisations reveals that a number of minority groups continue to experience violence and hate crime.
13. The Roma have experienced a series of ethnically motivated crimes against them as individuals and as a community. For example, in early 2014, in Slovyansk, Donetsk oblast, a group of over 20 men targeted seven Roma households, entering the houses and beating Roma families, including children, demanding money and stealing anything of value.¹⁰ In February 2014, a group of about 15 people attacked four Roma households in Korosten, Zhytomir oblast, and in April 2014, a Roma family's house in Cherkassy was set on fire.¹¹
14. Crimean Tatars have also experienced various forms of violence and hate speech; for example, in May 2012, the tombstone of an important Muslim leader, Eskender, was destroyed.¹² The Human

⁷ Article 4 of Закон України “Про державну службу” (Відомості Верховної Ради України, 1993, № 52, с. 490), as amended between 1995 and 2015; Закон України “Про місцеве самоврядування в Україні” (Відомості Верховної Ради України, 1997, № 24, с. 170), as amended between 1998 and 2015; Article 1 of Закон України “Про військовий обов’язок і військову службу” (Відомості Верховної Ради України, 1992, № 27, с. 385), as amended between 1992 and 2015; Article 46 of Закон України “Про прокуратуру” (Відомості Верховної Ради України, 1991, № 53, с. 793), as amended between 1993 and 2015; Article 19 of Закон України “Про Службу безпеки України” (Відомості Верховної Ради України, 1992, № 27, с. 382), as amended between 2000 and 2014; Article 52 of Закон України “Про судоустрій і статус суддів” (Відомості Верховної Ради України, 2010, № 41–42, № 43, № 44–45, с. 529), as amended between 2010 and 2015; Article 8-1 of Закон України “Про нотаріат” (Відомості Верховної Ради України, 1993, № 39, с. 383), as amended between 1998 and 2015; and Закон України “Про аудиторську діяльність” (Відомості Верховної Ради України, 1993, № 23, с. 243), as amended between 1995 and 2015.

⁸ Закон України “Про фермерське господарство” (Відомості Верховної Ради України, 2003, № 45, с. 363), as amended between 2005 and 2014.

⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 27: Discrimination against Roma*, UN Doc, 16 August 2000, Para 12.

¹⁰ European Roma Rights Centre, “Joint Statement on Violence Against Roma in Ukraine”, *errc.org*, 30 April 2014.

¹¹ *Ibid.*

¹² United States Department of State, *2012 Report on International Religious Freedom: Ukraine*, 2013.

Rights Committee has previously raised concerns about reports of hate speech and racial violence against Crimean Tatars.¹³

15. In recent years, there have been numerous reports of anti-Semitic hate crime and violence. Our research has shown that incidents such as the desecration of and graffiti at Jewish cemeteries¹⁴ have been accepted as the norm by both Jews and the wider community. Interviews with Jews revealed an expectation of discrimination, with little hope for change:

*To a certain degree we can observe popular anti-Semitism. But this is rather the ignorance of our society. It existed and will always exist.*¹⁵

16. Yet despite such experiences, other interviews revealed that Jews do not feel that they are a national minority and feel that they are no worse off than any other ethnicity.¹⁶
17. Foreign nationals experience a significant amount of xenophobia in the form of hate crime and hate speech. Skin colour is invariably the motivation for such attacks. In 2012, the European Commission Against Racism and Intolerance (ECRI) noted that:

*[M]ost racist incidents reported to the authorities or – more often – to civil society consist of physical attacks committed against foreign students, migrants, refugees, asylum seekers, Roma and other persons of non-Slavic appearance, including Africans, Central and South-East Asians and persons from the Middle East or the Caucasus. Such attacks clearly target people based on their appearance and most commonly occur in Kyiv and other major urban centres where there is a significant number of foreign students or migrants. (...) Such attacks are frequently severe, resulting in serious wounding by beating, knifing or shooting. Some observers also indicate that racist attacks tend to increase during electoral periods, when the political climate is less stable.*¹⁷

18. The Human Rights Committee has previously urged the Ukrainian authorities to strengthen its efforts to address hate speech and racial violence, in particular by ensuring that perpetrators of such crimes are prosecuted under Article 161 of the Criminal Code.¹⁸ However, our research shows that racial violence remains a problem in Ukraine. For example, while Jews report feeling safe in Ukraine, two individuals interviewed for our report noted that Article 161 of the Criminal Code – which prohibits deliberate actions aimed at inciting ethnic, racial or religious hatred – is difficult to

¹³ United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 11.

¹⁴ See, for example, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine*, UN Doc. A/HRC/27/52, 19 September 2014, p. 18.

¹⁵ Equal Rights Trust interview with A, B and C, 8 April 2015, Odesa. (Initials changed.)

¹⁶ Equal Rights Trust interview with Roman Shvartsman, Head of the Odesa Regional Association of Jews and former Prisoners of Ghettos and Nazi Concentration Camps, 8 April 2015, Odesa.

¹⁷ European Commission against Racism and Intolerance, *ECRI Report on Ukraine (fourth monitoring cycle)*, CRI (2012)6, 21 February 2012, Para 43.

¹⁸ See above, note 13, Para. 12 noting the “prevalence of discrimination, including the difficulties encountered in access to personal documents, education, health care, housing and employment”.

enforce, and that anti-Semitic offences are instead treated as a lesser offence of hooliganism.¹⁹ One interviewee discussed the complications in applying this law:

However, its fulfilment is problematic because of quite complicated and time-consuming procedure foreseen by the article. For instance, a violation must take place during a public event when the accused person must incite against someone or something. It also requires an expert opinion and there is a very big problem in that state experts are non-existent. Thus, it is difficult to prove that a crime was committed on the ground of ethnicity and was not an act of hooliganism or similar misconduct.²⁰

19. Levels of prosecution for hate crime remain low; in 2009, only four investigation proceedings were initiated by the Public Prosecutor's Office, six in 2010, and two in 2011 with only a few of these being brought to court.²¹
20. The Trust urges the Committee to call on Ukraine to improve the investigation and prosecution of hate crime and incitement.

Interaction with Public Authorities – Article 4(c)

21. Article 4(c) of the Convention states that State parties “[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”. Our research revealed several incidents where public authorities, such as law enforcement agencies or those providing social assistance, have discriminated against minorities.
22. Roma are particularly vulnerable to discrimination from the police, as the Committee has previously noted.²² Our research found many such incidents. For example, Olena Petrenko, a Romani woman, told Equal Rights Trust researchers about a case of racial abuse by police in Myrhorod, Poltava oblast.²³ Ms Petrenko and three of her relatives arrived at a railway station in Myrhorod when an officer from the Myrhorod municipal police department prevented them from boarding the train and took them to the police department. Not only were their passports and money confiscated, without registering the confiscation, they were verbally abused and forced to confess to crimes they did not commit. One of the police sprayed one of the women's heads with deodorant before setting it alight with a cigarette lighter. When collecting their belongings later on, only Olena Petrenko was given her money back. The women complained about their treatment, but the acting chief of the municipal police department told them that he considered their detention to be lawful, that his officers had not exceeded their powers and that they would receive no apology.
23. The police also fail to investigate crimes against the Roma. In *Fedorchencko and Lozenko v Ukraine*, the European Court of Human Rights found that there had been a failure properly to investigate an

¹⁹ Equal Rights Trust interview with X., 7 April 2015, Kyiv; Equal Rights Trust interview with Y., 8 April 2015, Odesa. (Initials changed.)

²⁰ *Ibid.*

²¹ Харківська правозахисна група, Права людини в Україні 2012. Узагальнена доповідь правозахисних організацій: 14. Вразливі групи як об'єкт дискримінації, расизму, ксенофобії та злочинів на ґрунті ненависті, 2013.

²² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 27: Discrimination against Roma*, 16 August 2000, Para 13.

²³ Equal Rights Trust interview with Olena Petrenko, 27 February 2014, Myrhorod, Poltava oblast.

attack by a police officer against three Roma households which resulted in the death of a number of individuals in breach of Articles 2 and 14 of the European Convention on Human Rights:

[G]iven the widespread discrimination and violence against Roma in Ukraine (...) it cannot be excluded that the decision to burn the houses of the alleged drug traffickers had been additionally nourished by ethnic hatred and thus it necessitated verification.²⁴

24. Foreign nationals and recent immigrants also face discriminatory treatment by law enforcement agencies, primarily the police, who sometimes racially profile them for the purpose of identity checks or even to extort money.²⁵ The Committee has previously urged Ukraine to “ensure that the police do not engage in racial or ethnic profiling when conducting document checks on foreigners or members of “visible minorities””.²⁶ However, discriminatory profiling of minorities remains a problem. In a survey of foreign nationals conducted by the Kharkiv Human Rights Protection Group in the city of Kharkiv at the end of 2011, 79.1% of respondents stated that they had been detained by representatives of law enforcement agencies with the most obvious reason for this being their skin colour or appearance.²⁷ In addition, 67% of respondents had had their documents checked, and 13.2% had had money extorted from them. More than half stated that law enforcement agents had detained them, despite their having the correct documentation with them, and 45% of those detained were only released after they had paid a bribe to the police. One interviewee told researchers ““Once a policeman was asked, ‘Why do you stop us and extort money out of us constantly?’ and he replied, ‘Why? Because you are foreigners’””.²⁸
25. The Roma have also suffered discrimination from public authorities in accessing social assistance. For example, Nadiya Buzna, a Romani woman interviewed for our report, stated that in February 2012, she visited the district Labour and Social Protection Department of the Myrhorod District State Administration in Poltava oblast to apply for a “loss of breadwinner” pension for her and her son. When she entered the room, inspectors working there approached and said that she was “another Gypsy woman coming to ask for money”. Nadiya stated that every time she had to go to the office it was like torture for her, as the workers there humiliated her simply because she was Roma and requested social assistance to which she was entitled.²⁹
26. The Crimean Tartars have been targeted in raids by the authorities in search of weapons and “extremist” literature. Individuals have been fined when found with Islamic text, including one of the deputy heads of the Crimean Muftiyat in charge of education issues and a librarian of a boarding school whose school library contained three books with sermons by a Turkish Muslim theologian.³⁰ This is not only discriminatory behaviour from the authorities, but this is also an unjustifiable limitation to the right to freedom of thought, conscience and religion under Article 5(d)(vii) of the Convention.

²⁴ *Federhenko v Ukraine* (Application No. 387/03), 20 September 2012, Para 68.

²⁵ See above, note 13, Para 11.

²⁶ See above, note 6, Para 10.

²⁷ Ангурская, Л. “Почти половина иностранцев в Харькове подвергались преследованиям (данные опроса)”, Городской дозор Харькова, 30 January 2012.

²⁸ Николаев, И., “Чужой среди чужих: как складываются отношения иностранных студентов с украинцами”, Харьковского профсоюза студентов, 23 June 2011.

²⁹ Equal Rights Trust interview with Nadiya Buzna, 27 February 2014, Myrhorod, Poltava oblast.

³⁰ “Crimea: Enforced Disappearances”, *hrw.org*, 7 October 2014; Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine: 15 November 2014*, 20 November 2014, Para 209.

27. The Trust calls on the Committee to recommend the training of all law enforcement agencies and public authorities on the right of members of minorities to equality and non-discrimination. The Trust also urges that the Committee recommend disciplinary action of all law enforcement agencies and public authorities who have been found to have discriminated on the basis of ethnicity, nationality or race.

Education and employment- Articles 5(e)(v) and Articles 5(e)(i)

28. The Ukrainian Constitution, in line with the Convention Articles 5(e)(v) and(i), guarantees freedom of education and freedom of employment to everyone. However, this guarantee is not reflected in practice.
29. Only 38% of Roma in Ukraine are employed and only 28% work full-time.³¹ It is very difficult for Roma to find employment, given the lack of identification documents and high levels of illiteracy.³² Furthermore, as European Commission against Racism and Intolerance has noted that “prejudices remain rife” and that “Roma tend to be the first to lose their jobs in difficult times or to be blamed if something goes wrong”.³³ These prejudices inhibit the full integration of Roma into Ukrainian society.
30. The Committee has previously noted the high drop-out rates of Roma children in education and recommended that Ukraine take action to address this.³⁴ However, research indicates that that Roma children often only complete five to six years of education, despite the fact that a full secondary education in Ukraine lasts eleven years.³⁵ Furthermore, many Roma children often experience poorer quality education than their peers, or are subject to bullying and abuse. For example, the mother of Alyone Havrylenko spoke to our researchers about the abuse her daughter experienced. One of her teachers referred to her as a ‘stupid gypsy’ with the students following this example by verbally abusing her at break times. She has also suffered physical abuse such as other students pulling at her hair.³⁶ The European Roma Rights Centre has collected evidence indicating that Roma children are frequently educated in separate schools, often of lower standards effectively segregating Roma children. Discrimination against Roma children in education violates Article 5(e)(v) of the Convention.³⁷
31. The rate of unemployment of Crimean Tatars is double that of the population average.³⁸ The Crimean Tatars themselves consider this to be the result of discrimination in hiring, with particular difficulties faced by women and those in their 40s and 50s.⁴⁰ There is also a language barrier as the

³¹ See above, note 18, Para 144.

³² *Ibid.*

³³ *Ibid.* Para 145.

³⁴ See above, note 6, Paras 17-20.

³⁵ Харківський інститут соціальних досліджень, *Вивчення правових потреб ромського населення в Закарпатській та Черкаській областях*, 2012, p. 33.

³⁶ Equal Rights Trust interview with Olha Havrylenko, 27 February 2014, Zachepylivka, Poltava oblast.

³⁷ European Roma Rights Centre and Chiricli, *Written Comments concerning Ukraine for consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session from 28th April to 23rd May 2014*, p.7.

³⁸ See above, note 18, Para 92.

⁴⁰ Mirimanova, N., “Political participation and representation of Crimean Tatars and other formerly deported people: needs assessment”, *Social Science Research Network*, 2013, pp. 7–12.

Crimean Tatar language remains a language of limited communication. Crimean Tatars are mostly unable to receive education in their native language; there are no Crimean Tatar pre-schools, and in 2013, only 15 schools out of 576 in Crimea teach in the Crimean Tatar language.⁴¹ The limited availability of teaching in the Crimean Tatar language inhibits the rights of Crimean Tatars to freedom of education, in breach of Article 5(e)(v) of the Convention.

32. The Trust urges the Committee to recommend that Ukraine take steps to ensure that Roma and Crimean Tatar children are fully integrated within the education system and, more broadly, to ensure the enjoyment of the right to education without discrimination on the basis of race or ethnicity.
33. The Trust also calls on the Committee to recommend that Ukraine take steps to tackle the high unemployment rate of Roma and Crimean Tatars, and to ensure equality in access to employment more broadly.

⁴¹ OSCE High Commissioner on National Minorities, *The integration of formerly deported people in Crimea, Ukraine: Needs Assessment*, August 2013, p.27.